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# A Passport Identifies Who a Person Is

Not who they used to be!

by Marcelle, [The Scavenger](#) 

Article appeared in Polare magazine: July 2011 Last Update: October 2013 Last Reviewed: September 2015



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**A**n Australian transsexual woman has won the right to a full, ten year passport in her transitioned identity, without the need for undergoing sex realignment surgery first. She shares the story of her legal battle with the Australian Passport Office.

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My name is Marcelle. Just last week after seven long months I received my updated Australian passport indicating my true gender identity as female and valid for the full ten years. I am a transsexual woman who transitioned full-time in late September 2010 but have not had sex realignment surgery.

I managed to achieve this bureaucratic change as an individual, but I didn't achieve it alone. What's important and why I succeeded was that I had assistance from a variety of areas, some direct, some indirect. More importantly I was able successfully to expand on prior cases, fought and won by a large

number of others in the transsexual community. I was able to capitalise on their hard work and without them I would not have succeeded.

In November 2010, after transitioning fulltime for just on one month, I consulted with my sex and gender therapist about how I could adjust my passport as I was required to travel overseas for business.

After receiving a letter from her indicating my change, I put together two statutory declarations, one from my business partner indicating my change and that I was accepted by all our customers, and the other from myself indicating I was indeed transitioned fulltime. I then arranged for an appointment with the Passport Office to work with them to make the change.

I was warned ahead of time there might be issues and there were.

I live in Canberra and have been here most of my life. I have spent five years working in the public service and most of the other time contracting or consulting to them. I have friends who work in the public service.

What one needs to note is that this isn't a game of chess when dealing with them, it's much different, and I knew from the beginning that I had to ensure I was tackling procedures and not the people working there.

As I discovered from my first meeting with them, they were polite, helpful and sincere in their dealings, but they were not trained and had no knowledge of what sex and/or gender identity is and how to understand transsexuals and why this was so important to us. What was missing and it was very obvious, was a lack of training and knowledge in anything sex and/or gender diverse.

I also decided to be open and honest in all my dealings, and I never tried to be tricky or deceitful. I have been hiding my whole life – I didn't want to go down that path again. So I made sure I didn't compromise my principles in my dealings with them.

I have a background in I.S.O. 9001 procedures and have taken one company through certification so I know and understand guidelines. After my first meeting with the Passport Office, I was given a verbal decline for a full passport stating female in just thirty minutes because I was not booked for and showed no intention of having genital surgery.

My therapist, Dr. Tracie O'Keefe, [D.C.H.](#) agreed to follow-up with them and contacted the case worker. At this point I started on the paperwork. I knew it was important to keep a paper trail and I ensured everything said and done was documented, catalogued and tracked.

My history of events was going to be more accurate than theirs. So I requested another formal meeting.

This time I attended with three official letters of procedural complaint and one commendation to the original staff member who was legitimately sincere and polite in her dealings with me. There were two officials in attendance and it was a formal meeting.

The letters of complaint about their procedures related to the Passports Office's website, which was incorrect and misleading, and how my initial dealings with them were incorrectly handled. A couple of weeks later I received an official response denying my request, citing reference to the Passport Act and my birth certificate not matching my passport.

I also didn't satisfy the 'rare and unique circumstances of a compelling humanitarian nature', which they said gave them discretion in such decisions on a case-by-case basis.

I appealed the decision immediately, citing prior cases and concerns about my safety in having to travel on a passport that did not reflect my gender identity and presentation. I requested an impartial mediator because I didn't believe my case was being heard fairly.

I also pointed out their obvious lack of knowledge and requested information about how I was judged on humanitarian guidelines. I felt confident with the appeal. I went public with the local newspaper, the *Canberra Times*, and succeeded in having a full page article written on my case. My appeal was rejected on the same grounds as before.

I rang their legal counsel regarding the appeal and realised very quickly that their level of knowledge regarding sex and/or gender diversity was non-existent. Yet they had made their decisions. They refused to acknowledge risks to my safety when travelling on a passport that did not reflect my gender identity and presentation and insisted I use a Document of Identity (D.O.I.) like other transsexual and transgendered people.

It was then agreed during a phone call that they would answer any further questions I have in writing. Within two hours I submitted four pages, requesting information about their skill set, training and knowledge, what methods they used for determining humanitarian guidelines. I requested detailed reasoning why I needed answers before my appeal.

