

Births, Deaths and Marriages Registration Amendment Bill 2019

Introduction Print

EXPLANATORY MEMORANDUM

General

The Births, Deaths and Marriages Registration Amendment Bill 2019 amends the **Births, Deaths and Marriages Registration Act 1996** (referred to as the "Principal Act" in this explanatory memorandum) to remove the requirement for a person to have undergone sex affirmation surgery before being able to apply to alter the sex recorded in their Victorian birth registration or to obtain a document acknowledging their sex from the Victorian Registrar of Births, Deaths and Marriages (the Registrar).

The amendments allow an adult to apply to alter the sex recorded in their birth registration to a sex descriptor of their choice. The application will be accompanied by a statutory declaration and supporting statement made by an adult who has known the applicant for at least 12 months.

The amendments introduce a new process to allow the parents or guardian of a child to apply, with the child's consent, to alter the sex recorded in the child's birth registration to a nominated sex descriptor.

The Bill provides that where an adult or a child's birth is registered in a place outside of Victoria, the Registrar may issue a document acknowledging the person's sex in accordance with the person's nominated sex descriptor.

The Bill also makes consequential amendments to the **Children, Youth and Families Act 2005**, the **Corrections Act 1986**, the **Serious Offenders Act 2018** and the **Sex Offenders Registration Act 2004** in order to provide an approval process for applications to alter a record of sex in a birth registration, or for a document acknowledging a person's sex, made by a youth justice detainee, a person who is a prisoner, on parole, under supervision as a serious sex offender or a registrable offender.

Clause Notes

Part 1—Preliminary

Clause 1 sets out the main purposes of the Bill.

The main purposes of the Bill include the making of amendments to the Principal Act in order to—

- provide for applications to alter a record of sex in a Victorian birth registration to a sex descriptor nominated by the applicant;
- provide for the issuing of a document acknowledging the name and sex of an adult whose birth is registered in a place outside of Victoria;
- remove the requirement that an applicant has undergone sex affirmation surgery in respect of applications to alter the record of sex in their Victorian birth registration, or for the issuing of a document acknowledging their name and sex;
- provide for alteration of the record of a child's sex in a child's Victorian birth registration, or where that child's birth is registered in a place outside of Victoria, to provide for the issuing of a document acknowledging the child's name and sex; and
- set out the requirement that an application to alter the record of a restricted person's sex, or for the issuing of a document acknowledging the restricted person's name and sex, be accompanied by the appropriate approval—a *restricted person* is defined in new section 30FB, inserted by clause 13 of the Bill.

It is also a purpose of the Bill to consequentially amend the **Children, Youth and Families Act 2005**, the **Corrections Act 1986**, the **Serious Offenders Act 2018** and the **Sex Offenders Registration Act 2004** to provide for an approval process and required information sharing in respect of applications made by or on behalf of a restricted person to alter the record of sex of that person or for the issuing of a document acknowledging that person's name and sex.

Clause 2 is the commencement provision, which provides for the Bill to come into operation on a day or days to be proclaimed, or on 1 May 2020 if not proclaimed before that date.

The purpose of the default commencement date of 1 May 2020 is to allow sufficient time for implementation of the changes arising from the Bill.

Clause 3 provides that the **Births, Deaths and Marriages Registration Act 1996** is described as the Principal Act in the Bill.

Part 2—Amendment of Births, Deaths and Marriages Registration Act 1996

Clause 4 amends 2 of the objects set out in section 3 of the Principal Act. The amendment provide that the objects of the Principal Act include the alteration of the record of sex in a birth registration, and the issue of documents acknowledging the name and sex of persons whose birth is a registered in a place other than Victoria.

Clause 5 amends section 4(1) of the Principal Act, which sets out the definitions used in the Principal Act.

Paragraph (a) substitutes a new definition of *interstate recognition certificate* to remove redundant references to interstate legislation. An interstate recognition certificate means a current certificate identifying a person as being of a particular sex that is issued under a law of another State (defined to include a Territory under the Principal Act) that relates to the recognition of a person's sex.

Paragraph (b) substitutes a new definition of *registrable event* to include an alteration of the record of sex in a birth registration as a registrable event, and to set out all registrable events in the form of a list. The definition is relevant to Part 7 of the Principal Act in relation to the Registrar's obligation to maintain a register of registrable events. The definition is also relevant to section 56 of the Principal Act in relation to the Registrar's obligation to provide certain information to the Minister about the number of registrable events registered in a financial year. There will no longer be a requirement for the Registrar to separately report on the number of occasions on which the Registrar altered the record of sex in a birth registration (see the amendment to section 56 of the Principal Act in clause 18 of the Bill).

