

## **MEDIA RELEASE:**

25 September 2011: For immediate release.

*Sent on behalf of Conor Montgomery and Sex and Gender Education (SAGE).*

### **Trans man wins fight to have birth certificate changed after battle with NSW Births Deaths and Marriages**

A transsexual man from Sydney has won the fight to have his birth certificate changed from female to male, after a battle with the NSW Births Deaths and Marriages, which initially refused to issue him with an amended birth certificate.

CONOR MONTGOMERY, 51, a member of lobby group SEX AND GENDER EDUCATION (SAGE), hit the media spotlight in April last year when he applied to the NSW Births Deaths and Marriages (BDM) registration office to alter the recording of 'female' on his birth certificate to 'male'. His application was refused on the grounds that he had not had any kind of genital surgery.

Having had two chest surgeries (double mastectomy), suffering from various medical conditions and being registered as a disabled person, Conor was medically advised not to undergo more surgeries. The laws in NSW at the moment require transsexual people to undergo surgery to their reproductive organs to be able to amend their birth certificates.

Conor's lawyers put in a new application to amend his birth certificate on the grounds he had undergone a bilateral mastectomy, and since breasts are reproductive organs, he should therefore fulfil the legal requirement under NSW legislation. Two medical doctors certified that Conor had had reproductive organs removed.

In August 2011 Conor received his amended birth certificate stating 'male'.

"You cannot explain what it is like to hold that piece of paper in your hand when you have waited for it all your life," Conor said upon receiving the amended certificate. "It's been such a battle and it was great to have that amended birth certificate that said male at last. When I die I want it to say male on the death certificate; in the meantime I'm just another pretty ordinary bloke.

"This victory is not just for me, it's for the generation being born today so that they don't have to endure surgeries if that is not right for them, but can have a life of dignity."

Conor said he would like to thank the members of SAGE, Tracie O'Keefe, the lawyers, and all other campaigners who have made this possible.

TRACIE O'KEEFE, sexologist and spokesperson for SAGE, said requirements for trans people to undergo genital surgery in order to change their birth certificate are a breach of human rights.

"Some people cannot afford the expensive medical treatment available to trans men, and such surgery is not always successful because it is so complex. All surgery bears the risk of death and it is unfair to force people to take that risk. Some people also do not want surgery. There is also the principle that no government should force people to undergo surgery of any kind to gain their basic human rights," she said.

**For more information and to schedule an interview with Conor Montgomery, contact Tracie O'Keefe from SAGE on 0403 398 808 or email [info@tracieokeefe.com](mailto:info@tracieokeefe.com).**

**High-resolution image of Conor Montgomery is attached. Free to use but please credit Kate Jones. [Ends] SEE NEXT PAGE FOR DETAILED INFORMATION AND BACKGROUND NOTES.**

### **BACKGROUND INFORMATION & NOTES FOR EDITORS**

- When Conor's original application to change his birth certificate was denied in April 2010, he, with the help of the campaigning group Sex And Gender Education (SAGE), brought two complaints against the NSW BDM with the Australian Human rights Commission (AHRC).
- The first complaint was that under the 1984 Sex Discrimination Act he had been discriminated against because of his sex. The Act does not mention what sex a person has to be in order to bring a complaint, so whatever sex Conor was or was not, he was discriminated against and refused a service because of his sex.
- The second complaint was under the Disability Discrimination Act 1992 in that Conor had been denied a service, open to other transsexual men, because of his disability, which meant he could not have more surgery.
- The major mechanism that the AHRC has is to request conciliation between parties in discrimination disputes before they go to expensive legal trials. The AHRC requested the NSW BDM to attend conciliation again and again but under Attorney General Hatzistergos's rule, it refused. Since the AHRC only had jurisdiction over federal bodies, the NSW BDM said that it was exempt from the AHRC's powers because NSW BDM was a state body not federal. Even as a gesture of goodwill the NSW BDM still refused to meet with Conor and his team to see how he could be helped. So the complaint became stale-mated.
- In meetings with Conor, SAGE and a set of lawyers, a new approach was taken. The NSW BDM Act that pertains to changing birth certificates for transsexual people requires surgery on their reproductive organs. It does not state which reproductive organs. Conor had already had a bilateral mastectomy, which meant he had, indeed, had had removal of reproductive organs.
- At this present time two trans men in Western Australia (WA) are fighting a case in the High Court to have their birth certificates changed to male. Neither has had genital surgery nor wish to undergo such a procedure. Both have had chest surgery, are taking testosterone and present themselves as male in society.
- The objection from the state in the WA case is that if these trans men stop taking testosterone they could be impregnated and give birth, so its logic is they are not real men. WA requires trans men to be surgically sterile before it will change their birth certificate to male.
- Conor was post-menopause before he began to transition five years ago so even if he stopped taking testosterone he could not get pregnant. Due to his medical condition in vitro fertilisation would also be impossible. Also pregnancy would kill Conor because of his medical conditions.
- Governments seem to have ignored the fact that trans men could very easily have frozen their eggs before transition so even after transition and genital surgery they could still have children via surrogacy. They would legally be entitled to have their names on the child's birth

certificate as the mother even if they were stated as legally male because no court, under human rights law, can deny physical paternal recognition. Many trans people have done this over the past 20 years.

- Health professionals supporting people who wish to change their birth certificates without undergoing surgery are no longer prepared to put up with the outdated prejudicial Australian laws that are defiling trans people's human rights. Sex and/or gender medicine, healthcare and sciences are now more greatly advanced than the time that present outdated birth certificate laws were written. In the United Kingdom and Spain trans people do not have to have genital surgery to have their documents changed.
- The AHRC's 2009 Sex Files Report recommended that all states under the direction of the Federal Government change their laws so that transitioning people do not have to have surgery to amend their birth certificates. SAGE is calling on Federal Attorney General Robert McClelland to obligate all states to change all laws to comply with those recommendations in consultation with the community, and for Australia to honour its commitments to the international human rights treaties to which it is a signatory.
- While this case sets no precedents, what it shows is the incongruency of bureaucrats and politicians trying to dictate – even to the medical profession – who should be considered male, female or anything in between. Births, deaths and marriages laws were constructed to keep public records. Sometimes those records need to change, SAGE is calling for bureaucrats to help citizens to register their true identity in such cases.
- Approximately one in 100 people are sex and/or gender diverse in some way which accounts for around 200,000 Australians. They might not all want to transition and change their birth certificate, but if they do, the states and commonwealth should facilitate their needs, not go to war with them.

Conor will be speaking at Australia's first Sex and/or Gender Diversity (SGD) Human Rights conference in Sydney on 2 December, 2011. Details below:

**1st Sex and Gender Diversity (SGD) Human Rights and Dignity Conference – Australasia, 2011 – Sydney. Friday 2nd December, 2011  
Redfern Community Centre, The Block, Sydney**

Sex and/or gender diverse (SGD) people are made up from many differing groups including people who are intersex, transsexed, transsexual, transgendered, androgynous, without sex and gender identity, cross dressers and people with sex and gender culturally specific differences. They are people who experience variations in physical presentation and social behaviour that is other than stereotypically male or female. Each group may have its own physical, psychological, social, legal and political issues that may not necessarily relate to any of the other groups.

Call for papers and speakers and suggestions until 5pm on 31 October 2011.

Conference consultation page <http://www.sageaustralia.org/linked/conference%20proposal%208-9-2011.pdf>

Facebook event page: <http://www.facebook.com/#!/event.php?eid=220801031311943>

