

SEX DISCRIMINATION COMMISSIONER'S AIDE MEMOIRE: STATE AND TERRITORY LEGISLATION REGARDING ALTERATION OF SEX/GENDER

Legislation as at September 2021 unless otherwise noted

Act	Application	Relevant definitions	Decision	Issuing of certificates	Effect of alteration
<p><i>Births, Deaths and Marriages Registration Act 1996</i> (Vic)</p> <p>Gender affirming surgery not a pre-requisite</p>	<p>S 30A(1): A person who is aged 18 years or over may apply to the Registrar for the record of the person's sex in the person's birth registration to be altered if—</p> <p>(a) the person's birth is registered in Victoria; and</p> <p>(b) the person believes the person's sex to be as nominated in the application; and</p> <p>(c) the record of the person's sex has not been altered within the 12 months preceding the date of the making of the application</p> <p>This must be accompanied by a stat dec made by the applicant addressing the above requirements: s 30A(3)</p> <p>See also s 30E (Victorian residents born elsewhere)</p>		<p>S 30C(1): The Registrar must determine an application made under s 30A by altering the record of the person's sex in the person's birth registration or by refusing to do so.</p>	<p>S 30D: After the record of a person's sex in the person's birth registration or a child's sex in the child's birth registration is altered, any certificate issued by the Registrar concerning that birth registration—</p> <p>(a) must state the person's sex or the child's sex in accordance with the record as altered; and</p> <p>(b) must not state that the record of the person's sex or the child's sex has been altered; and</p> <p>(c) must not state the person's former name or the child's former name (if any).</p>	<p>S 30G(1): If the record of a person's sex in the person's birth registration is altered under this Part the person is a person of the sex as altered.</p> <p>...</p> <p>(2) If an interstate recognition certificate is issued to a person the person is a person of the sex stated in the certificate.</p> <p>...</p> <p>(3) Subsections (1), (1A), (1B), (1C), (2) and (2A) have effect for the purposes of, but subject to, the law of Victoria.</p> <p>"Interstate recognition certificate" defined in s 3 as "a current certificate identifying a person as being of a particular sex that is issued under a law of another State that relates to the recognition of a person's sex".</p>
<p><i>Births, Deaths and Marriages</i></p>	<p>S 29I(1): ... a person of or above the age of 18 whose birth is registered in the State</p>	<p>S 29H(1): "clinical treatment" need not involve invasive</p>	<p>S 29L: If, on an application under this Division, the Registrar is</p>	<p>S 29M(1): Subject to this section, an extract or certificate issued by the</p>	<p>S 29R: If an identity acknowledgement certificate is issued to a</p>

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<p><i>Registration Act 1996 (SA)</i></p> <p>Gender affirming surgery not a pre-requisite</p>	<p>may apply to the Registrar...for registration of a change of the person's sex or gender identity</p> <p>S 29K: Such an application must be accompanied by:</p> <p>(a) a statement by a medical practitioner or psychologist certifying that the person has undertaken a sufficient amount of appropriate clinical treatment in relation to the person's sex or gender identity (including in the case of a person whose sex or gender identity has now become determinate)...</p> <p>See also s 29O (South Australian residents born outside Australia)</p>	<p>medical treatment (and may include or be constituted by counselling)</p> <p>But see (3): For the purposes of this Part [4A], clinical treatment constituted by counselling only cannot be regarded as a sufficient amount of appropriate clinical treatment unless the period of the counselling is equal to or greater than the prescribed period</p>	<p>satisfied that the applicant has undertaken a sufficient amount of appropriate clinical treatment in relation to their sex or gender identity, the Registrar may make an entry about the change of the person's sex or gender identity in the Register, including the particulars required by regulation.</p>	<p>Registrar in relation to a person after the registration of a change in the person's sex or gender identity under this Part must only disclose and certify up-to-date particulars contained in the relevant entry.</p> <p>S 29Q: If, on an application for an identity acknowledgement certificate, the Registrar is satisfied that the person has undertaken a sufficient amount of appropriate clinical treatment in relation to the person's sex or gender identity, the Registrar may issue a certificate that acknowledges the person's sex or gender identity.</p>	<p>person under this Division, the person is of the sex or gender identity specified in the identity acknowledgement certificate.</p> <p>S 29U: A person who has changed their sex or gender identity or has been issued an identity acknowledgement certificate under this Part will be taken to have satisfied a requirement under another Act or law that the person provide details of their sex if the person provides details of their sex or gender identity as changed</p>
<p><i>Births, Deaths and Marriages Registration Act 2003 (Qld)</i> (in force at time of conduct)</p> <p>Gender affirming</p>	<p>S 23: (1) An adult may apply to note the reassignment of the adult's sex.</p> <p>(4) The Application must be—</p> <p>(a) in the approved form; and</p> <p>(b) accompanied by—</p> <p>(i) statutory declarations, by 2 doctors, verifying that the person the subject of the application has undergone</p>	<p>Dictionary (Sched 2): “sexual reassignment surgery” means a surgical procedure involving the alteration of a person's reproductive organs carried out—</p> <p>(a) to help the person to be considered to</p>	<p>S 22: The reassignment of a person's sex after sexual reassignment surgery may be noted in the person's entry in the register of births or adopted children register.</p>		<p>S 24: (1) A person who has had the reassignment of the person's sex entered into a register maintained under a corresponding law is a person of the sex as reassigned.</p> <p>(2) A person who is the subject of a recognition certificate is a person of</p>