Paragraph (c) amends the definition of *sex affirmation surgery* to replace the reference to "opposite sex" with "a particular sex". While sex affirmation surgery will no longer be a requirement for an application to alter the sex recorded in a Victorian birth registration, or to obtain a document acknowledging name and sex from the Registrar, the definition is retained for the purposes of section 30H of the Principal Act. Section 30H applies to the reissuing of interstate birth certificates and provides that the validity of such a certificate in Victoria is not affected merely because it was issued as a result of the person having undergone sex affirmation surgery.

Paragraph (d) inserts the following new definitions into section 4(1) of the Principal Act—

- *acknowledgement of sex application*, which means an application by or on behalf of a restricted person under section 30A, 30B, 30E or 30EA of the Principal Act (applications to alter the sex recorded in a birth registration or for a document acknowledging name and sex). These applications require the prior approval of a relevant authority. The terms *restricted person* and *approval* are also defined;
- *approval*, which means a decision by the relevant authority to approve the making of an acknowledgement of sex application by a restricted person;
- *Justice Secretary*, which means the Secretary to the Department of Justice and Community Safety;
- *prohibited sex descriptor*, which means a descriptor of a person's sex that is obscene or offensive, or that could not practicably be established by repute or usage because it is too long, consists of or includes symbols without phonetic significance or for some other reason;
- *restricted person*, which means a person who is a detainee within the meaning of section 482A of the **Children, Youth and Families Act 2005**, a prisoner within the meaning of section 3(1) of the **Corrections Act 1986**, a prisoner on parole within the meaning of section 79HA of the **Corrections Act 1986**, an offender within the meaning of section 265A of the **Serious Offenders Act 2018**, or a registrable offender within

the meaning of section 3 of the **Sex Offenders Registration Act 2004**; and

- *sex descriptor*, which is defined to include male or female or any other sex. It is intended to provide for any description of sex including male, female or any gender diverse or non-binary descriptions of sex. The only limitation on what can be included as a sex descriptor is the Registrar's discretion to refuse to register or issue a document with a prohibited sex descriptor.

Clause 6 amends section 28(2) of the Principal Act.

Section 28(2) allows the Registrar to register a change of name of a person whose birth is registered in Victoria, if satisfied that the name has been changed by order of a court. The amendment clarifies that this includes an order of a court of another State (defined to include a Territory under the Principal Act) or the Commonwealth.

Clause 7 replaces the heading of Part 4A of the Principal Act to remove the outdated reference to "transsexualism" and to better describe what is provided for by Part 4A. Rather than refer to "recognition of sex (transsexualism)", the new heading refers to "acknowledgement of sex", as Part 4A provides for applications to alter the record of an adult or a child's sex on a Victorian birth registration and applications for documents acknowledging the name and sex of an adult or a child.

Clause 8 substitutes sections 30A and 30B of the Principal Act with new sections 30A and 30B, and also inserts new sections 30BA and 30BB into the Principal Act.

New section 30A

New section 30A sets out a new process for adults to apply to the Registrar to alter the record of sex in their Victorian birth registration. The new process does not require the applicant to have undergone sex affirmation surgery.

Instead, new section 30A(1) allows a person who is 18 years old or over to make an application if—

- the person's birth is registered in Victoria; and

- the person believes their sex to be as nominated in the application; and
- the record of their sex has not been altered within the 12 months preceding the application date.

The applicant must nominate a sex descriptor. Clause 5 inserts a definition of *sex descriptor* into the Principal Act, which includes male or female or any other sex.

The application must be in the form approved by the Registrar and include a statutory declaration by the applicant that the applicant meets the requirements of section 30A(1).

The application must be accompanied by a supporting statement from an adult who has known the applicant for at least 12 months, which states that the person making the supporting statement believes that the applicant makes their application in good faith, and that the person supports the application.

The application must also be accompanied by any prescribed fee and any other documents or information reasonably required by the Registrar.

New section 30B

New section 30B sets out a new process for the parents of a child to apply to the Registrar to alter the record of the child's sex in a child's Victorian birth registration. The section is subject to new section 30BA, which sets out the circumstances in which one parent, or a guardian, may make the application.

Under new section 30B(1), the parents of a child may make an application for the record of sex in the child's birth registration to be altered if—

- the child's birth is registered in Victoria; and
- the child consents to the alteration of the record of the child's sex to the sex descriptor nominated in the application; and
- the parents believe on reasonable grounds that the alteration is in the best interests of the child; and
- the record of child's sex has not been altered in the 12 months preceding the application date.

In the application, the parents must nominate a sex descriptor. Clause 5 inserts a definition of *sex descriptor* into the Principal Act, which includes male or female or any other sex.

