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## A Submission to H.R.E.O.C.

### Seeking a National Enquiry into Discrimination experienced by Transgender people in Australia

by Kathy Noble

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The amount of documentation that is required to be altered is appalling ...

**H**aving been involved with the New Zealand H.R.C. report via a submission and meeting with Joy Liddicoat in Wellington, I am firmly convinced that

we need to have a similar enquiry in Australia. This should be determined along the lines of the New Zealand enquiry, i.e. be nationwide and should arrange meetings and take submissions from the trans-community in order to understand the situation. The enquiry should deal with all levels of government in Australia, which currently make laws which are inconsistent between State, Territory and Federal Governments.

Too many laws lead to confusion and make it extremely difficult to understand who is responsible for what. We need easily understood legislation which is user-friendly, and does not vary from each level of government, but is based on directions from the Federal Government that can be implemented by State and Territory Governments. At present if people move interstate they are faced with different and confusing laws that often mean they have to learn how the new state's laws affect them.

Some states offer a recognition certificate, but there is no consistency in this, as the usage of recognition certificates differs from jurisdiction to jurisdiction. South Australia, Western Australia and Victoria offer recognition certificates but may or may not recognise the certificates issued by other States. In addition, their certificates may not be recognised by the other states and territories. They can be used abroad as recognition of a person's transition in order to have documentation amended in a country of birth, yet no government in Australia recognises any recognition certificate issued outside Australia, and this creates problems for those who have immigrated here and become citizens.

The amount of documentation that is required to be altered is appalling, and can be very off-putting to those who face this both before and after surgery. In addition there is the fact that you have to apply to each government department separately, as they do not exchange details inter-departmentally. This means that you have to tell the Passport Office, Citizenship, Immigration and Multicultural Affairs separately. States and territories are responsible for birth certificate, change of name, drivers licence and other matters such as land registry.

The Federal Government is responsible for passport, citizenship certificate, marriage, Health Insurance Commission and permanent residency. Therefore, it is of little value to blame the wrong government for causing problems. As each of these governments makes its own laws, inconsistency is inevitable, and will remain so until a structure is established at federal level to be the basis for consistency at all levels of government. This should include an assurance that data will be passed between departments, as is the case in Britain. The format used in the U.K. would be an ideal starting place. The Gender Recognition Act U.K., 2004 dictates that one department notifies all others after acceptance and issue of the gender recognition certificate.

We have tried to underline these problems in the following pages with letters from affected transgender people. We would like you to consider very carefully what we have put together, in the hope that we can at last achieve congruence of government policy and law. We have been continually told about this by the Federal Government of both the former Coalition and the current Labor Government.

Transgender people are a minority group seeking equality at law with the rest of society, which we currently do not have. We wish to be recognised in the same way that we have recognised ourselves since birth. Through a quirk of nature we were born into the wrong body and we ask that this be corrected through appropriate documentation. By doing this many will be saved a lifetime of torment and the strong possibility of suicide.

### Official Submission Concerning Discrimination Against Trans People and Their Spouses.

This submission comes under the International Covenant on Civil and Political Rights and Immigrant Status and Social and Cultural Rights. It also relates to the Australian Constitution (Chapter 1 part V (xxi.) marriage and (xxii.) divorce and chapter V. The States. 109

and 117)

109 states "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" So, is an inconsistency at state level overruled by a consistency, or a bigger inconsistency at federal level?

At present there are huge inconsistencies at all levels where the transgendered are concerned. Correspondence from the Coalition and the policies of the Labor Government's talk about consistency, but deliver inconsistency. In addition they both abdicate their federal obligations, and attempt to pass to the states and territories what is not their legal area of concern!

I am continually told by various government and health departments that we are "too complex". I would counter this, by saying that the current legal framework is too complex and confusing for trans people.

The New Zealand Human Rights Commission (H.R.C.) in their 2008 transgender report state in Conclusions at 8.43 "The current legal framework is complex and confusing for trans people. Trans people are very diverse and should not have barriers placed in the way of their human rights simply because that diversity presents legal complexity. All persons, everywhere are entitled to respect for their dignity by virtue of their humanity. An inclusive approach should be taken to protecting trans people from discrimination"

In the New Zealand H.R.C.s Findings and Recommendations at 9.2 "Frequently, the wider community has little or no understanding about these issues affecting trans people's lives. The evidence presented in this report demonstrates there are crucial policy areas where no consultation has taken place with trans people and decisions have been made based on limited knowledge about their impact on trans people".

This is certainly true in Australia where the full problem has not been researched and thought through in a unified and consistent way.

At 9.50 "The enquiry recommends that the Government should enable effective participation by trans people in decisions that affect them by:

- recognising and supporting the leadership advocacy of trans people; and
- increasing government agencies' consultation and collaboration with trans people, starting with the priority areas outlined in this report".

We in Australia would very much like to see this implemented!

It appears all too easy to hide behind the oft quoted word 'complex' which seems to be an excuse for those departments that really are saying "Go away, we have no time to spend on your problems".

The following lists show the difference in the number of documents which need to be amended for those born in Australia and those born offshore.

Born in Australia:

- change of name;
- sex reassignment surgery;
- divorce (if married);
- amend birth certificate; and
- amend passport.

Born off shore:

- change of name;
- sex reassignment surgery;
- residency status;
- recognition certificate;
- divorce (if married);
- amend birth certificate from country of birth;
- amend citizenship certificate; and
- amend passport.

