



Dr Timothy Kendall
Acting Committee Secretary
Community Affairs Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

21-02-2011

Submission concerning Human Services Legislation Amendment Bill 2010

Dear Dr Kendall.

This submission is on behalf of Changeling Aspects

Thank you for the opportunity to put before you many of the problems faced by the Trans community with regard to Medicare and Centrelink.

Most of us are completely unaware of how to address our problems with regard to a change of name—pre-op, and change of sex—post-op.

All government departments and agencies allow us to change our name, as can anyone legally, but there are no designated web pages for Trans people to access in order to know how to go about this. We have won this facility from the Passport Office and it is proving to be useful for both the department and Trans people. This simple expediency saves angst from both sides, as we are both aware of the paths to follow.

As an example, Medicare and private health will issue us with new cards in our new name before Sex Affirmation Surgery. This means that when the card is scanned, it shows a femme name, but male data. This can be embarrassing for both client and staff.. If one does not have Sex Affirmation Surgery then this will continue indefinitely. Correspondence is received with the wrong sex identifier, such as *Mr Joan or Miss John*.

After Sex Affirmation Surgery, we have to re-apply to Health Insurance Central Records in order to have our sex re-registered and all details when scanned now show up in the new sex and name.

I understand from Centrelink this is the same situation, but most Trans people are not aware of this procedure, so they think they only have to apply for the name change and everything will be registered not only in new name, but new sex as well.

As you will understand, this causes problems, not just for Trans people, but for the staff of both Medicare and Centrelink. Due to the intolerable pressures we are exposed to, we sometimes lose patience with staff because both sides do not, or may not understand the situation and the correct approach to amending data.



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This can and does lead to frustration, depression and suicidality within the Trans community. Many only opt for change of name and driver's licence, as it is all too complicated.

I am also given to understand that access to our data, both old and new is available to all staff. I have been told this by both Medicare and Centrelink. Also, questions posed by email or letter, never seem to receive an answer.

We wish to make you cogniscent of the fact that we are expected to amend every document (40+) as well as divorce in order to be recognised in our true sex/Gender. I hope that these facts will finally be understood because of the immense pressures they place on us to be fully and legally recognised as man or woman after Sex Affirmation Surgery, or even before hand, as many choose not to have surgery, cannot afford it or it would be life threatening so to do.

The interesting fact of remaining married after Sex Affirmation Surgery sets up what can only be described as farcical. We are **Forced** to divorce in order to amend our birth certificate. However, we are recognised by Federal Government as per the following letter and the one from Centrelink.

“Australian Government
Attorney-General's Department
Social Inclusion Division
09/3082, MC09/849, MC09/981, MC09/1292, MC09/1272

17 March 2009

Ms Kathy Anne Noble
President, Changelings Aspects
PO BOX 897
CLEVELAND QLD 4163

Dear Ms Noble,

Thank you for your correspondence of 8 January 2009, 12 January 2009, 22 January 2009 and 24 January 2009 in respect of the Government's same-sex reforms and on issues concerning identity documents for transgender people born overseas and the inconsistencies between the technology used by Equal Opportunity Commissions and the Anti Discrimination Commissions.

As you are aware the Australian Government is awaiting the report on the Australian Human Rights Commission's sex and gender diversity project. As mentioned in previous correspondence, the Commission is currently preparing its report of the project which is likely to be released shortly.

The Australian Government will consider the recommendations made by the Commission. In relation to your concerns about the inconsistent references to transgender issues in State and Territory laws (raised in your letter of 22 January 2009), I can inform you that a project on the harmonisation of anti-discrimination laws is being progressed through the Standing Committee of Attorneys-General. A Working Group of officials has been established to develop options for Ministers' consideration. It is possible that this type of issue may be examined in that context.