New section 30B(3) provides that the application must be in the form approved by the Registrar and must include a statutory declaration made by each parent that the application meets the requirements under section 30B(1).

The application must be accompanied by a supporting statement made by a *relevant person*, defined in new section 30B(5) to mean a doctor, registered psychologist or a person who is a member of a prescribed class of persons. The supporting statement must state that, in the relevant person's opinion, the alteration of the record of the child's sex is in the best interests of the child. If the child is under 16 years of age, the supporting statement must also include the relevant person's opinion that the child has capacity to consent to the alteration of the record of their sex. A child aged 16 or more years is presumed to have capacity to consent.

A supporting statement does not need to accompany the application where the County Court makes an order under new section 30BB(3) approving the alteration of the record of the child's sex. New section 30BB allows one parent, or a guardian, to apply to the County Court for an order approving the alteration of the record of a child's sex if the Court is satisfied that the alteration is in the child's best interests.

The application must also be accompanied by any prescribed fee and any other documents or information reasonably required by the Registrar.

New section 30BA

New section 30BA sets out the circumstances in which one parent, or a guardian, may make an application under new section 30B to alter the record of a child's sex in the child's Victorian birth registration.

An application under section 30B may be made by one parent if—

- the applicant is the sole parent named in the child's Victorian birth registration; or
- there is no other surviving parent of the child; or

- the County Court makes an order under new section 30BB(3) approving the alteration of the record of the child's sex.

An application under new section 30B may be made by the child's guardian if—

- the child's parents are dead, cannot be found or cannot exercise their parental responsibilities in relation to the child; or
- the County Court makes an order under new section 30BB(3) approving the alteration of the record of the child's sex.

Where the County Court makes an order under new section 30BB(3) approving the alteration of the record of the child's sex, the parent or guardian is then able to apply to the Registrar for the alteration under new section 30B.

New section 30BB

New section 30BB allows a parent of a child to apply to the County Court for an order to approve the alteration of the record of the child's sex in the child's birth registration. The section also allows a guardian to make such an application where the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child.

The County Court may make an order approving the alteration of the record of the child's sex if satisfied that the alteration is in the child's best interests.

Clause 9 substitutes sections 30C and 30D of the Principal Act.

New section 30C

New section 30C sets out how the Registrar must determine an application made under new section 30A (application to alter record of sex in person's birth registration) or 30B (application to alter record of sex in child's birth registration).

Under subsection (1), the Registrar must determine an application made under section 30A by either altering the record of the person's sex in the person's Victorian birth registration or refusing to do so.

Under subsection (2), the Registrar must determine an application made under section 30B by either altering the record of the child's sex in the child's Victorian birth registration or refusing to do so.

Subsection (3) enables the Registrar to request necessary further information or documentation from an applicant before determining the application, including evidence to establish to the Registrar's satisfaction—

- the identity and age of the person or child whose record of sex is to be altered; and
- that the alteration of the record of sex is not sought for a fraudulent or other improper purpose.

Separate to an application under section 30A or 30B, subsection (4)(a) enables the Registrar to alter the record of sex in a Victorian birth registration if a court (including a court of another State (defined to include a Territory under the Principal Act) or the Commonwealth) has ordered that the sex recorded be altered. This provision will, for example, enable the Registrar to alter the record of a child's sex in the child's Victorian birth registration when the Family Court makes an order to that effect. The Family Court may be approached to make such an order where a child seeks to alter their record of sex and no parent or guardian of the child seeks to make an application on behalf of the child.

Subsection (4)(b) also enables the Registrar to alter the record of sex in a Victorian birth registration if the record has been altered under another law.

New subsection (5) enables the Registrar to refuse to alter the record of sex in a Victorian birth registration if the alteration would result in the recorded sex being a prohibited sex descriptor. A *prohibited sex descriptor* is defined in clause 5 to be a descriptor of a person's sex that is obscene or offensive, or which could not practicably be established by repute or usage because it is too long, consists of or includes symbols without phonetic significance or for some other reason.

New section 30D

New section 30D provides for the form of any birth certificate issued by the Registrar after the alteration of the record of sex in a Victorian birth registration. After the alteration, the birth certificate must—

- state the person's sex or the child's sex as altered; and
- not state that the record of sex has been altered; and
- not state the person's former name or the child's former name (if any).

The purpose of section 30D is to ensure a person or child is not required to disclose personal information regarding the alteration of their record of sex by way of their birth certificate.

Clause 10 substitutes section 30E of the Principal Act and inserts new sections 30EA, 30EB and 30EC.