## Queensland

(The author is from Queensland)

**Problem:** Lack of full recognition for those born offshore due to there being no recognised details certificate (R.D.C.) in place.

**Solution:** Issue an R.D.C. in Queensland.

**Problem:** Gender recognition certificate issued by country of birth not recognised

**Solution:** Recognise offshore recognition certificates. Proof of residency in Australia is required if we are to implement an R.D.C. in Queensland. This is a federal problem. Births, Deaths & Marriages will allow a change of name for those born offshore and resident in

Queensland. Allow driver's licence to be amended before surgery and after change of name accompanied by a letter from your psychiatrist. Those born in Queensland do not need proof of residency, or an R.D.C. to be fully recognised in their new sex or gender in order to change their birth certificate.

**Problem:** Those from offshore are now made to feel like second class citizens, even when they have been granted permanent residency and are citizens of Australia.

**Solution:** Afford us the same status at law as those born in Australia. In the Australian Constitution Chapter 5, 117: "A subject of the Queen, resident in any state, shall not be subject in any other state to disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other state".

## Federal

**Problem:** Does not recognise any recognition certificate issued offshore.

**Solution:** Recognise offshore recognition certificates. For those born in Australia they need only to be divorced, over eighteen and single to be able to change their birth certificate and passport after S.R.S.

**Problem:** Requirements for those born offshore. include an amended birth certificate from the country of birth, and an amended citizenship certificate in order to amend their Australian Passport

**Solution:** Allow amended citizenship and passport after S.R.S.

**Problem:** Proof of Residency has to be amended if you entered the country as male and are now female. Could it be construed that until that amendment is made, you do not exist, or are an illegal immigrant? No sex is mentioned on Form 283, Certificate of Evidence of Resident Status.

**Solution:** To be automatically amended after citizenship certificate has been amended. There is no link between departments. Citizenship certificate must be amended in order to amend your passport (Since May 2007). No sex is mentioned.

**Problem:** If married, there has to be a divorce in order to amend your birth certificate. This discriminates against those who wish to stay married.

**Solution:** Needs to be approached in an entirely different way to same-sex, as still legally married

**Problem:** The trans-person's spouse suffers loss of rights to inheritance and superannuation. They are placed into a same-sex relationship category by government departments, although still legally married. The spouse cannot regain full rights in marriage. Divorce is required in order to have those rights reinstated. Why should this be, as they took solemn vows and have done no wrong, other than stay married to their partner?

**Solution:** As the above solution

**Problem:** If denied an amended birth certificate because they are still married, then the passport cannot be amended due to being still married. (But note the recent Abrams case and Supreme Court ruling). This places those who have to travel offshore in a very invidious position.

**Solution:** In the past passports have been amended on production of evidence of surgery, why not now? We have proof

**Problem:** Those born in the U.K. have to divorce to be able to amend their birth certificate, so this stops them from amending their citizenship certificate and passport.

**Solution:** Also, in the past, the citizenship certificate was amended without an amended birth certificate. Again we have proof.

**Problem:** Does this apply to residency too?

**Question:** Does this also apply to proof of permanent residency, that birth certificate and citizenship certificate have been amended?

**Problem:** The decision handed down in the case of Abrams, now presents us with a farce, as she can amend her passport, but not her birth certificate.

**Query:** Will this mean that many more will use this precedent in order to change their passport via this route?

Why has the government made it so hard to change our passports, when it is a seemingly easy exercise when a newly married woman changes hers due to her change of name?

Is it possible to lower the threshold for enabling trans women to obtain an 'F' passport and a trans man to obtain an 'M' passport, reflecting the U.K. approach? This could take the form that allows the gender marker to be changed as long as the person has permanently changed gender role and does not intend to reverse it. A simple letter from a medical professional, general practitioner, psychologist or psychotherapist is sufficient to endorse this. This is unrelated to the gender recognition certificate issued by the U.K.'s Gender Recognition Panel.

## Legal Stance

What is the difference for those born an Australian citizen, as against those who are granted it via Australian citizenship? Are those born here considered to be more elite, than those granted both permanent residency and citizenship. It gives those who are granted citizenship the feeling of being second class citizens.

Is the Federal Government aware that a couple who remain married after one has undergone S.R.S., are forced to divorce in order for the trans person to amend documentation, and they would have to commit perjury as the law expects them to quote 'irreconcilable breakdown', when this is patently not the case, as this is the only grounds allowed for divorce.

What would be the outcome if the couple stated in court that they were being forced into a divorce in order to be allowed to change their birth certificate and other documentation, because of current Federal Government legislation with regard to trans people who are married and wish to stay married? If this were found to be a lie, would they have committed the crime of perjury?

The New Zealand Human Rights Commission in their 2008 transgender report on page 98 at 9.40 states: "Similarly, the inquiry considers that while amending a birth certificate should be sufficient to amend sex details on other records, it is not a necessary prerequisite. If someone meets the proposed criteria for changing the sex details on their birth certificate, they should nonetheless have the right to amend a passport, citizenship certificate or other documents. This provision is particularly important for trans people who cannot amend their birth certificate (for example: because they were born in a country that does not allow trans people to amend birth certificates, if they are currently married, or for cultural reasons).

What is the legal situation concerning young people who may require puberty blockers, (Re: Alex), whilst they decide if they are transsexual and intend to fully transition?