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In relation to your letter of 24 January 2009, I would like to clarify the Government's position. I can confirm that the Commonwealth Same-Sex discrimination law reforms will have no effect on the *Marriage Act* 1961. The Marriage Act provides that a marriage must be between a man and a woman. This is consistent with current Government policy and there are no plans to change the Marriage Act to allow for a marriage to be solemnized between same-sex couples.

Gender re-assignment surgery has never, of itself, changed the status of a marriage which was valid at the time of solemnization. It has always been the case that a validly solemnized marriage would continue, irrespective of whether one of the parties subsequently underwent gender re-assignment surgery. The same-sex reforms due to come into force on 1 July 2009 do not change that position.

The legal recognition of the sex of transgender persons is primarily a matter for the States and Territories, as they are responsible for maintaining their respective Registers of Births, Deaths and Marriages. All States and Territories have legislation which enables post-operative transgender persons to obtain either a recognition certificate or an amended Birth Certificate recording their preferred sex in certain circumstances, unless the person is a married person. Again, the same-sex reforms have no impact on this.

The Government's same-sex reforms amend 84 Commonwealth laws to remove discrimination against same-sex couples and their children. They extend to same-sex de facto couples the same entitlements and obligations that apply to opposite-sex de facto couples.

From your correspondence I now understand that you are also asking about the policy positions taken by other Commonwealth departments and agencies, including Centrelink. I understand that those policy issues are currently under review by the relevant departments and agencies.

I also note that the National Human Rights Consultation may also provide an opportunity to share your views on human rights in Australia. The National Human Rights Consultation was launched on 10 December 2008. The Attorney-General has appointed a Committee of eminent Australians to conduct the Consultation. The members are Father Frank Brennan SJ AO, who chairs the

Committee, Ms Tammy Williams, Ms Mary Kostakidis and Mr Mick Palmer AO APM.

Over the coming months, the Committee will seek the views of the Australian public on which human rights and responsibilities they consider are important, whether they are currently sufficiently protected and promoted, and whether they could be better protected and promoted.

The Committee will hold community roundtables throughout regional and remote Australia, as well as in capital cities during the first part of 2009. The Committee is also accepting written and online submissions to the Consultation. They want to ensure that a diverse range of people in Australia, particularly those who would not usually participate in a Consultation such as this, are able to share their views on human rights in a variety of locations around the country.

To help enable this, the Committee is planning to have a strong online presence throughout the Consultation.



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To register to participate in a community roundtable or to make a submission, you may wish to visit the Consultation website at www.humanrightsconsultation.gov.au.

The Committee will report to the Government on a range of options for protecting and promoting human rights in Australia by 31 August 2009.

I trust that this information will be of assistance. Thank you for bringing your concerns to the Government's attention.

John Boersig,
Assistant Secretary

Centrelink
Australian Government giving you options

Kathy Anne Noble
PO Box 897
Cleveland Qld 4163
7 May 2009

Dear Ms Noble,

I refer to your recent enquiry about Centrelink's policy in regard to the introduction of the Government's same-sex reforms.

From 1 July 2009, a couple who are legally married and not living separately and apart from one another on a permanent or indefinite basis, despite one of the members of the couple having undergone gender re-assignment surgery, can be assessed in the same way as any other legally married couple.

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

Yours Sincerely,
Paula Nightingale
Manager
Cleveland Customer Service Centre
www.centrelink.gov.au

We can also amend our passport if remaining married after Sex Affirmation Surgery on a case by case basis. As per attached extract from their designated web page.

“Exceptions - Full validity passport to be issued in new gender

Married Applicants



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Applicants who claim that they are unable to obtain an amended cardinal document because they are married should provide the following documentation (note, this only applies to RBDM documents as DIAC will amend its records for married persons):

- A statement from the relevant RBDM/Gender Reassignment Board that they have met all requirements for their reassigned gender to be recognised, except that they are married **or** medical evidence as set down in the relevant state or territory Registry of Births, Deaths and Marriages;
- Evidence of living in the character of the other gender such as driver's licence, medicare card, centrelink card, rates notices (or other PIDS documents);
- Original birth certificate;
- RBDM name change certificate;
- Marriage certificate;
- Statutory declaration stating that marriage has not been annulled.