New section 30E

New section 30E allows an adult whose birth is registered outside of Victoria, and for whom Victoria has been their principal place of residence for at least 12 months, to apply to the Registrar for a document acknowledging their name and sex. The requirements of this application are the same as for an adult seeking to alter their record of sex in their Victorian birth registration, unless the person already has an *interstate recognition certificate* (defined in clause 5), in which case, a supporting statement is not required.

Subsection (3) clarifies that an application under section 30E relates only to the acknowledgement of a person's sex. If the person wishes to change their name, the person must apply under Part 4 of the Principal Act.

New section 30EA

New section 30EA sets out a new process for the parents of a child to apply to the Registrar for a document acknowledging a child's name and sex, if the child's birth is registered outside of Victoria and Victoria has been the child's principal place for residence for at least 12 months. This section is subject to new section 30EB, which sets out the circumstances in which one parent, or a guardian, may apply for a document acknowledging a child's name and sex.

The requirements of this application are the same as for an application seeking to alter a child's record of sex in the child's birth registration, unless the child already has an *interstate recognition certificate* (defined in clause 5), in which case, a supporting statement is not required.

Further, the 12 month residency requirement is waived if the County Court makes an order under new section 30EC(3), and can be waived if the Registrar is satisfied that the document acknowledging sex is sought for the child's protection.

New section 30EB

New section 30EB sets out the circumstances in which one parent, or a guardian, may make an application under new section 30EA for a document acknowledging a child's name and sex.

An application under new section 30EA may be made by one parent if—

- the applicant is the sole parent named in the child's birth registration registered outside of Victoria; or
- there is no other surviving parent of the child; or
- the County Court makes an order under new section 30EC(3) that the Registrar issue a document that acknowledges the child's name and sex.

An application under new section 30EA may be made by the child's guardian if—

- the child's parents are dead, cannot be found or cannot exercise their parental responsibility in relation to the child; or
- the County Court makes an order under new section 30EC(3) that the Registrar issue a document acknowledging the child's name and sex.

Where the County Court makes an order under new section 30EC(3) that the Registrar issue a document acknowledging the name and sex of the child, the parent or guardian is then able to apply to the Registrar for a document acknowledging the child's name and sex.

New section 30EC

New section 30EC allows a parent to apply to the County Court for an order that the Registrar issue a document acknowledging the name and sex of the child under new section 30F(1A).

The section also allows a guardian to make such an application if the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities.

The County Court may make an order that the Registrar issue a document acknowledging the name and sex of the child in these circumstances if satisfied that the issuing of the document under new section 30F(1A) is in the child's best interests.

Clause 11 makes various amendments to section 30F of the Principal Act.

Existing section 30F sets out how the Registrar must determine an application made under section 30E (applications for a document acknowledging name and sex). Amended section 30F also sets out how the Registrar must determine an application under section 30EA (applications for a document acknowledging a child's name and sex).

Subclause (7) inserts a new subsection 30F(6) to provide that the Registrar may refuse to issue a document acknowledging the name and sex of an adult or a child if that document would acknowledge a prohibited sex descriptor. A ***prohibited sex descriptor*** is defined in clause 5 to be a descriptor of a person's sex that is obscene or offensive or could not practicably be established by repute or usage because it is too long, consists of or includes symbols without phonetic significance or for some other reason.

Clause 12 inserts new section 30FA into the Principal Act.

New section 30FA provides that, where the Registrar issues a document acknowledging name and sex under section 30F(1) or (1A), the Registrar must notify the relevant registering authority of the name and sex acknowledged. As defined in section 4(1) of the Principal Act, the relevant registering authority will be the authority responsible under a law of the State or Territory in which the person's or child's birth is registered.

Clause 13 inserts new Division 2A into Part 4A of the Principal Act.

New Division 2A sets out the process for acknowledgement of sex applications made by restricted persons (as set out in the definition inserted by clause 5).

New section 30FB

New section 30FB requires an acknowledgement of sex application made to the Registrar by or on behalf of a restricted person to be accompanied by the appropriate approval.

New section 30FC

New section 30FC(1) provides that if the Registrar is satisfied that the acknowledgement of sex application is accompanied by an approval as required by new section 30FB, the Registrar must determine the application in accordance with either section 30C (alteration of the Register) or 30F (issue of document acknowledging name and sex), as the case requires.

New section 30FC(2) requires the Registrar to give a copy of a decision to refuse an acknowledgement of sex application under section 30C and 30F of the Principal Act to the person or body which gave the approval that accompanied the application.

New section 30FD

New section 30FD provides that if an acknowledgement of sex application is not accompanied by the appropriate approval, the Registrar must notify the relevant person or body whose approval was required of the failure to provide that approval.

