

# Neither male nor female ... but still Jewish

According to Australian law now, an individual needn't necessarily be male or female. So does someone who is neither wear a kippah or a sheitl? **Timna Jacks** reports.

**I**N a historic ruling handed down by the NSW Court of Appeal late last month, a person who does not consider themselves to be either male or female can be legally recognised as being of neither gender.

The case revolved around Norrie May-Welby, who was born male but underwent sexual reassignment surgery and now identifies as a neuter. May-Welby successfully appealed a decision that everyone must be registered as a man or a woman with the registry of Births, Deaths and Marriages.

Now, May-Welby and others who have had sex affirmation surgery can have their sex recorded as "gender non specific".

According to spokesperson for Transgender Victoria Sally Goldner, the case will encourage other states and territories to extend the legal rights of transgendered (a person who believes they are the opposite gender to their biological sex), inter-sex (ambiguous genitalia or chromosomal variations causing confusion of gender) and even the gender-less.

"Two dot points for 'male' or 'female' cannot represent the reality of human existence," Goldner, who is Jewish and a member of the Jewish Community Council of Victoria's GLBTIQ (Gay, Lesbian, Bisexual, Transgender, Intersex and Queer) reference group told *The AJN*. "This serves as a reminder for other jurisdictions that we need to keep moving forward."

But how does the Jewish religion accommodate the gender-less Jew, if indeed at all?

With many Jewish traditions and obligations gender-specific, how should a Jew outside the bounds of gender, as a result of a medical condition or their own desires, appropriately observe Jewish customs and laws?

For instance, would a gender-neutral Jew don tefillin or light Shabbat candles or both?

Where would they sit in synagogue?

According to president of the Organisation of Rabbis of Australasia Rabbi Moshe Gutnick, each individual

case would have to be judged on its own merits.

Many of the halachic requirements, he said, should depend on how "the person physically presents [their gender identity]".

"There is no code that talks about a person having no obligations because they are neither [male nor female]," said Rabbi Gutnick.

"There may be circumstances where one would follow the commandments of both male and female."

Historically, he noted, Jews have proven rather progressive on matters involving gender ambiguity.

**"I have a medical condition that meant if I had continued to live as a man, I would not be alive today."**

**ELIZABETH**  
Gender dysphoria sufferer

When hermaphrodites were once seen as a bad "omen" and thus a target for merciless prejudice and murder by some rulers of the ancient world, Jewish law was already equipped with laws that catered for "tumtums" (a person whose sex is unknown) and the androgynous.

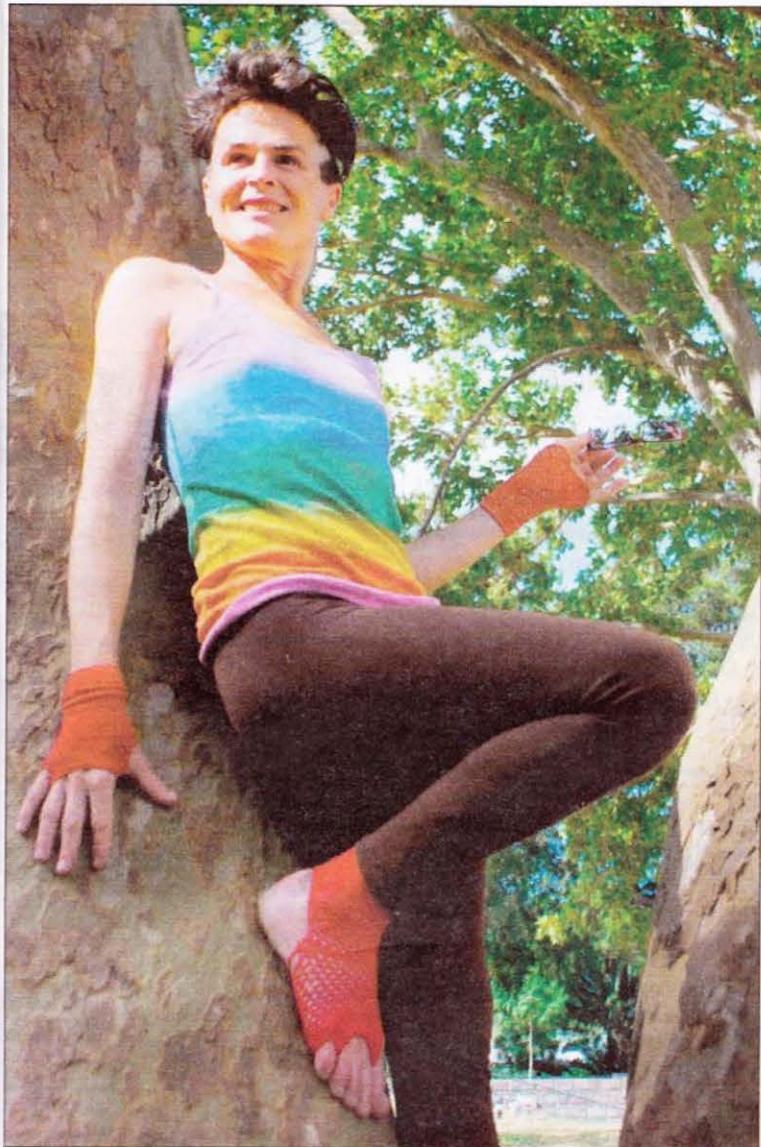
"The bottom line is," Rabbi Gutnick said, "whatever the person is, male or female ... whatever their situation or circumstances are, that person remains part of the Jewish community."

Part of it or not, they may still face problems feeling comfortable within it. Such was the case for Elizabeth, an antiques dealer, parent of three, and former member of a Melbourne Modern Orthodox synagogue for 12 years.

Elizabeth suffered from a medical condition called gender dysphoria, which caused her to feel a mismatch between her gender identity and biological sex. This meant that while she was biologically male, she always felt female.

When she informed a rabbi of her shul three years ago that she wished to attend as a female, she was told that she should "dress as a man and sit in the men's area", Elizabeth told *The AJN*.

"I was upset and continue to be upset by the lack of knowledge and education about these issues in the Orthodox Jewish community. I have a medical condition that meant if I had continued to live as a man, I would not be alive today,"



**Norrie May-Welby won a legal battle last month to be categorised as neither male nor female.**

Photo: AFP/Norrie May-Welby

Elizabeth, who currently attends a Progressive synagogue, said.

Given that men and woman are not required to sit separately in a Progressive synagogue and both boys and girls celebrate their bnei mitzvah aged 13, issues of gender-bending, or even gender-ignoring, may be less challenging for the Progressive movement.

Even God adopts a gender-neutral term in the Progressive siddur.

Yet the views of the congregation can prove discordant with the spirit of the law, Progressive Rabbi Jonathan

Keren-Black of the Leo Baeck Congregation in East Kew, noted.

"When I was in London, somebody who changed their gender – a tall man who had become a woman – came to my synagogue and wanted to explain her journey before the congregation. But people found it uncomfortable. She wasn't what they were expecting, so although I tried to encourage openness, in the end, she found a more welcoming community in London instead," he said.

"I felt sad about that, but I can understand it."