This can and does lead to confusion by staff in both Medicare and Centrelink. In the past, until January 2009, we were deemed to be a same sex couple if we stayed married after Sex Affirmation Surgery, thereby losing all rights under the Marriage Act 1961. This was especially hard on the spouse, as they had decided to stand by their changeling partner.

08/775, MC08/17645, MC08/17302

19 January 2009

Ms Kathy Anne Noble
President, Changelings Aspects
PO BOX 897
CLEVELAND QLD 4163

Dear Ms Noble,

Thank you for your correspondence of 6 and 12 December 2008 regarding the Australian Government's same-sex reforms and the issue of a Recognised Details Certificate.

You queried how the Australia Government's same-sex reforms affect transgender individuals who remain married after surgery. As you may be aware, the same-sex reforms amend 84 Commonwealth laws to remove discrimination against same-sex de facto couples and their families from a wide range of Commonwealth laws and programs.

While the reforms do not expressly address the sex or gender diversity of specific individuals, they ensure that same-sex de facto couples and their families are recognised and have the same entitlements as opposite-sex de facto couples. A transgender individual who remains married after surgery will not be deemed to be no longer married as a result of the reforms. The effect of the reforms is that such an individual will receive the same treatment regardless of whether they are considered to be a member of a same sex or opposite-sex couple.

The Australian Government is aware of the Australian Human Rights Commission project which aims to address some of the difficulties faced by the sex and gender diverse community.



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The Commission has advised that its project will now consider laws and policies that govern the amendment of identity documents and the various ways that private and public organisations use or record information about a person's sex or gender.

The Commission is currently preparing its report of the project which is likely to be released in the coming months. The Australian Government will consider the recommendations made by the Commission.

You also raised particular concern about the lack of a Recognised Details Certificate in Queensland and the impact it has on transgender individuals living in Queensland.

As I explained in my previous correspondence to you (27 October 2008), the Australian Government supports consistent laws relating to transgender recognition across the States and Territories. The implementation of the Births, Deaths and Marriages Registration Amendment Bill 2005 is a matter for the Queensland Government. The Australian Government cannot legislate for identity documents issued by the States and Territories.

I trust that this information will be of assistance. Thank you for bringing your concerns to the Government's attention.

Yours sincerely
Peter Arnaudo
Assistant Secretary
Human Rights Branch

I have already made five submissions to the Senate Committee concerning the Sex and Ageing Discrimination Review Bill 2010, in regard to the Sex Discrimination Act 1984. These are concerning many of our problems.

A very great concern for us is the proscribing of the drug ANDROCUR to pre-op Trans women. If this prescribed under the PBS system, then we are listed as "*Sexual Deviants for life*" as per the letter from PBS.

ANDROCUR, THE TRUTH

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

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



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

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

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

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

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

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

Subject: Androcur on the PBS [SEC=UNCLASSIFIED]

Dear Kathy

As per our phone conversation:

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

Advanced carcinoma of the prostate

To reduce drive in sexual deviations in males.

It is an Authority required listing and hence specifies the specific indications for use on the PBS. These are also TGA registered indications for the drug.

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



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

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

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

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

Regards Sue

Sue Swensson
PBAC Secretariat
02 6289 8348

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

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

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

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

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

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

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



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

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

Paul Smith

The codes were intended to allow Medicare to carry out audits to ensure the drugs were being used in line with PBS rules

To finalise.

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

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

We are no longer a minority group as per the figures from the USA which state 1-1000 for Trans people.

As you can see from this submission, we have many problems to overcome, but with the right approach from both sides, I firmly believe that we can accomplish them

Yours Sincerely, Kathy Anne Noble.

President, Changeling Aspects

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