Clause 14 makes various amendments to section 30G of the Principal Act to provide that the alteration of a record of sex in a Victorian birth registration, the issuing of a document acknowledging name and sex and an interstate recognition certificate have effect for the purpose of, but subject to, the law of Victoria.

Clause 15 amends section 30H(a) of the Principal Act to omit a redundant reference to a Territory, as Territory is included in the definition of *State* in section 4(1) of the Principal Act.

Clause 16 inserts new sections 30J and 30K into the Principal Act to allow for the disclosure of certain information by the Registrar to the Justice Secretary.

New section 30J

New section 30J applies if the Registrar has been notified of the details of certain persons by the Justice Secretary under the **Corrections Act 1986** or the **Serious Offenders Act 2018**. In these circumstances, the Registrar must give the Justice Secretary notice of an alteration of the record of sex of the person, or the issuing of a document acknowledging name and sex of the person, as soon as practicable after the record is altered or the document is issued.

New section 30K

New section 30K provides that if the Justice Secretary makes a request to the Registrar under section 47R of the **Corrections Act 1986** in relation to a prisoner, the Registrar must disclose to the Justice Secretary all alterations made to the record of sex in the prisoner's birth registration or all documents issued acknowledging the name and sex of the prisoner.

- Clause 17 amends section 43(5) of the Principal Act. Currently, section 43 provides for the correction and amendment by the Registrar of the Register of registrable events. After amendment, section 43(5) will allow a person to apply to the Registrar for the addition, alteration or deletion of registrable information to an entry in the Register.
- Clause 18 amends section 56(b) of the Principal Act to remove the Registrar's obligation to include in the report of operations under the **Financial Management Act 1994** a report on the number of occasions on which the Registrar altered the sex recorded in a person's Victorian birth registration. The reporting of the alteration of a record of sex will now form part of the Registrar's obligation to report registrable events under section 56(a).
- Clause 19 inserts a new section 65 into the Principal Act to provide for transitional arrangements.

Where an application is made under either section 30A (Application to alter Register) or 30E (Application for document acknowledging identity) of the Principal Act before these sections are substituted by the **Births, Deaths and Marriages Registration Amendment Act 2019**, and the Registrar has not determined the application before the substitution, the Registrar is to determine the application in accordance with Part 4A of the

Principal Act as if it had not been amended. However, the Registrar may ask the applicant to nominate a sex descriptor (as defined in clause 5 of the Bill) for the purposes of the application.

Clause 20 makes a statute law revision to section 4(1) of the Principal Act.

Part 3—Consequential amendment of other Acts

Division 1—Amendment of Children, Youth and Families Act 2005

Clause 21 inserts a new section 17(1)(fb) into the **Children, Youth and Families Act 2005**.

New paragraph (fb) adds to the list of functions or powers that the Secretary is *not* authorised to delegate the power to approve the making of an acknowledgement of sex application under new section 488Q.

Clause 22 inserts into section 482A of the **Children, Youth and Families Act 2005** definitions of *acknowledgement of sex application*, *Registrar* and *Victorian Registrar*.

The definition of *acknowledgement of sex application* refers to an application made under the Principal Act for the alteration of the record of sex in a Victorian birth registration or for the Victorian Registrar to issue a document acknowledging name and sex, as well as to applications under a corresponding section of an equivalent law of another State or Territory.

Clause 23 repeals the definition of *Victorian Registrar* in section 488I of the **Children, Youth and Families Act 2005** as the definition will now be located in section 482A of that Act.

Clause 24 repeals section 488J(3) of the **Children, Youth and Families Act 2005** as the definition of *Registrar* will now be in section 482A and apply to the whole of Part 5.8 of that Act.

Clause 25 inserts a new Division 4A into Part 5.8 of the **Children, Youth and Families Act 2005**.

New Division 4A sets out the approval process for the making of an application by a detainee within the meaning of the **Children, Youth and Families Act 2005**, or by a person acting on behalf of a detainee, to alter the record of sex in the detainee's

birth registration (whether registered in Victoria or outside of Victoria) or for the issue of a document (by the Victorian Registrar or by the Registrar of another State or a Territory) acknowledging a detainee's name and sex.

New section 488O

New section 488O makes it an offence for a detainee, a person acting on behalf of a detainee, or a person acting on behalf of a detainee who is under the age of 18 years, to make an acknowledgement of sex application to a Registrar without prior written approval of the Secretary of the Department of Justice and Community Safety.

New section 488P

New section 488P provides that a detainee, or a person acting on behalf of a detainee, may apply to the Secretary for approval to make an acknowledgement of sex application.