## Recommendations

If a person meets the criteria to amend his/her birth certificate in any state or territory or country that affords this to those born in those states, territories or countries, why can't those born offshore, but residing in said state, territory or country also be allowed to amend their documentation as is mentioned above in the New Zealand Human Rights Commission's report at 9.40. e.g. citizenship certificate, passport, permanent residency, or with the Health Insurance Commission? Why can't these be amended if one is still married or unable to undergo S.R.S. because of finance, cultural or health reasons if residing in the said state, territory or country, either by birth or being born offshore?

As the Federal Government is responsible at law for five areas (passports, citizenship certificates, proof of permanent residency, marriage and the Health Insurance Commission) that cover trans people, they should implement consistency of law and word with regard to trans people. This could then be used as a guide for all states and territories in Australia, creating consistency within the Commonwealth in accordance with Chapter V - 109 of the Australian Constitution. The new guide should include the principle that amended facts are to be passed between Federal Government departments, so that trans people do not have to apply to each department in turn for full recognition. Which would be the alpha department that would collate these details and pass them on? This is done in the U.K., under the Gender Recognition Act U.K. 2004 by the Gender Recognition Council. Once the gender recognition certificate is granted, then that authority notifies all relevant departments, such as Birth Registry, Tax Office and Pension Office, whose records are amended to show the person's new gender.

Our Federal Government should recognise all gender recognition certificates issued in Australia and those issued outside Australia by other sovereign governments and this recognition should then flow to all levels of government within Australia.

## Summation

We would like to see an approach in Australia similar to that of the New Zealand Human Rights Commission. Trans people should be interviewed across Australia, or asked to send in submissions. This would lead to a much better understanding of the problems that we face at all levels of government and medical areas. It can also afford anonymity for those who require it.

Chapter 5 of the New Zealand Human Rights Commission's report records what professional clinicians have to say. This is what is sadly lacking in Australia.

The New Zealand Human Rights Commission's report outlines the extreme problems that we face in Australia. Something must be done to counter the immense damage that our current laws cause and how trans people's problems are viewed, before too many more are lost to depression, despair and suicide.

Young trans people, sometimes as young as four, who come into the system, deserve better treatment than we older activists and advocates have received, and are receiving.

We suffer from outdated laws that are not being amended in order to keep pace with changes and research within the trans area of concern. The laws pertaining to trans people are far out of date in most cases, and out of touch with reality. We would ask that you give open and honest consideration to what we have outlined, in order to bring us up to date and into the twenty-first century, with regard to legal, social and health concerns in Australia.

## Letters to accompany the submission to H.R.E.O.C. Complaints

**I am fortunate that I have been able to acquire a gender recognition certificate from the U.K., and have therefore had my birth certificate amended. This has allowed me to amend my citizenship certificate, both my Australian and U.K. passports, as well as now receiving my Form 283, Certificate of Evidence of Resident Status. Clearly this should mean that I am fully recognised in Australia and Queensland. However,**

I feel that the situation in Queensland is questionable, as Queensland does not recognise any form of recognition certificate issued offshore, plus the fact that I have not been offered a recognised details certificate by Queensland, as they do not offer this!

My question is, am I recognised in Australia, but not in the State where I am domiciled (Queensland)?

Kathy Anne Noble  
President, Changeling Aspects

Hi Kathy,

Please find below an account of my dealing with the Passport Office.

I rang up the Passport Information Service on the 18th December 2007 and asked what the procedure was to change gender in my passport. After a discussion they said it would be best if my application was processed at the Passport Office and not a post office. An appointment was made for the 27th December 2007.

On the 27th I fronted the Passport Office. They initially said that I would need an updated birth certificate and I explained that I did not fit the criteria for a revised birth certificate (due to being married and not divorced). I brought a certified copy of my birth certificate but for some reason they needed the original even though I had my current and previous passports with me.

Finally they accepted my application. They did state it wouldn't be processed in their normal ten day period. They didn't know how long it was going to take and that it would need to go to Canberra for approval. The reference number for my application is 03452512W.

The following day (28th), I went down to the local Australia Post business centre and asked them to send a copy of my birth certificate through.

On the following Thursday (4th January 2008), I received a phone call from the Passport Office with an additional requirement, they wanted a letter from a second doctor confirming that I had had reassignment surgery. About half an hour later they phoned again requesting a letter stating that I was married and not going to get a divorce and also a letter from the N.S.W. Department of Births Deaths and Marriages stating the requirements for gender change on N.S.W. birth certificates, even though these are publicly available. They said they would forward my application to their Policies Department.

I spoke to the call centre at Births Deaths and Marriages (also on the 4th) and asked if they could produce such a letter. They said they'd get back to me within twenty-four hours with a decision. I queried what 'decision', their response was the decision would be on whether they'd give me such a letter.

I didn't hear back from them until the morning of the 7th when I had to re-explain what I needed and why. The gentleman I spoke to said this wouldn't be an issue and he'd get it out that afternoon.

In my letter to the Passport Office regarding my marital status, I also explained that I work for a company that is in the oil industry, I pointed out that we deal with oil companies in countries that are not accepting of transsexuals and that the longer it takes to process my application, the higher the chance that it will interfere with my ability to perform my duties.

I received the letter on the 10th of January, 2008 and faxed the documents to the Passport office. I will take the originals to my local Australia Post business centre today, so they can forward the hard copies to the Passport Office.

Name Withheld  
11th January 2008

Hi Kathy,

I've been hassling the Passport Office and I just got a phone call from them today (I rang them yesterday and last week but they didn't get back to me). They said it still hasn't been approved but it should be in the next couple of days. So I explicitly asked if it'll be issued next week and she said "yes".

So the squeaky wheel gets the oil. But it still remains to be seen whether they'll do it or not.

