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The Sex/Law Tango Tangle

Discrimination Against Transgender People

by norrie mAy-welby

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Social progress is so often a matter of three steps forward and two steps back.

In 1996, we (transsexuals) were included in the Anti-Discrimination Act of

N.S.W., but only "recognised transgender persons" were guaranteed equal treatment with others of their gender. To be a "recognised transgender person", you must change your birth certificate, which requires (A) being born in a State (or country) that allows for such a change, and (B) satisfying the prerequisites for such a change, which means having had irreversible surgical procedures for the purpose of living in the "new" gender. This may mean a full vaginoplasty or penoplasty, or be as "simple" as a hysterectomy or hormone implants.

In 2004, it was established that in Australian Federal law, the legal sex of a person is not determined solely by the sex assigned at birth, but by the sex they are now, which is influenced by how they are seen by their social environment,

and by supporting surgery. This was a judgement by the full bench of the Family Court, re: Kevin, in which it was held that a transgendered man (who had not had full penoplasty, but had undergone some other transsexual medical processes) was a man for the purpose of the Marriage Act.

This would seem to shift the drawing of lines for when transgendered people must be considered legally to be of the sex in which they present.

Yet there have been retrograde decisions too, such as the granting of exemptions to allow Mission Australia and Edward Eager Lodge to discriminate against transgendered people.

Mission Australia's exemption states that they may run women-only services, but transgendered women are a kind of women, and I cannot see how they are allowed to use the old criteria of "recognised transgendered persons" for the only transwomen allowed in, when Re: Kevin supersedes this State law. Re: Kevin says that what you are now is what you are now, not necessarily what was assigned at birth, so a transwoman is a woman even if her birth certificate is male.

Edward Eager Lodge accepts trans women and treats them as men, and vice versa for transmen.

This is contrary to the principles of good welfare provision, where the humiliation of needy people is no longer an accepted practice.

To add insult to injury, I have just been informed that Supported Accommodation Assistance program (S.A.A.P.), which funds many agencies including Edward Eager Lodge, Mission Australia, and the Gender Centre, is asking all agencies to report the sex of clients, with sex defined "as a biological distinction between male and female, whereas gender is a self-identifying term. An example may be in the case of a client who was born with male anatomy but identifies as female. Under the new guidelines, that client should be recorded as male". Of course this is contrary to the N.S.W. law applying to "recognised transgender persons" and flies in the face of the federal legal ruling of re: Kevin.

As S.W.O.P.s Transgender Project Officer, I am working with the Gender Centre and Sex and Gender Education (S.A.G.E.) Australia to change the exclusionary practices of Mission Australia, and against an extension of Edward Eager Lodge's exemption, and to try and have the bureaucrats of S.A.A.P. adopt a more respectful and legally appropriate practice.

On a brighter note, those transsexuals who were born in the U.K. can now have their birth certificates changed to reflect the appropriate gender.

But Lord only knows what complications will follow the Federal Government's amendments to the Marriage Act made last August, which prohibit people of the same sex marrying in Australia, and render invalid in Australia any marriage made by same sex couples overseas, but do not address the question of marriages made heterosexually that become same-sex by virtue of one partner changing

sex, or of marriages made heterosexually overseas by partners who are classified as the same sex in Australia (due to the different determinations of legal sex in different jurisdictions).

In Iran, transsexuals are now recognised as their self-identified sex after sex-change surgery. But homosexuality (or any sex a pre-op. tranny girl has with a man) still gets a wall pushed on top of you.

Not surprisingly, there is a reduction in the number of "in-betweenies" (my frivolous term for people like me who are of ambiguous or androgynous gender) or effeminate queens, and an increase in "women trapped in men's bodies" seeking surgery and gender "normalisation".

Ah, wouldn't it be nice to just be accepted as a human being, without having to have a "normal" Type A or B identity, or without having to get universal agreement about what your sex or gender is?