New section 488Q

New section 488Q sets out the process the Secretary must follow in considering whether or not to approve the making of an acknowledgement of sex application.

Section 488Q(1) provides that the Secretary may approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is reasonable in all the circumstances.

Section 488Q(2) provides that the Secretary must not approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex, or the issuing of a document acknowledging name and sex, would be reasonably likely to—

- be a threat to the security of a youth residential centre or youth justice centre; or
- jeopardise the safe custody or welfare of any detainees; or
- be used to further an unlawful activity or purpose; or
- be regarded as offensive by a victim of crime or an appreciable sector of the community.

New section 488R

New section 488R sets out to whom the Secretary must provide a copy of the Secretary's approval or refusal of the making of an acknowledgement of sex application.

Section 488R(1) provides that, if the Secretary approves the making of an acknowledgement of sex application, the Secretary must as soon as practicable provide a copy of the approval to the person who sought the approval and to the Victorian Registrar.

Section 488R(2) provides that, if the Secretary refuses the making of an acknowledgement of sex application, the Secretary must give a copy of that refusal to the person who sought the approval.

Division 2—Amendment of Corrections Act 1986

- Clause 26 inserts into section 3(1) of the **Corrections Act 1986** definitions of *acknowledgement of sex application*, *Registrar* and *Victorian Registrar*.

The definition of *acknowledgement of sex application* refers to an application made under the Principal Act for the alteration of the record of sex in a Victorian birth registration or for the Victorian Registrar to issue a document acknowledging name and sex, as well as to applications under a corresponding section of an equivalent law of another State or a Territory.

- Clause 27 repeals the definition of *Victorian Registrar* in section 47G of the **Corrections Act 1986**, as the definition will now be located in section 3(1) of that Act.
- Clause 28 repeals section 47H(3) of the **Corrections Act 1986**, as the definition of *Registrar* will now be located in section 3(1) of that Act.
- Clause 29 inserts a new Division 6 into Part 6 of the **Corrections Act 1986**.
New Division 6 sets out the approval process for the making of an application by a prisoner, or by a person acting on behalf of a prisoner, to alter the record of sex in the prisoner's birth registration (whether registered in Victoria or outside of Victoria) or for the issue of a document (by the Victorian Registrar or by the Registrar of another State or a Territory) acknowledging a prisoner's name and sex.

New section 47N

New section 47N makes it an offence for a prisoner, or a person acting on behalf of a prisoner, to make an acknowledgement of sex application to a Registrar without prior written approval of the Secretary of the Department of Justice and Community Safety.

New section 47O

New section 47O provides that a prisoner, or a person acting on behalf of a prisoner, may apply to the Secretary for approval to make an acknowledgement of sex application.

New section 47P

New section 47P sets out the process the Secretary must follow in considering whether or not to approve the making of an acknowledgement of sex application.

Section 47P(1) provides that the Secretary may approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex, or the issuing of a document acknowledging name and sex, is in all the circumstances necessary or reasonable.

Section 47P(2) provides that the Secretary must not approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex, or the issuing of a document acknowledging name and sex, would be reasonably likely to—

- be a threat to prison security; or
- jeopardise the safe custody or welfare of any prisoners; or
- be used to further an unlawful activity or purpose; or
- be regarded as offensive by a victim of crime or an appreciable sector of the community.

New section 47Q

New section 47Q sets out to whom the Secretary must provide a copy of the Secretary's approval or refusal of the making of an acknowledgement of sex application.

Section 47Q(1) provides that, if the Secretary approves the making of an acknowledgement of sex application, the Secretary must as soon as practicable provide a copy of the approval to the person who sought the approval, and to the Victorian Registrar.

Section 47Q(2) provides that, if the Secretary refuses the making of an acknowledgement of sex application, the Secretary must give a copy of that refusal to the person who sought the approval.

New section 47R

New section 47R allows the Secretary to request information from the Victorian Registrar in relation to all of the alterations of the record of sex in a prisoner's birth registration or all documents issued acknowledging the name and sex of a prisoner.

The Secretary must not make a request for the information unless the request is reasonably necessary to receive information in respect of a prisoner for—

- the administration of Corrections legislation as defined in section 104ZX of the **Corrections Act 1986** (which includes the **Corrections Act 1986, Community Based Sentences (Transfer) Act 2012, Parole Orders (Transfer) Act 1983, Serious Offenders Act 2018** and the regulations made under any of these Acts); or
- the provision of services related to the health of the prisoner.

Clause 30 inserts a new Division 6A into Part 8 of the **Corrections Act 1986**.

