

Births, Deaths and Marriages Registration (Amendment) Bill

Circulation Print

EXPLANATORY MEMORANDUM

Clause Notes

- Clause 1 sets out the purpose of the Bill.
- The purpose of the Bill 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.
- Clause 2 sets out the proposed commencement date of the Bill. Clause 2 provides that the Bill will come into operation upon proclamation. If the Bill does not come into operation before 1 January 2005, clause 2 provides that the Bill will come into operation on that day.
- Clause 3 amends the objects in section 3 of the **Births, Deaths and Marriages Act 1996** to include the alteration of the record of sex in a person's birth registration where the person has undergone sex affirmation surgery and to provide for the issue of documents acknowledging the identity of certain persons who have undergone sex affirmation surgery.
- Clause 4
- Inserts a new definition of "interstate recognition certificate" into section 4(1) of the **Births, Deaths and Marriages Registration Act 1996**. "Interstate recognition certificate" is defined to mean a certificate identifying a person as being of a particular sex that is issued under the Gender Reassignment Act 2000 (WA), the Sexual Reassignment Act 1988 (SA) or any other law prescribed by the regulations for the purposes of new Part 4A of the **Births, Deaths and Marriages Registration Act 1996**.

- Inserts a new definition of "sex affirmation surgery" into section 4(1) of the **Births, Deaths and Marriages Registration Act 1996**. "Sex affirmation surgery" is defined to mean 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.

Clause 5 inserts a new Part 4A into the **Births, Deaths and Marriages Registration Act 1996**. Part 4A consists of new sections 30A to 30H.

Section 30A

- New section 30A(1) provides that an unmarried person who is aged 18 years or over, and whose birth is registered in Victoria and who has undergone sex affirmation surgery, may apply to the Registrar of Births, Deaths and Marriages for the record of the person's sex in the person's birth registration to be altered.
- New section 30A(2) provides that an application under section 30A(1) must be in the form approved by the Registrar and must be accompanied by any prescribed fee.

Section 30B

- New section 30B(1) provides that an application under new section 30A must include two statutory declarations from doctors or medical practitioners who either performed sex affirmation surgery on the applicant or treated the applicant in connection with the applicant's transsexualism.

"Doctor" is defined by the **Births, Deaths and Marriages Registration Act 1986** to mean a medical practitioner registered under the relevant Victorian law.
- New section 30B(2) provides that if the applicant's sex affirmation surgery was performed outside Australia, and the Registrar does not consider it reasonably practicable for the applicant to obtain two statutory declarations from overseas medical practitioners, the Registrar may instead require that the application include two statutory declarations from any of the

following: an overseas medical practitioner who has seen the person's medical records and can verify that the person has undergone sex affirmation surgery, and/or a doctor or medical practitioner registered in Australia who the Registrar considers is adequately experienced in treating persons in connection with transsexualism and who can verify that the applicant appears to have undergone sex affirmation surgery.

- New section 30B(3) provides that 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.
- New section 30B(4) provides that where an applicant has been issued with an interstate recognition certificate and includes that interstate recognition certificate in their application, the applicant does not need to provide the two statutory declarations required by new sections 30B(1) and 30B(2).

Section 30C

- New section 30C(1) provides that the Registrar must determine an application under new section 30A by altering the record of the applicant's sex in the applicant's birth registration or refusing to do so.
- New section 30C(2) provides that prior to deciding to alter the record of the applicant's birth in the applicant's birth registration or declining to do so, the Registrar may require the applicant to provide any further information or documentation as is considered reasonably necessary by the Registrar.
- New section 30C(3) provides that the Registrar cannot make the alteration to the birth registration if the applicant is married.

Section 30D

New section 30D provides that following alteration of the Register under new section 30C, any new certificate which the Registrar issues to the applicant must state the person's sex in accordance with the record as altered and must not state that the record of the person's sex has been altered or any former name the person may have had.

Section 30E

- New section 30E(1) provides that a person who is unmarried and aged 18 years or over, and whose principal place of residence is, and has been for at least 12 months, in Victoria; and whose birth is registered in a place other than Victoria; and who has undergone sex affirmation surgery, may apply to the Registrar for a document that acknowledges the person's name and sex.
- New section 30E(2) provides that an application under new section 30E(1) must include statutory declarations as described in new section 30B or an interstate recognition certificate issued to the applicant.
- New section 30E(3) provides that an application under new section 30E(1) must be in the form approved by the Registrar and must be accompanied by any prescribed fee.

Section 30F

- New section 30F(1) provides that the Registrar must determine an application under section 30E either by issuing a document acknowledging the applicant's name and sex or by refusing to issue the document.
- New section 30F(2) provides that before determining the application under new section 30E, the Registrar may require the applicant to provide any further information or documentation that the Registrar reasonably considers is necessary.
- New section 30F(3) provides that a document issued under section 30F(1) must not state the applicant's former sex or any former name the applicant may have had.

- New section 30F(4) provides that where the Registrar considers it appropriate to do so, the Registrar may include in the document issued under new section 30F(1) any other information concerning the applicant's birth as requested, in writing, by the applicant.
- New section 30F(5) provides that a document issued under new section 30F(1) must include a statement that makes it clear that the document is not to be taken to certify the particulars of any entry in the Register.
- New section 30F(6) provides that the Registrar cannot issue a document under new section 30F(1) if the applicant is married.

Section 30G

New section 30G provides that where the record of a person's sex has been altered under new section 30C, or where a person has been issued with an interstate recognition certificate, the person is a person of the sex as altered for the purposes of, but subject to, the law of Victoria.

Section 30H

New section 30H provides that in order to avoid doubt, the validity of a certificate concerning the birth registration of a person, which was issued in another State or a Territory, is not affected merely because it was issued as a result of the person having undergone sex affirmation surgery.

- Clause 6 Sections 48(1) and 48(2)(b) of the **Births, Deaths and Marriages Registration Act 1996** together provide that the Registrar may grant a person access to the Register of Births, Deaths and Marriages taking into account a number of considerations, including the sensitivity of the information which the person is seeking to access.

Clause 6 amends section 48(2)(b) of that Act to provide that where the Registrar is considering whether or not to grant access to the Register, the Registrar must take particular account of the sensitivity of an entry in the Register which relates to records altered under the amendments made by this Bill.

- Clause 7 inserts a new section 56(1)(b) into the **Births, Deaths and Marriages Registration Act 1996**. New section 56(1)(b) provides that the Registrar must report for the number of occasions on which the Registrar altered the Register under new section 30D, or issued a document under new section 30G, during that financial year.