Has the other girl got hers issued yet?

Name Withheld

Some typical questions and answers:

Question: Sorry to trouble you, but is your passport with 'M' in the box a ten year one, or longer?

Answer: My Passport is a ten year one, it was one I took out before flying to Thailand for S.R.S. I was told I

could have it changed upon providing evidence of surgery to the department.

Question: Several others have been given this type of passport and when they have queried it, they are told "It is to save embarrassment when travelling" How can that be? When there is a clear mix of male and female displayed.

Answer: Damned good question - I think it's a disgrace. I travel quite a lot with work and it's a source of constant fear for me (particularly in South East Asia). I have actually held off on trips to the U.S. because of their level of scrutiny and potential for intense humiliation at a U.S. airport with a prominent 'M' on my passport. Recently I had to apply for some complex business finance and had to provide a copy of my passport with the documentation. I was terrified someone would pick up on the 'M' then too.

Question: Have you changed your U.K. passport, or don't you have one?

Answer: I have a U.K. passport, but it has expired many years ago. I haven't been to the U.K. since I left in 1987.

Question: Have you amended your citizenship certificate, and if so, was it back-dated in your female status to the date that you originally took it out?

Answer: Yes - my citizenship certificate has been amended. I have no idea if it was backdated at all - wasn't something I checked to be honest.

Question: There is now no mention of sex on the citizenship certificate.

Answer: There was no mention of sex on my original certificate (Issued in 1990), but the name was obviously male.

Question: Hope you don't mind answering these questions, as it is all useful in building a case for change.

Answer: No problems at all - happy to help if I can.

Dear Kathy

Sorry this has taken so long. I just haven't had a chance to do it before this. The passport is attached.

This is my experience as you requested.

I rang the passport section of the Immigration Department in around August/September 2004 to tell them that I was travelling to Thailand later in the year to consult three surgeons who specialise in male-to-female sex reassignment surgery.

I am a professional and I told them that on the way to Thailand I had to visit a colleague in Surabaya, Indonesia on business. I had been advised by my Indonesian colleague to be sure that I had a passport that declared me as female or I might experience difficulty, or even be forced to repatriate on the next available flight to Sydney when passing through Indonesian immigration. In my phone conversation with the passport Section of the Immigration Department in Canberra I mentioned that I wanted a twelve months passport which declared me as female (i.e. an 'F' in the passport number and box rather than an 'M') which I understood was available for M.T.F. transsexual people visiting Thailand to either seek or to actually have surgery performed and explained my reason for needing this. I was advised that this type of passport had been available for a number of years to assist transsexual people in choosing and consulting a surgeon, but that it had recently been removed from the type of passports available. I was advised that the only way to have the passport declaring me as female was to obtain a birth certificate issued declaring me as female. This can only be issued by Births, Deaths & Marriages in N.S.W. if sex reassignment surgery has been undergone by the applicant. Thus I was unable to get the birth certificate I required. The only other way was to travel as a male with my male passport. Under the standard conditions of transitioning from male-to-female, the psychiatrist will not allow any reversion to the former gender of the person seeking S.R.S. for any reason whatsoever, and if that does occur the patient must start therapy again and repeat the standard two year period with a full psychiatric report before any surgeon will carry out the procedure. I was already twelve months through the period.

The only way that I could solve my problem was to request the printer to assist me in gaining entrance to Thailand. Fortunately the company was influential in Surabaya and because of the then outdated entrance arrangements, representatives were able to meet me before Immigration, whisked me away to a lounge while the company director took care of the customs and immigration formalities on my behalf.

I was fortunate. Many other transsexual people would not be as fortunate. I cannot emphasise enough how important it is for a pre-operative transsexual's sense of self and dignity that he or she be treated as the gender dictated by this condition which has been present since birth. The current situation is devastating for transsexuals needing surgery.

Surgery is more cost effective overseas and is certainly up to Australian standards and in some cases exceeds them, but the normal procedure of finding, consulting and becoming comfortable with a surgeon is denied Australian transsexuals travelling overseas. Under the current regulations they travel under embarrassing circumstances with inappropriate documentation.

## The Dog's Breakfast - 1st August 2007

I arrived in Australia on a temporary passport in 1964! Issued by Australia under the Migration Act supporting white immigrants, usually called 'ten pound Pommie'

Many years later I applied for Australian citizenship in my then male name, address etc. and it was issued as such.

Applied to British High Commission in Canberra for passport so I could return to England for a three month holiday (male mode).

Some twelve years later I transitioned from male-to-female. I was issued with a deed poll for name change. Medicare, drivers licence etc changed with deed poll and medical certificate from psychologist issued by sexual health. All documents were changed.

In 2006 I applied to Canberra's British passport office for new passport in new name (deed poll supplied) plus old male passport with all information asked for - as per application. New passport was issued in female name with an 'F' in the box and on the bottom amongst the numbers was an 'F' as well. My old passport was returned with the corner cut off.

I now applied for an Australian passport via the post office with documents asked for. The new passport was returned with an 'F' in place, and no questions asked! As per the law in Australia, I answered all questions truthfully. There was no question that had to be ticked or answered that had anything to do with being transsexual!

Hypothetical question! If I was a mass killer would I say that I was, if not asked?

I cannot accept that an error has been made as stated in the above. If what follows is correct!

Clearly you have gathered from the general basic information which (name withheld) supplied initially that there is a fairly specific and detailed process to go through but there is no mention of how to do this contained within the I.P.S. application pack due to the sensitivity of the information.