On the plus side, glamorous transwoman Miriam charmed *Big Brother* in Australia, while another transwoman won the U.K. series last year. More and more transgender people are becoming visible in many varied fields, from the glamour of television to the grind of politics. I met Georgina Beyer a few months ago, the transsexual woman who retired from showbiz to the country, became interested in Council politics, and after being elected Mayor a couple of times stood for election as the local Member of Parliament and was elected. Despite the many legal and other challenges we face, there is room for us to achieve in whatever fields we choose, without our trans identity limiting us.

The world is a changing place, but by and large most people are more accepting of diversity than they may have been ten or twenty years ago. There are still bigots, but they are fewer in number, and far less influential than in bygone days. And enough of us have survived to build support for each other, to grow strong and assert our right to exist on equal terms with anyone. We know there's nothing wrong with who we are, even if who we are doesn't fit nicely into other people's expectations or the standard sex categories. And, as transgendered people, our liminal nature may even be a gift to the world. The law, of course, remains an ass, but such is life.

norrie mAy-welby

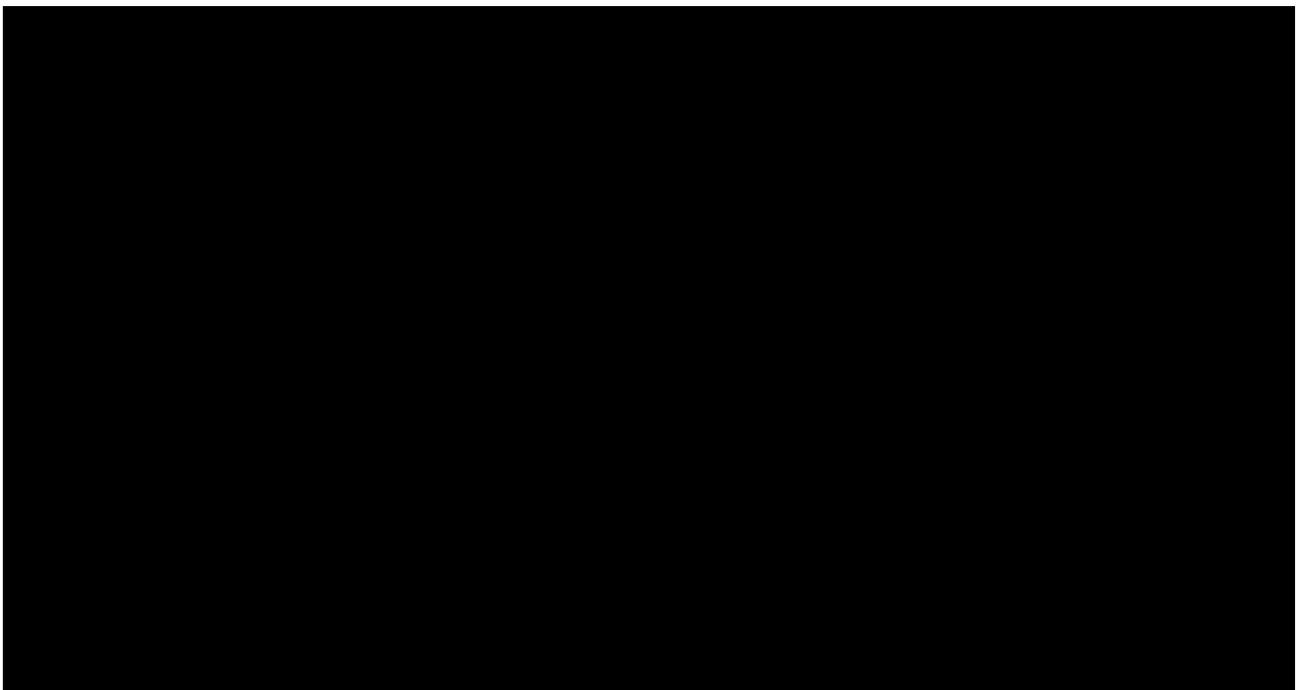
From [Wikipedia](#)  norrie mAy-welby became the first person in the world to be officially declared to be neither a man nor a woman, making Australia the first country in the world to recognise a "non-specified" gender.

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.