New Division 6A sets out the approval process for the making of an application by a prisoner on parole, or by a person acting on behalf of a prisoner on parole, to alter the record of sex in the prisoner's birth registration (whether registered in Victoria or outside of Victoria) or for the issue of a document (by the Victorian Registrar or by the Registrar of another State or Territory) acknowledging a prisoner's name and sex.

New section 79HA

New section 79HA defines *prisoner on parole* for the purposes of new Division 6A of Part 8 of the **Corrections Act 1986**.

New section 79HB

New section 79HB makes it an offence for a prisoner on parole, or a person acting on behalf of a prisoner on parole, to make an acknowledgement of sex application to a Registrar without prior written approval of the Adult Parole Board.

New section 79HC

New section 79HC provides that a prisoner on parole, or a person acting on behalf of a prisoner on parole, may apply to the Adult Parole Board for approval to make an acknowledgement of sex application.

New section 79HD

New section 79HD sets out the process the Adult Parole Board must follow in considering whether or not to approve the making of an acknowledgement of sex application.

Section 79HD(1) provides that the Adult Parole Board may approve the making of an acknowledgement of sex application if the Board is satisfied that the alteration of the record of sex, or the issuing of a document acknowledging name and sex, is in all the circumstances necessary or reasonable.

Section 79HD(2) provides that the Adult Parole Board must not approve the making of an acknowledgement of sex application if the Board is satisfied that the alteration of the record of sex, or the issuing of a document acknowledging name and sex, would be reasonably likely to be—

- regarded as offensive by a victim of crime or an appreciable sector of the community; or
- used to evade or hinder supervision of the prisoner during the parole period.

New section 79HE

New section 79HE sets out to whom the Adult Parole Board must provide a copy of the Board's approval or refusal of the acknowledgement of sex application.

Section 79HE(1) provides that, if the Adult Parole Board approves the making of an acknowledgement of sex application, the Board must as soon as practicable provide a copy of the approval to the person who sought the approval, the Victorian

Registrar and the Secretary of the Department of Justice and Community Safety.

Section 79HE(2) provides that, if the Adult Parole Board refuses the making of an acknowledgement of sex application, the Board must give a copy of that refusal to the person who sought the approval and the Secretary of the Department of Justice and Community Safety.

New section 79HF

New section 79HF provides that an acknowledgement of sex application lapses if the prisoner's parole is cancelled and the Victorian Registrar has not yet registered the alteration of the record of sex or issued the document acknowledging name and sex.

Division 3—Amendment of Serious Offenders Act 2018

- Clause 31 inserts into section 3 of the **Serious Offenders Act 2018** definitions of *acknowledgement of sex application*, *Registrar* and *Victorian Registrar*.

The definition of *acknowledgement of sex application* refers to an application made under the Principal Act for the alteration of the record of sex in a Victorian birth registration or for the Victorian Registrar to issue a document acknowledging name and sex, as well as to applications under a corresponding section of an equivalent law of another State or a Territory.

- Clause 32 repeals the definition of *Victorian Registrar* from section 258 of the **Serious Offenders Act 2018**, as the definition will now be located in section 3 of that Act.

- Clause 33 repeals section 259(1) of the **Serious Offenders Act 2018**, as the definition of *Registrar* will now be located in section 3 of that Act.

- Clause 34 inserts a new Part 17A into the **Serious Offenders Act 2018**.

New Part 17A sets out the approval process for the making of an application by an offender, or by a person acting on behalf of an offender, to alter the record of sex in the offender's birth registration (whether registered in Victoria or outside of Victoria) or for the issue of a document (by the Victorian Registrar or by

the Registrar of another State or a Territory) acknowledging an offender's name and sex.

New section 265A

New section 265A defines *offender* for the purposes of Part 17A of the **Serious Offenders Act 2018**.

New section 265B

New section 265B makes it an offence for an offender, or a person acting on behalf of an offender, to make an acknowledgement of sex application to a Registrar without prior written approval of the Post Sentence Authority.

New section 265C

New section 265C provides that an offender, or a person acting on behalf of an offender, may apply to the Post Sentence Authority for approval to make an acknowledgement of sex application.

New section 265D

New section 265D sets out the process the Post Sentence Authority must follow in considering whether or not to approve the making of an acknowledgement of sex application.

Section 265D(1) provides that the Post Sentence Authority may approve the making of an acknowledgement of sex application if the Authority is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is in all the circumstances necessary or reasonable.

Section 265D(2) provides that the Post Sentence Authority must not approve the making of an acknowledgement of sex application if the Authority is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely to be—

- regarded as offensive by a victim of crime or an appreciable sector of the community; or
- used to evade or hinder supervision of the offender during the period of the supervision order or interim supervision order.