If there is nothing contained in the information pack, where do we get the information from? Therefore, I think that what my friend has done, was correct, as she complied with what was asked for. I would suggest that the error is in the way the law package has been put together!

Name Withheld

Kathy, the above was sent to Newcastle-Upon-Tyne to try to get answers as to how this happened.

Private and Confidential  
Director, Passport Renewal Section, Passport Office

I need to bring to your attention an issue around the renewal of my current Australian Passport. In its current state, it is both incorrect and misleading, not to mention creating unnecessary personal stress.

Making the passport renewal online I was distressed to discover that the renewal form, that I was to take to the local post office, contained incorrect and misleading name and gender details.

I find it incredible that this has occurred, given I made, and was granted a decision through the Department of Immigration and Multicultural Affairs (Melbourne section), the right to change my personal records pertaining to all government records, including Passport and Australian Citizenship Certificate, after I had provided evidence to the effect I had undergone gender reassignment and was regarded as being female in the community, with the name (withheld).

The evidence provided included records stating that I legally be known as (withheld) and my gender regarded as female, including the following:

1. Victorian Recognised Details Certificate;
2. United Kingdom Birth Certificate; and
3. United Kingdom Gender Recognition Certificate.

The Officer from the Parliamentary and Public Access Unit, stated the personal evidence provided, leads her to the concluding decision that personal information held and available for use by Australian

Government departments was incorrect and misleading.

This authorised the changing of all Australian Government departments' records to the name (withheld) and gender as female, and includes changing all historical personal records, of which clearly a renewal of the passport is one. This decision allowed a successful application and issue of the Australian Citizenship Certificate, in the name to be received.

I also make reference to information received from a friend, where I draw the conclusion made by an officer from the Watch Office, Department of Foreign Affairs and Trade (dated 17th April 2007), under section 8 of the Australian Passport Act 2005, and that from an Assistant Secretary, Passport Client Services Branch (dated 22nd May 2007), that I have provided absolute evidence to ensure all future renewal applications of my Australian passport should correspond to that of my correct female name and female gender.

I trust this provides sufficient evidence for you to make a decision and direction, to ensure the renewal of my Australian Passport and to direct that it no longer has reference to incorrect and misleading information.

Sincerely yours,  
Name Withheld

Re: Chronological sequence of my passport story

Hi Kathy,

I attach the F.O.I. decisions (not sure if I previously sent them?). But it is worth referring to the section where the F.O.I. agent says that if there is any passport enquiries contact the Passport Office!

You can imagine the mockery of this statement from the result I received when I initially queried with the passport office about the fact that old improper details appeared on the passport renewal online and was told offhandedly, "we need this for security reasons" so that in effect they were not interested in assisting me at all.

So in ascending date order of events leading up to today's (Friday 31st August 2007) 'experience' at the Australia Post (Airport West - Victoria) Office:

1. Received authority from the F.O.I. for departmental records to be changed which, in effect, would allow for me to pursue an application for a new citizenship certificate.
2. Received citizenship certificate with new 'proper' details with the date it was first issued (in 1977)
3. Noted passport was up for renewal mid-September 2007
4. Around mid-August initiated renewal through the passport renewal online access.
5. Discovery after completing family name, first names, gender, and date of birth etc. the P.D.F. file revealed my old gender, name and details.
6. Tried to seek assistance thru the passport telephone contact number 131 232. Received response that I mentioned in the first part of this email.
7. I contacted Kathy who suggested I contacted the passport policy section - this I duly did referring to two instances of replies Kathy had received from earlier passport queries.
8. I phoned to seek progress and was informed that the response would be in the post that in effect would outline that I need to submit the new citizenship certificate with a normal passport application - this letter I duly received around a week later.
9. I then made progress to complete the passport application, including having the photo sighted and signed, then wanting to make an appointment with the Passport Office.
10. Informed this is not possible despite explaining the circumstances surrounding the sensitivities of this application that could be revealed - being informed all Australian Post personnel are trained and would need to go to Australia Post.
11. Made appointment with the first available Australia Post for the passport application - making copies of documents that may be required in what I thought was going to be a private meeting in a closed-off office!
12. Imagine my surprise - to the point I was going to walk out - where I have had the so-called interview as if I was buying a book of stamps - disgusting
13. The clerk said "it would not make any difference if I were to walk out as all Australia Post do it is this way"
14. So I stood there handing over the copy of the citizenship certificate imagining that any personal question that may have come up - would have been the point I would have walked out - can imagine the stress for someone who had to do an initial passport with all the questions/answers back and forth - very unacceptable
15. To cap off this 'wonderful experience' she cut my still valid passport front cover!

So Kathy you can see this is just the 'tip of the iceberg' of what we have to put up with - what should have been a relatively standard process.

Hi Kathy,

Thank you for your thoughts on problems transsexuals and G.I.D. Australians face! My wife and I approached my name change and all its implications honestly but in trepidation as we notified the various government and state authorities.

## Centrelink

We had no difficulty with Centrelink Lismore as we apprised their financial advisor of our plight and my name change. This particular officer changed my name on their files and this to date has made no difference to us receiving married Centrelink part pension payments.

My wife and I confirmed that we will remain married and stay together for life as we both took sacred marriage vows and had no intention of breaking them by divorce.

## N.S.W. R.T.A. Drivers License

I provided the Lismore office of N.S.W. R.T.A. with a certified copy of my amended birth certificate in my new name and was issued with a new license in the name of (withheld). As there is no gender noted on the licence all is ok.