My questions were never answered and with one week to go I put in the appeal request to the Federal Government Administrative Appeals Tribunal (A.A.T.). I had to pay a large fee up front and I requested a skilled and impartial person to handle it. I had concerns up-front because the form requested gender on it, and my whole case was based around this and my identity. On contacting them, they said this part of the form was optional.

Realising that if I didn't do this, others would share a similar fate because the precedent was currently in the negative, I lodged the appeal and caught the Passport Office off guard as they referred to me in paperwork as female. I did succeed in getting a further small victory in that the Passport Office admitted in writing they had no procedures for determining what humanitarian guidelines one can be judged against.

I again used prior cases of similar discrimination, like the Peter Hyndal case, as the grounds for the appeal, and then went into reading on previous case law in Australia to get a feel for what I would have to face. When they requested the date of the hearing to be pushed back, I said no. I was ready to put forward my case. I also made it known I wanted the case to be public.

I might have been hiding who I was my whole life, but I wasn't going to do that now.

In all my dealings with the Passport Office, I used my original name and no title. With the A.A.T. I used my female name and female title. Ironically and actually quite importantly the Passport Office in the appeal actually referred to me as Ms and used my female name even though I had never used it with them. I deliberately kept a neutral path.

I have not changed my name, but as a simple extension (adding an 'le' to the end) as an alias to help people cope with the transition. They had unknowingly identified me as female, and done it via legal paperwork.

They also had no grounds to say this was what I wanted to be referred to as, as I had never in writing expressed that.

As this whole case centred in part around establishing my identity as female (and their quoting the law saying they needed access to the sex on my birth certificate to establish my identity), it was quite absurd that in the rejection email I was referred to in the feminine but was told I had to be male on my passport.

Interestingly and as I repeatedly pointed out to them, the law stated that they may use the gender on the passport to establish identity, it did not say that they had to.

When I received my official legal papers from the A.A.T., they also referred to me as female and this time, an official legal document established my identity as female. Again, without anyone realising it, I was being identified and treated as female.

I sent through documentation to the Tribunal covering these points:

1. Trying to associate fraud with anyone gender transitioning was tantamount to an insidious form of discrimination.
2. The issue was about my safety when travelling above all else, and I was not going to be used as an experiment to prove the point that I could be incarcerated when travelling because I did not match my passport.
3. Forcing me to use a D.O.I., when I was entitled to a passport was discrimination on two grounds. The first being that an employee of the crown was knowingly putting me in a position of embarrassment or harm if I had to keep my passport as male. The second was that they were denying me a goods and service under the law because of my sex and gender identity. Whether these arguments had merit, I never found out. I also raised the issue that the government was either dictating that I use an inferior D.O.I. when I travel, or that I travel as a male.

In effect they were dictating what my sex and gender identity should be. A very dangerous path to go down.

At my preliminary hearing there were two lawyers, one a partner, representing the Passport Office. Intimidating – yes, but it worked well for me. I realised my case was more important and warranted more attention than I was led to believe. The Department didn't want to lose and they were using excessive legal muscle to ensure it.

The case went from a simple one of wanting to change one letter on my passport to ensure my safety when I travelled, into one which now looked absurd. Here I was, with no legal skill, just fighting for my safety when I travelled, up against a government department sending in two lawyers to push their case.

When I showed them my current passport photo taken eighteen months ago it was obvious I looked completely different.

When I raised the embarrassing issues encountered entering and leaving the country, and that in the United States my driver's licence was accepted by officials as a form of identity and not my passport, it showed how useless my passport was for establishing my identity.

Considering the prime purpose of the passport is to establish one's identity, this issue proved my point. It surprised me that they did not push the use of the D.O.I., which until then had been their strongest argument.

Maybe the points I raised with them had merit. Without it, I knew that they had no case, as without it, the case now focused around my safety when I travelled, and there were well documented prior cases involving the Passport Office whereby it had to officially acknowledge that not matching your passport gender is a safety concern as in the Stefanie Imbruglia case.

I felt at all times that this case was not about winning or showing-up the Passport Office. That wasn't my goal. My aim was to help them understand that the implementation of procedures and guidelines were causing harm to those transitioning.

After the hearing I went on the offensive, raising arguments against possible further technicalities they might try to sneak a win on.

When the rules of the hearing were sent to me, and one of them included the establishment of whether I qualify under humanitarian guidelines, I responded with my most emotive and strongly worded letter.