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surgery required	sexual reassignment surgery; or (ii) a recognition certificate...	<p>be a member of the opposite sex; or</p> <p>(b) to correct or eliminate ambiguities about the sex of the person.</p> <p>“Recognition certificate” means a certificate issued under the law of another State that identifies the person who is the subject of the certificate as—</p> <p>(a) having undergone sexual reassignment surgery; and</p> <p>(b) being the sex stated in the certificate.</p>			<p>the sex stated in the recognition certificate.</p> <p>(3) However, the person must comply with section 23 for the reassignment of the person’s sex to be noted under this Act.</p> <p>(4) If the reassignment of a person’s sex is noted under this Act, the person is a person of the sex as reassigned.</p>
<p>Births, Deaths and Marriages Registration Act 2023 (Qld) (yet to commence)</p> <p>Gender affirming surgery not a pre-requisite</p>	<p>S 39(1): If the person is 16 years or more, the person may apply to alter the record of sex of the person in the relevant child register.</p> <p>(2) An application must –</p> <p>(a) be in the form required by the registrar and made in an approved way; and</p> <p>(b) nominate a sex descriptor; and</p>	<p>S 39(3) A supporting statement must—</p> <p>(a) be made by a person who is at least 18 years and who has known the person making the application for at least 12 months; and</p> <p>(b) state that the person making the supporting statement—</p>	S 43(2): The Registrar may alter, or refuse to alter, the record of sex of the person in the relevant child register.		S 47(1): If the record of a person’s sex in the relevant child register is altered under this division, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State.

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	(c) include a statement, verified by statutory declaration, that the person— (i) identifies as the sex stated in the application; and (ii) lives, or seeks to live, as a person identified by that sex; and (d) be accompanied by— (i) a supporting statement; ...	(i) believes that the person making the application makes the application in good faith; and (ii) supports the application.			
<i>Births, Deaths and Marriages Registration Act 1995</i> (NSW) Gender affirming surgery required	S 32B(1): A person who is 18 or above— (a) whose birth is registered in NSW; and (b) who has undergone a sex affirmation procedure; may apply to the Registrar...for alteration of the person's sex in the registration of the person's birth See also s 32DA (NSW residents born elsewhere)	S 32A: a "sex affirmation procedure" is defined as a surgical procedure involving the alteration of a person's reproductive organs carried out— (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or (b) to correct or eliminate ambiguities relating to the sex of the person.	S 32D(1): The Registrar is to determine an application under s 32B by making the alteration or by refusing to make the alteration.	S 32E(1): After the record of a person's sex is altered under this Part, a birth certificate issued by the Registrar for the person must, unless otherwise requested by the person, show the person's sex in accordance with the record as altered. (2) Any such birth certificate must not include a statement that the person has changed sex.	S 32I(1): A person the record of whose sex is altered under this Part is, for the purposes of, but subject to, any law of NSW, a person of the sex as so altered. (2) A person to whom an interstate recognised details certificate relates is, for the purposes of, but subject to, any law of NSW, a person of the sex as stated in the certificate. (3) An interstate recognised details certificate is a certificate issued under the law of another State that is prescribed by the regulations for the purposes of this section. See also s 32J