## N.S.W. Birth Certificate

I amended my N.S.W. Birth Certificate by deed poll without any trouble as long as I retained male gender indicated on the amended certificate.

To change the gender on this certificate I must:

1. divorce my wife;
2. furnish the Births Deaths and Marriages with a certified statement by the Surgeon that I have had G.R.S. and am now a female.
3. I must lodge a fresh application as a transsexual before I can have my gender changed on my birth certificate.

This is totally impossible and draconian, not to mention discriminatory as my wife and I (like many other couples in our situation) wish to remain married to honour our commitment and marriage vows to one another.

## Australian Passport

As an Australian citizen I hold a passport in my former male name with the gender as male. If I wish to apply for a new passport in the name of (female name), gender - female, then the N.S.W. birth certificate must show I am transgender female!

A catch-22 situation, in anyone's language. Such a situation over gender would cause major problems in many countries if my passport showed me as (female name) male thus I might be unable to travel overseas as a result of this Federal Government's discriminatory legislative folly.

## Commonwealth Public Servants Superannuation

This august body is bound by Federal Government legislation which discriminates against all same-sex couples (married or not) by denying their surviving partner/husband/wife the 65 percent of the deceased public servant's superannuation pension which is applied only to married male and female couples!

In our case we are both retired, superannuated commonwealth public servants (still married after thirty-nine years) and we both contributed to the Commonwealth Public Servant's Superannuation from our salaries while working for our joint retirement.

Because of current legislation we are not now entitled to receive 65 percent of the deceased person's pension if I change my gender on my birth certificate! This is grossly unfair as we have and always will rely heavily on one another as a married couple financially, morally and in health matters not to mention the tremendous unconditional love, compassion and support we continue to share with one another through thick and thin. I still get Commonwealth Public Servant's Superannuation mail addressed to Mr. (female name) because I dare not change my gender on my birth certificate because of the aforementioned legislation.

We and many couples like us are caught in government legislative discriminatory regulations which refuse human rights and equal opportunities to those Australian taxpayers who through no fault of their own do not meet the religious and political norm of a male-female heterosexual couple.

I don't know of other legislation which precludes us from health care etc.

I do know that we are in no man's land because we do not fit into the government mould.

It is vital that our situation is resolved and we are able to receive the same entitlements as other Australian taxpaying citizens.

Hope this helps you a bit.

Name withheld 20th September 2007

## Letter to Member of Parliament

Re: Discriminatory Legislation of State and Federal Governments Impacting on Transgender Married Couples and Singles in Australia

I am writing to you to try and highlight the draconian and cruel discriminatory legislation currently applied to Australian transgender married couples which strips away the basic human rights and equal opportunities of all Australian transgender citizens. Such legislation flies in the face of the International Human Rights and Equal Opportunities Charter of which Australia is a signatory.

My wife and I are like many other Australian married couples, lumped in with the anti-gay legislation of 'same-sex couples' post-Howard and state legislation which ignores the facts as follows:

My 72 year-old wife and I married in good faith thirty-eight years ago as male and female and our union has lasted to this point despite surviving the stresses of Cyclone Tracy, major floods on the Queensland Sunshine Coast and even the very necessary gender reassignment surgery undertaken on 3rd August 2007. Because my Gender Identity Disorder and Transsexualism were not understood before our marriage I was forced to subjugate my condition all my life until such unbearable pressure of the condition overwhelmed me to the point of contemplating suicide four years ago.

As part of an incomplete university psychology degree which my wife undertook for her work, she attended a section on 'gender bending' (transgenderism) and therefore understood my condition and sought help to diagnose and confirm my condition. Because the area where we live is so isolated from specialist gender medical practitioners I was referred to the Brisbane Gender Centre by a local doctor. I attended appointments with a specialist gender G.P. at the Centre, and with a psychiatrist at the Brisbane Women's Hospital and Queensland Mental Health Specialist, also an endocrinologist in Wickham Terrace, Brisbane, over a period of four years.

My condition was confirmed and I began female hormones after being subjected much earlier to both Electro Convulsive Therapy (E.C.T.) and testosterone therapy in an effort to become male. Both failed. I also had a four-hour neuropsychology test in Brisbane to ensure my brain functions were okay and passed with flying colours.

I attended appointments with doctors, two psychiatrists and the plastic surgeon at the Monash Gender Centre. These reviewed my condition and treatment by the Queensland Gender Centre before accepting me for gender reassignment on 3rd August 2007.

At no time were either my wife and I advised of the draconian discriminatory State and Federal legislation against 'same-sex couples' introduced into both State and Federal Parliaments which lump transgender citizens in with lesbian and gay couples.

Neither of us is homophobic but we resent being classed and discriminated against by inclusion under the wrong label.

We are not lesbians nor thought of as such in our local community that understands that my condition is both medical and mental and, after all other avenues have been exhausted, has resulted in me becoming a woman.

The Commonwealth and State Legislatures choose not to recognise our condition and strip us of all our human rights and equal opportunity before the law.

The Human Rights and Equal Opportunities Commission late last year identified over fifty pieces of State and Federal legislation against 'same-sex couples' including transgender couples and transgender singles.

