## PARLIAMENT OF VICTORIA

### Births, Deaths and Marriages Registration (Amendment) Act 2004

**Act No.**

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A BILL

to amend the Births, Deaths and Marriages Registration Act 1996
to provide for the recognition of the sex of persons who have undergone sex affirmation surgery and for other purposes.

Births, Deaths and Marriages
Registration (Amendment) Act 2004

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to amend the Births, Deaths and Marriages Registration Act 1996 to provide for the recognition of the sex of persons who have undergone sex affirmation surgery.
2. Commencement

(1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 January 2005, it comes into operation on that day.
PART 2—AMENDMENTS

3. Objects of Act

(1) After section 3(c) of the Births, Deaths and Marriages Registration Act 1996 insert—

"(ca) the alteration of the record of sex in a person's birth registration where the person has undergone sex affirmation surgery; and".

(2) After section 3(e) of the Births, Deaths and Marriages Registration Act 1996 insert—

"(ea) the issue of documents acknowledging the identity of certain persons who have undergone sex affirmation surgery; and".

4. Definitions

In section 4(1) of the Births, Deaths and Marriages Registration Act 1996 insert the following definitions—

"interstate recognition certificate" means a current certificate identifying a person as being of a particular sex that is issued under the Gender Reassignment Act 2000 of Western Australia, the Sexual Reassignment Act 1988 of South Australia or any other law prescribed by the regulations for the purposes of Part 4A of this Act;

"sex affirmation surgery" means a surgical procedure involving the alteration of a person's reproductive organs carried out for the purpose of assisting the person to be considered to be a member of the opposite sex;".
5. New Part 4A inserted

After Part 4 of the Births, Deaths and Marriages Registration Act 1996 insert—

'PART 4A—RECOGNITION OF SEX (TRANSSEXUALISM)

Division 1—Persons born in Victoria

30A. Application to alter Register

(1) An unmarried person—

(a) who is 18 years or over; and

(b) whose birth is registered in Victoria; and

(c) who has undergone sex affirmation surgery—

may apply to the Registrar for the record of the person's sex in the person's birth registration to be altered.

(2) An application must be in the form approved by the Registrar and must be accompanied by the prescribed fee (if any).

30B. Statutory declarations by doctors

(1) An application under section 30A must include statutory declarations, verifying that the applicant has undergone sex affirmation surgery, by—

(a) 2 doctors; or

(b) 2 medical practitioners registered under the law of the place where the sex affirmation surgery was performed—

who performed the surgery or provided other medical treatment to the applicant in
connection with the applicant's transsexualism.

Note 1: An application does not need to include these statutory declarations if the applicant has already obtained an interstate recognition certificate (see sub-section (4)).

Note 2: For "doctor", see section 4(1).

(2) However, if the sex affirmation surgery was performed outside Australia and the Registrar considers it is not reasonably practicable for the applicant to obtain those statutory declarations, the Registrar may instead require that the application include statutory declarations by 2 persons each of whom is either—

(a) a medical practitioner registered under the law of the place where the surgery was performed who will verify that the practitioner has examined medical records, that he or she believes to be authentic, confirming that the surgery was performed; or

(b) a doctor, or medical practitioner registered under the law of an Australian State or Territory, who the Registrar considers is adequately experienced in treating persons in connection with transsexualism and who will verify that the applicant appears to have undergone sex affirmation surgery.

(3) A statutory declaration by a medical practitioner registered under the law of a place outside Australia must be witnessed by a person authorised under the law of that place to witness statutory declarations.
(4) This section does not apply to an application if the applicant—
   (a) has been issued with an interstate recognition certificate; and
   (b) includes that certificate in the application.

30C. Alteration of Register

(1) The Registrar must determine an application under section 30A by altering the record of the applicant's sex in the applicant's birth registration or refusing to do so.

(2) Before determining the application, the Registrar may require the applicant to provide such further information or documentation as the Registrar reasonably considers is necessary.

(3) The Registrar cannot make the alteration to the birth registration if the applicant is married.

30D. Issue of new birth certificate

After the record of a person's sex in the person's birth registration is altered, any certificate issued by the Registrar concerning that birth registration—

(a) must state the person's sex in accordance with the record as altered; and

(b) must not state that the record of the person's sex has been altered; and

(c) must not state the person's former name (if any).
Division 2—Victorian residents born elsewhere

30E. Application for document acknowledging identity

(1) An unmarried person—
   (a) who is 18 years or over; and
   (b) whose principal place of residence is, and has been for at least 12 months, in Victoria; and
   (c) whose birth is registered in a place other than Victoria; and
   (d) who has undergone sex affirmation surgery—

   may apply to the Registrar for a document that acknowledges the person's name and sex.

(2) An application must include statutory declarations as described in section 30B or an interstate recognition certificate issued to the applicant.

(3) An application must be in the form approved by the Registrar and must be accompanied by the prescribed fee (if any).

30F. Issue of document acknowledging identity

(1) The Registrar must determine an application under section 30E by issuing a document acknowledging the applicant's name and sex or refusing to do so.

(2) Before determining the application, the Registrar may require the applicant to provide such further information or documentation as the Registrar reasonably considers is necessary.
Part 2—Amendments

(3) The document must not state the applicant's former sex or former name (if any).

(4) The Registrar may, if he or she considers it appropriate to do so, include in the document any other information concerning the applicant's birth that the applicant has requested (in writing) be included.

(5) The document must include a statement to the effect that it is not to be taken to certify the particulars of any entry in the Register.

(6) The Registrar cannot issue a document under this section if the applicant is married.

Division 3—Other matters

30G. Effect of alteration of Register and interstate recognition certificates

(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.

(2) If an interstate recognition certificate is issued to a person the person is a person of the sex stated in the certificate.

(3) Sub-sections (1) and (2) have effect for the purposes of, but subject to, the law of Victoria.

30H. Re-issue of interstate birth certificates

To avoid doubt, the validity in Victoria of a certificate that—

(a) is issued under a law of another State or a Territory; and
(b) concerns the birth registration of a person—
is not affected merely because it was issued
as a result of the person having undergone
sex affirmation surgery.'.

6. Access to Register

In section 48(2)(b) of the Births, Deaths and
Marriages Registration Act 1996, after
"information" insert "(in particular, whether it
concerns a birth registration that has been altered
under Part 4A)".

7. Registrar to provide certain information to Minister

In section 56 of the Births, Deaths and
Marriages Registration Act 1996, for "report of
the number of registrable events registered during
that financial year." substitute—

"report of—

(a) the number of registrable events registered
during that financial year; and

(b) the number of occasions on which the
Registrar altered the Register under
section 30C, or issued a document under
section 30F, during that financial year.".