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<p><i>Births, Deaths and Marriages Registration Act 1997</i> (ACT)</p> <p>Gender affirming surgery not a pre-requisite</p>	<p>S 24(1): A person may apply to the registrar-general for alteration of the record of the person's sex in the registration of the person's birth if—</p> <p>(a) the person is—</p> <p>(i) at least 16 years old...</p> <p>(b) the person's birth is registered in the ACT; and</p> <p>(c) the person believes their sex to be the sex nominated in the application (the "altered sex") and—</p> <p>(i) has received appropriate clinical treatment for alteration of the person's sex; or</p> <p>(ii) is an intersex person</p> <p>S 25(1): An application under s 24 for alteration of the record of the sex of a person must be accompanied by—</p> <p>(a) a statement by a doctor, or a psychologist, certifying that the person—</p> <p>(i) has received appropriate clinical treatment for alteration of the person's sex; or</p> <p>(ii) is an intersex person;...</p> <p>See also s 29A (ACT residents with births registered elsewhere)</p>	<p><i>NB "Appropriate clinical treatment" was not defined, although the Explanatory Statement for the Births, Deaths and Marriages Registrations Amendment Bill 2013 (ACT), p 5, stated that the term was not defined to "ensure that the exercise of professional medical judgement is not expanded or impeded by this Act" and confirmed sexual reassignment surgery was no longer required</i></p> <p><i>NB that, due to the Births, Deaths and Marriages Registration Amendment Act 2024 (ACT), the requirement for "appropriate clinical treatment" has been removed: see Supplementary Explanatory Statement to the Births, Deaths and Marriages Registration Amendment Bill 2023 (ACT).</i></p>	<p>S 26: On receipt of an application under s 24, the registrar-general must—</p> <p>(a) make the required alteration to the register; or</p> <p>(b) refuse to make the required alteration.</p>	<p>S 27: (1) A birth certificate issued by the registrar-general in relation to a person must show the person's sex in accordance with the record as altered.</p> <p>(2) The registrar-general may issue a birth certificate showing a person's sex before the alteration of the record if application for the certificate is made—</p> <p>(a) by the person; or</p> <p>(b) by a child of the person; or</p> <p>(c) by a person specified by regulation.</p> <p>(3) A birth certificate mentioned in this section must not include any word or statement to the effect that the person to whom the certificate relates has changed sex.</p> <p><i>NB s 27 has also been amended by the Births, Deaths and Marriages Registration Amendment Act 2024 (ACT)</i></p>	

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<p><i>Births, Deaths and Marriages Registration Act 1996 (NT)</i></p> <p>Gender affirming surgery not a pre-requisite</p>	<p>S 28B(1): An adult may apply to the Registrar, in a form approved by the Registrar, to register a change of the adult's sex or gender if:</p> <p>(a) the adult's birth is entered in the Register; and</p> <p>(b) the adult believes the adult's sex or gender to be the sex or gender specified in the application; and</p> <p>(c) the adult:</p> <p>(i) has received appropriate clinical treatment in relation to the adult's sex or gender; or</p> <p>(ii) is an intersex person.</p> <p>S 28C(1): An application under s 28B(1) must be accompanied by the following:</p> <p>(a) a statement by a medical practitioner or a psychologist certifying that the adult:</p> <p>(i) has received appropriate clinical treatment in relation to the adult's sex or gender; or</p> <p>(ii) is an intersex person;</p> <p>(b) any other documents or information prescribed for this subsection.</p>	<p><i>NB “clinical treatment” not defined, although the Explanatory Statement for the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018 (NT), p 3, states that the term was not defined to “ensure that professional medical opinions are not impeded by the Act, and to recognise that different types and levels of clinical treatment will be appropriate for different individuals”</i></p> <p>S 28A: “intersex person” means a person who is born with physical or biological sex characteristics that do not fit typical classifications of male or female bodies.</p>	<p>S 28D: On receipt of an application under section 28B, the Registrar must:</p> <p>(a) make the requested change to the Register; or</p> <p>(b) refuse to make the requested change.</p>	<p>S 28E: (1) If the change of a person's sex or gender is registered under this Part, a birth certificate issued by the Registrar for the person is, unless otherwise requested by the person, to show the person's sex or gender in accordance with the registered change.</p> <p>(2) A birth certificate mentioned in subsection (1) must not include a statement that the person has changed sex or gender.</p>	<p>S 28H: Where a person's change of sex or gender is registered under this Part, the person is, for the purposes of (but subject to) any law in force in the Territory, a person of the sex or gender as so changed.</p> <p>S 28J: A person in respect of whom there is a recognition certificate is, for the purposes of (but subject to) any law in force in the Territory, a person of the sex or gender stated in the recognition certificate.</p> <p>S 28A: “recognition certificate” means a certificate issued under any law certifying that a person has a sex or gender that is different to the sex or gender specified for that person in the Register.</p>
<p><i>Births, Deaths and</i></p>	<p>S 28A(1): A person who has attained the age of 16 years</p>	<p>S 3: “gender declaration” means a</p>	<p>S 28C: The Registrar, after receiving an</p>		<p>S 28C(7): If a gender is registered as the</p>