The following are just some that impact on transgender married couples:

1. By Medicare we are now determined to be a 'same-sex couple' and lose our married status despite the fact we are still married;
2. I cannot change the gender on my N.S.W. Birth Certificate without divorcing my seventy-two-year-old wife of thirty-eight years;
3. I cannot have an Australian passport with the corrected gender on my new passport unless I change the gender on my name-amended birth certificate;
4. If I change my gender on my birth certificate then my wife loses her pension card as she is then classed as a 'same-sex' single person! As a married couple we are both entitled to a part-pension along with all the married pensioner discounts on utilities travel on public transport; and
5. Commonwealth Superannuation Scheme legislation discriminates against 'same-sex couples' by denying the remaining partner the same rights as heterosexual married couples (entitlement of receiving 65 percent of the deceased public servant's superannuation pension. In our case we were both commonwealth public servants and both paid ten 10 percent plus of our gross salary to our superannuation scheme but under the current legislation neither of us is entitled to 65 percent of our partner's pension upon either's demise.

These are a few examples which discriminate against married transgender couples which we have come

across so far.

There is no assistance given to Australian G.I.D. and transgender citizens at present so married couples who do not divorce are discriminated against and put under impossible pressures.

The non-transgender wife/husband in the union is ignored and along with the transgendered person often suicides as a result of the treatment received under legislation.

Most married transgender couples have worked, paid taxes and contributed to the prosperity of Australia yet understanding and support by State and Federal Governments, the medical profession and the community is sadly lacking.

My wife and I, along with other transgender married couples and singles petition the current Labor Federal and State Governments to rescind Coalition and state draconian and discriminatory legislation as quickly as possible. National legislation rather than the piecemeal state and federal approach to address our plight would be needed to remove the legislative nightmare we all now face.

We are Australian taxpaying citizens who deserve the same rights as other Australians. My wife and I would appreciate a face to face meeting with you to discuss the points raised and to appraise you of our plight.

It is totally unfair that the non-transgender member of the married couple should be labelled as part of a 'same-sex couple' and stripped of all rights as a married person! After all she/he and the partner are the victims of a medical/mental condition over which they have no control.

Dear Kathy,

I received your email requesting approval to use my details in your complaints submission. My wife and I are suffering great distress to the point of depression at the inability of State and Federal Governments and their Quangos to address jointly the plight of transgender Australians, their families, wives and husbands, etc. in legislation. It would appear that our plight has been handballed back and forth between State and Federal legislators with each putting the situation in the too-hard basket.

As a married couple we resent the withdrawal and denial of our human rights and equal treatment before the law and the denial in current legislation of our ongoing commitment to one another by marriage vows taken in good faith by us both as man and wife.

We raised my wife's four young children (by her previous marriage) and I sublimated my undiagnosed transgender condition to achieve a 'normal' family life and comply with all the expectations that marriage, family and society demands. Late in life when the pressures of my condition were diagnosed and confirmed after they became unbearable, by joint agreement I underwent G.R.S.

No-one explained the minefield of discriminatory legislation which now confronts us and there appears to be no willingness or effort to try and rectify this situation at present despite a number of emails to the Human Rights and Equal Opportunities Commission as the legislation begins to be applied to us!

Always the promise of another special review of transgender problems but nothing ever transpires. Our situation is very depressing and at times this pain resulted in us results in depression and makes us ill.

Transgenderism is not a choice but a medical/mental condition which is not understood well either by the medical fraternity or the State and Federal Governments and is therefore swept into the too-hard basket. Married transgender couples lose all their married rights and privileges because they have been lumped in with gays and lesbians under the label of 'same-sex couples' by State and Federal legislation. Although technically one of the couple may have undergone gender reassignment surgery the bond, reliance, trust and support for one another does not change and the responsibilities and commitments to one another never changes.

Some are the same as mature heterosexual couples who do not practise conjugal bed activities (asexual) but in all other ways they remain the same married couple. It is also unfair that the communities in which we live and work accept our condition once it is explained to them and yet governments are unable to do the same in uniform national legislation.

It is particularly hard to comprehend the often ambiguous, discriminatory legislation against transgender citizens and their families in over fifty identified pieces of legislation by the Human Rights and Equal Opportunities Commission in late 2007.

Such action denies transgender couples the basic rights of other married couples not afflicted with the transgender condition.

It is high time the State and Federal Governments faced up to their joint obligations to treat all Australian citizens equally both in legislation and before the law.

I wish you well, Kathy.

Name Withheld

To Whom it may concern,

I write this as a document that lays out perceived and real problems that have been caused by my transition from male to female.

## Background

I am married to a wonderful woman and have been for twenty-seven years.

My transition took place in 2001-2002 and I had S.R.S. in January 2002.

My wife stayed with me.

I have changed several but not all the documents that pertain to me including, passport, bank accounts, name (Deed Poll), insurance, Medicare card, superannuation to my female name. Those not changed include citizenship papers, council rates and house deeds, birth certificate. Documents yet to be considered include immigration papers and status papers.

At this juncture I would like to add that some papers I've not changed due to cost as I was unemployed for quite a while during my transition due to difficulty with appearance discrimination etc.

For instance I informed the council that my rates notice should be addressed to (female name) as I had changed my name, but they told me that I had to pay to change it - I'm not sure how this works as I paid to change my name and am not allowed to use my old name even though apparently they are.

Now at this point I felt justified in thinking that I might be perceived in a real fashion as a woman by both the general population and by those who manage the duties of government. I find this not the case. This is how I now find the system to be.