I pointed out that nobody was qualified to make this decision: the Passport Office had no basic understanding of what the humanitarian guidelines really are because they eventually admitted there was "no policy document, guidelines or any other information in existence that expands on the meaning of the expression 'rare and unique circumstances of a compelling humanitarian nature' ". Eventually after the preliminary hearing, the Passport Office conceded the case and it was settled with them issuing me with my ten year female passport. The decision handed by the A.A.T. on 27th May 2011 states:

**The Respondent's decision of 25th January 2011 to refuse to issue an Australian passport to the Applicant with the sex shown as female is set aside; and the Applicant's application for a passport dated 17th November 2010 is to be remitted to the Respondent with the direction that an Australian passport be issued to the Applicant, noting her sex as female."**

In cases such as mine, I advise people to follow procedures to the letter, document what happens, and let them know when the procedures fail. Focus on the procedures and guidelines, not the individuals. Always look for win/win situations and understand whom you are dealing with. Be open and honest, do not be deceitful. Do not be bullied by bureaucratic procedures and stay strong, because you are not alone.

Special thanks goes to Dr. Tracie O'Keefe D.C.H. and the campaigning group Sex And Gender Education (S.A.G.E.). As my sex and gender therapist Tracie has provided me with the direction, advice and assistance I needed to make it this far.

I would also like to thank my local Federal Representative, Gai Brodtmann, whom I found out today had actually made efforts behind the scenes in a number of key areas to help my case.

### **Addendum by Tracie O'Keefe:**

This is yet another pivotal case in the history of the Australian Passports Office's changing policy on passports for transitioning transsexed, transsexual and transgendered people. In the past the Australian Passport Office has cited transitioning women who have not had genital surgery as potential terrorist risks.

Marcelle's case establishes that from day one of official transition a person should be entitled to a full ten year passport in the gender they present themselves to be, regardless of genitalia status or sex stated on the birth certificate. Accompanying letters from professionals must be included.

Genital surgery or a promise of surgery should not be the decider or qualifier of real entitlement to a gender appropriate passport, although hormone treatment may need to be present. Under international law a passport must match the presenting identity and provide a safe document of travel. The Passport Office says it has discretion on humanitarian grounds. However, to change a passport the applicant must state that being transsexed, transsexual or transgendered in the first place is a qualifier for consideration on humanitarian grounds.

S.A.G.E. will now press for better humanitarian guidelines and policies to be put in place at the Passport Office. People applying for new passports in a revised gender may encounter difficulties until those guidelines are put in place but Marcelle's case proves that lack

of surgery should never be an obstacle to having the gender on your passport changed when you are transitioning. S.A.G.E. is willing to help in difficult cases.

## Getting a Passport Made Easier for Sex and Gender Diverse People

On 11th September 2011, the then Foreign Minister Kevin Rudd and the then Attorney-General Robert McClelland announced new guidelines to make it easier for sex and gender diverse people to get a passport in their preferred gender.

Under the guidelines, sex reassignment surgery will no longer be a prerequisite to issue a passport in a person's preferred gender. "Sex and gender diverse people now have the option of presenting a statement from a medical practitioner supporting their preferred gender", said Mr Rudd. "This amendment makes life easier and significantly reduces the administrative burden for sex and gender diverse people who want a passport that reflects their gender and physical appearance".

The initiative is in line with the Australian Government's commitment to remove discrimination on the grounds of gender identity and sexual orientation. "Most people take for granted the ability to travel freely and without fear of discrimination", Mr McClelland said. "This measure will extend the same freedoms to sex and gender diverse Australians. While it's expected this change will only affect a handful of Australians, it's an important step in removing discrimination for sex and gender diverse people. Importantly, this policy addresses a number of the recommendations contained in the Australian Human Rights Commissions' *Sex Files* report".

The Hon. Kevin Rudd M.P., Minister for Foreign Affairs  
The Hon. Robert McClelland M.P., Attorney-General  
Canberra - Wednesday 14th September 2011

Polare Magazine is published quarterly in Australia by The Gender Centre Inc., which is funded by the Department of Family & Community Services under the S.A.A.P. program and supported by the N.S.W. Health Department through the AIDS and Infectious Diseases Branch. Polare provides a forum for discussion and debate on gender issues. Unsolicited contributions are welcome, the editor reserves the right to edit such contributions without notification. Any submission which appears in Polare may be published on our internet site. Opinions expressed in this publication do not necessarily reflect those of the Editor, The Gender Centre Inc., the Department of Family & Community Services or the N.S.W. Department of Health.

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.