New section 265E

New section 265E sets out to whom the Post Sentence Authority must provide a copy of the Authority's approval or refusal of the making of an acknowledgement of sex application.

Section 265E(1) provides that, if the Post Sentence Authority approves the making of an acknowledgement of sex application, the Authority must as soon as practicable provide a copy of the approval to the person who sought the approval, the Victorian Registrar and the Secretary of the Department of Justice and Community Safety.

Section 265E(2) provides that, if the Post Sentence Authority refuses to approve the making of an acknowledgement of sex application, the Authority must give a copy of that refusal to the person who sought the approval and the Secretary of the Department of Justice and Community Safety.

Division 4—Amendment of Sex Offenders Registration Act 2004

- Clause 35 inserts into section 3(1) of the **Sex Offenders Registration Act 2004** definitions of *acknowledgement of sex application*, *Registrar* and *Victorian Registrar*.

The definition of *acknowledgement of sex application* refers to an application made under the Principal Act for the alteration of the record of sex in a Victorian birth registration or for the Victorian Registrar to issue a document acknowledging name and sex, as well as to applications under a corresponding section of an equivalent law of another State or a Territory.

- Clause 36 repeals the definition of *Victorian Registrar* in section 70B of the **Sex Offenders Registration Act 2004**, as the definition will now be located in section 3(1) of that Act.

- Clause 37 inserts a new Part 5C into the **Sex Offenders Registration Act 2004**.

New Part 5C sets out the approval process for the making of an application by a registrable offender, or by a person acting on behalf of a registrable offender, to alter the record of sex in the registrable offender's birth registration (whether registered in Victoria or outside of Victoria) or for the issue of a document (by the Victorian Registrar or by the Registrar of another State or a Territory) acknowledging a registrable offender's name and sex.

New section 70Q

New section 70Q makes it an offence for a registrable offender, or a person acting on behalf of a registrable offender, to make an acknowledgement of sex application to a Registrar without prior written approval of the Chief Commissioner of Police.

New section 70R

New section 70R provides that a registrable offender, or a person acting on behalf of a registrable offender, may apply to the Chief Commissioner of Police for approval to make an acknowledgement of sex application.

New section 70S

New section 70S sets out the process the Chief Commissioner of Police must follow in considering whether or not to approve the making of an acknowledgement of sex application.

Section 70S(1) provides that the Chief Commissioner of Police may approve the making of an acknowledgement of sex application if the Chief Commissioner is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is in all the circumstances necessary or reasonable.

Section 70S(2) provides that the Chief Commissioner of Police must not approve the making of an acknowledgement of sex application if the Chief Commissioner is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely to—

- be regarded as offensive by a victim of crime or an appreciable sector of the community; or
- frustrate the administration of the **Sex Offenders Registration Act 2004** in respect of the registrable offender.

New section 70T

New section 70T sets out to whom the Chief Commissioner of Police must provide a copy of the Chief Commissioner's approval or refusal of the making of an acknowledgement of sex application.

Section 70T(1) provides that, if the Chief Commissioner of Police approves the making of an acknowledgement of sex application, the Chief Commissioner of Police must as soon as practicable provide a copy of the approval to the person who sought the approval and the Victorian Registrar.

Section 70T(2) provides that, if the Chief Commissioner of Police refuses the making of an acknowledgement of sex application, the Chief Commissioner must give a copy of that refusal to the person who sought the approval and the Secretary of the Department of Justice and Community Safety.

New section 70U

New section 70U provides that an acknowledgement of sex application made by or on behalf of a registrable offender lapses if a registrable offender ceases to be a registrable offender and the Victorian Registrar has not registered the alteration of the record of sex or issued the document acknowledging name and sex.

New section 70V

New section 70V applies to a registrable offender who is also subject to a supervision order, an interim supervision order, a detention order, an interim detention order or an emergency detention order within the meaning of the **Serious Offenders Act 2018**.

For registrable offenders in these circumstances, and despite what is otherwise provided for in Part 5C of the **Sex Offenders Registration Act 2004**, an application for the approval to make an acknowledgement of sex application must be made under and in accordance with Part 17A of the **Serious Offenders Act 2018**. This means that the approval must be sought from the Post Sentence Authority.

New section 70W

New section 70W provides that an application for the approval to make an acknowledgement of sex application by or on behalf of a registrable offender who is also a prisoner on parole within the meaning of new Division 6A of Part 8 of the **Corrections Act 1986** must be made under and in accordance with Division 6A of Part 8 of the **Corrections Act 1986**.

Part 4—Repeal of this Act

Clause 38 provides for the automatic repeal of this amending Act on 1 May 2021. The repeal of this Act does not affect in any way the continuing operation of the amendment made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).