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<p><i>Marriages Registration Act 1999 (Tas)</i></p> <p>Gender affirming surgery not a pre-requisite</p>	<p>and whose birth is registered in this State may apply to the Registrar to have a gender, specified in the application, registered in relation to the person.</p> <p>(2) An application...</p> <p>(a) is to be in the approved form; and</p> <p>(b) is to be accompanied by a gender declaration made by the person; and</p> <p>(c) is to be accompanied by any other document or information that the Registrar reasonably requires, other than a medical certificate, or other medical document, in relation to the sex, sexual characteristics or gender of the person.</p>	<p>statutory declaration in which the declarant declares that the declarant identifies as being of the gender specified in the declaration and lives, or seeks to live, as a person of that gender.</p>	<p>application made under s 28A(1), (3) or (4) for a gender to be registered in relation to a person –</p> <p>(a) must –</p> <p>(i) register the gender as the registered gender in relation to the person by making an entry in the Register specifying the gender to be the registered gender in relation to the person... or</p> <p>(b) must refuse to register the gender as the registered gender in relation to the person.</p> <p>(4) ...the Registrar may...require the applicant to provide to the Registrar appropriate evidence of counselling...</p>		<p>registered gender in relation to a person under subsection (1) –</p> <p>(a) any registered sex that was previously registered in relation to the person ceases to be the registered sex in relation to the person; and</p> <p>(b) any registered gender that was previously registered in relation to the person ceases to be the registered gender in relation to the person.</p> <p>S 28D(1): If there is a registered gender in relation to a person, the person is, for the purposes of, but subject to, any law in force in this State, a person of that gender.</p> <p>(2) Subject to subsection (3), a reference to a person's sex in any law in force in this State is taken to be, in relation to a person whose birth is registered in this State, a reference to –</p> <p>(a) the registered sex, if any, in relation to the person; or</p>

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					<p>(b) the registered gender, if any, in relation to the person.</p> <p>S 28E: A person in respect of whom there is a recognition certificate in force is taken to be, for the purposes of, but subject to, any law in force in this State, a person of the sex, or gender, as the case may be, stated in the recognition certificate.</p>
<p><i>Gender Reassignment Act 2000</i> (WA), Part 3</p> <p>Gender affirming surgery not a pre-requisite</p>	<p>S 14(1): Where a person has undergone a reassignment procedure (before or after the commencement of this Act and within the State or elsewhere), application may be made to the Board in accordance with this section for the issue of a recognition certificate.</p>	<p>S 3: “reassignment procedure” means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other gender characteristics of a person, identified by a birth certificate as male or female, so that the person will be identified as a person of the opposite sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate</p>	<p>s 15(1): Where an application under section 14 relates to an adult, the Board may issue a recognition certificate if —</p> <p>(a) one or more of the following applies —</p> <p>(i) the reassignment procedure was carried out in the State;</p> <p>(ii) the birth of the person to whom the application relates is registered in the State;</p> <p>(iii) the person to whom the application relates is a resident of the State and has been so resident</p>	<p>S 17(1): (1) Subject to this section, if a recognition certificate, or an equivalent certificate issued under a corresponding law, relating to a person whose birth is registered in the State is produced to the Registrar, the Registrar must —</p> <p>(a) register the reassignment of gender; and</p> <p>(b) make such other entries and alterations on any register or index kept by the Registrar as may be necessary in view of the reassignment.</p>	<p>S 16(1): A recognition certificate is conclusive evidence that the person to whom it refers —</p> <p>(a) has undergone a reassignment procedure; and</p> <p>(b) is of the sex stated in the certificate.</p> <p>(2) An equivalent certificate issued under a corresponding law has the same effect as a recognition certificate under this Act.</p>

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		<p>ambiguities in the child's gender characteristics (NB in <i>AB v WA</i> (2011) 244 CLR 390 at [32] the High Court confirmed that a medical procedure such as hormonal treatment is sufficient).</p> <p>"gender characteristics" means the physical characteristics by virtue of which a person is identified as male or female</p> <p>"recognition certificate" means a certificate issued under this Act that identifies a person who has undergone a reassignment procedure as being of the sex to which the person has been reassigned</p>	<p>for not less than 12 months; and</p> <p>(b) the Board is satisfied that the person —</p> <p>(i) believes that his or her true gender is the gender to which the person has been reassigned; and</p> <p>(ii) has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned; and</p> <p>(iii) has received proper counselling in relation to his or her gender identity.</p>	<p>S 18:(1) After the reassignment of gender is registered by the Registrar and the register altered accordingly, a birth certificate issued by the Registrar for the person must, unless otherwise requested by the person or permitted by the regulations, show the person's sex in accordance with the register as altered.</p> <p>(2) Any such birth certificate must not include a statement that the person has changed sex.</p>	