- To the Government, I am a married person of indeterminate status unless dead in which case I am not married and my estate may not be claimed by my wife.
- To Medicare I am a woman
- To my wife's superannuation I apparently am not a family member (particularly as it pertains to inheritance rights).
- I am not married to my wife as I am a female, but I am not allowed a birth certificate as a woman because I am married.
- My passport is female - though it may have male tracers on it - and I've been informed by the issuing body that the amendments are to spare me embarrassment while travelling and do not confer legal status.
- To the tax office I am a single woman.
- I've also been told that when it comes to be renewed, it may be renewed as a male passport as my citizenship certificate is male (though in fact it doesn't say anything except my old (male) name). I also can't change it because I don't have single status to get a details certificate or a new birth certificate.
- My wife doesn't appear to have any rights as a married woman either - though she's done nothing wrong nor has she signed anything that may abbreviate or negate any rights as a married woman - this is an important point as it apparently discriminates against an innocent bystander.

Now I have some questions.

1. How do I restore those rights of a person who has not committed any offence nor done anything wrong except treat a medical necessity?
2. How do I restore those rights of a person married to the above?
3. How do I achieve the same rights I had before in terms of marital rights of inheritance? I didn't change anything nor sign away any of my rights as a married person - though I now apparently have none.

## Conclusion

My wife and I have both been discriminated against by human rights abuses, by Governments, both State and Federal.

I have had my status removed as a person and my life disrupted by a Government that refuses to accommodate real and difficult changes that had to occur if my life was to continue.

I seek only that to which others are entitled - the right to be me, the right to pass on to my spouse of twenty-seven years my estate and to be recognised by my country as a real person with an integral identity.

I hope this is not too much to ask.

Name Withheld

Dear Ms Noble,

Thank you for your email received by the Minister for Immigration and Citizenship, Mr. Chris Evans, on 9th January 2008 concerning issues faced by transsexuals resident in Australia when confirming their visa status and having a 'Recognised Details Certificate' issued. The Minister has asked that I reply on his behalf.

I apologise if you have been passed between officers. Your email has prompted a review of the procedures used by staff in our F.O.I. administration area and all staff are now aware of the process that is required for clients with similar circumstances.

While I can confirm that your records have been amended to reflect your details in the name of Kathy Anne Noble, for your information I will outline the process that should happen to effect these changes. I note that you are President of Changing Aspects so this information may also be of use to your members.

The Freedom of Information Act 1982 (the F.O.I. Act) provides a mechanism for the amendment and annotation of personal records held by Commonwealth Government agencies. Where clients consider that the Department of Immigration and Citizenship (the Department) has recorded their details incorrectly they may request under the F.O.I. Act that the Department amends their details.

To seek such amendment/s of personal records as held by the Department, they will need to complete a Form 424C and provide evidence of their correct details as explained by the form.

There is no fee to lodge an amendment request. F.O.I. Section is currently arranging to refund the \$30 application fee that you have already paid to lodge an F.O.I. request to determine your visa status. Once the amendment/s have been made, the next step is to apply for Certificate of Evidence of Residency Status (C.E.R.S.). This application is made on a Form 164 and has an application fee of \$70.

In respect of the visa/residency status of a person after gender reassignment, it is unlikely that their visa/residency status would change. The visa/residency held by the client is granted because the client has met criteria associated with that visa. If the visa holder continues to meet these requirements, their visa/residency status will not change.

Difficulties encountered by clients who may be permanent residents, but arrived on parental passports relate mainly to difficulties in locating the record of the original arrival in Australia. These difficulties arise due to the age of the records. For example, the records may not be held electronically or in some instances may have been destroyed. These difficulties, while regrettable, are likely to be encountered by any client who arrived in Australia in the same circumstances. I can assure you that the Department is committed to working closely with clients in this situation to find alternative ways of establishing the information required.

If you would like to discuss these issues further, please contact The Director, F.O.I. Section on (02) 6223 8565, in respect of the F.O.I. matters and your local departmental office in respect of matters about visa status (locations of departmental offices in Australia can be found on the Department of Immigration & Citizenship website).

Louise Smith  
Assistant Secretary, Review Coordination Branch  
Department of Immigration & Citizenship

Dear Louise,

Thank you for your letter of the 30th January 2008. I am pleased that a review of procedures will be undertaken, as we are totally confused by all of this. I have sent off Form 164 and have received back Form 283 with my amended details all as Kathy Anne Noble and backdated to my entry as a permanent resident in Australia.

This was achieved very quickly, as I sent the application on the 8th December 2007 and received Form 283 on the 20th December 2007.

We would like some clear indication as to the procedure for people who arrived as 'Ten Pound Poms' and those who arrived as children on their parents' passports. This situation has already caused one person problems, as when she went to Centrelink to change details, she was told at first that she did not exist. As you can imagine this caused her real concern, and she had to try to find details from her parents as to the flight or ship that she came out on.

We have so many documents to change, that it can be quite frightening when first experienced. There are some that can only be altered after surgery, as well as many that can be amended before surgery. This can prove very frustrating, especially if one is sent from one department to another, and many of those Departments do not pass details to other Departments.

The U.K. system is excellent. Once they granted my Gender Recognition Certificate, they advised all other departments, such as Birth Registry, Pensions and Tax Office automatically.

If the same were done here, I am sure that it would be a great boon to not just us, but government departments as well. Details would then be centralised and would lead to consistency within these areas.

Good Afternoon Kathy,

I am writing to you today on behalf of Louise Smith, Assistant Secretary, Review Coordination at Immigration to inform you that she has passed on your email dated 5th February 2008 to the appropriate research officers for a response to be prepared. As this may take some time due to the research involved, this email is to inform you that action is being taken and that a response will be forthcoming.

Executive Assistant to Louise Smith

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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.