

NSW REGISTRAR OF BIRTHS, DEATH AND MARRIAGES v NORRIE (S273/2013)

Court appealed from: New South Wales Court of Appeal
[2013] NSWCA 145

Date of judgment: 31 May 2013

Special leave granted: 8 November 2013

Upon a review of a decision by the NSW Registrar of Births, Death and Marriages ("the Registrar") not to register Norrie's sex as "non-specific" under Pt 5A of the *Births, Deaths and Marriages Registration Act 1995* (NSW) ("the Act"), the Administrative Decisions Tribunal ("the Tribunal") held that the Registrar's power under s 32DC of the Act was confined to the registration of a person's sex as either "male" or "female". The Appeal Panel of the Tribunal subsequently affirmed that decision. Upon a further appeal to the Court of Appeal, Norrie contended that the Appeal Panel had erred in its construction of s 32DC of the Act by holding that the Registrar could only register a change of a person's sex from "male to female", or from "female to male".

On 31 May 2013 the Court of Appeal (Beazley ACJ, Sackville AJA and Preston CJ of LEC) unanimously allowed Norrie's appeal. Their Honours held that the Appeal Panel had erred in construing that s 32DC(1) of the Act limited the Registrar's powers of registration of a person's sex to only "male" or "female". They also held that, as a matter of construction of s 32DC, the word "sex" does not bear the binary meaning of "male" or "female".

The Court of Appeal unanimously found that the Appeal Panel had therefore erred in law in concluding that it was not open to the Registrar to register Norrie's sex as "non-specific". Their Honours further held that it will be a matter for the Tribunal, upon remittal, to determine if it is satisfied that a person's sex may be registered as "non-specific". The Court of Appeal also found that the text and context of the word "sex" in the definition of "sex affirmation procedure" does not limit the sex affirmation procedure to only the "male" or "female" sexes.

A Gender Agenda Inc has applied for leave to appear as *amicus curiae* at the hearing of this appeal.

The grounds of appeal are:

- The Court of Appeal erred in concluding that s 32DC of the Act permits registration of a person's change of sex to a category other than "male" or "female".
- The Court of Appeal erred in holding that it was open to the Tribunal to consider whether to register a specification of sex of the kind sought by the Respondent, namely, "non-specific".