

Proposed legislation to affirm gender

The Victorian Government proposes to amend the Victorian Births, Deaths and Marriages Registration Act 1996 so that transsexual people in Victoria can amend their birth certificates to reflect their affirmed sex, by presenting evidence to the Registrar of Births, Deaths and Marriages. They claim this is a faster, less expensive, more accessible and more dignified process for transsexual people, than a process involving a Board or a Court. Is this the case?

Language & Age

One factor making this a more dignified process is in the use of language. Legislation in other States doesn't use terms such as "transsexual person" instead preferring to refer to the "applicant", with the exception of the ACT which defines "transsexual person" to mean "a person whose record of birth has been altered" under the ACT Act. Similarly the proposed term for what is usually referred to as "gender reassignment" is "sex affirmation". The Government says that this term is considered to be preferable to "gender reassignment" because it reflects the fact that the person who undertakes medical treatment for transsexualism is doing so to affirm their understanding of their sex, rather than to "change" or "reassign" their sex. In their reply to the government's discussion paper, Transgender Victoria indicate that they would prefer the term 'gender affirmation' since the surgery is affirming the person's gender identity. Their view is that as the surgery is frequently referred to in different terms; Sex Reassignment Surgery, Gender Reassignment Surgery, Gender Realignment Surgery, the acronym is acknowledged to be SRS or GRS. TGV says that the common-use meaning of the words 'sex' and 'gender' have become interchangeable in the last 30 years and while the Birth Certificates still continue to show 'sex', this could comfortably be replaced with 'gender'.

18 years of age has been proposed as a minimum age in order for people to be eligible to apply for an amendment to a birth certificate to reflect their affirmed gender. People whose birth was not registered in Victoria but who has been a resident in Victoria for 12 months or more will need to apply to the Registrar of Births, Deaths and Marriages to be issued with a 'change of details certificate', instead of a new birth certificate. TGV has stated that this is a positive outcome and the only feasible option where the original Birth record was not registered in Victoria.

What are the threshold medical treatment criteria?

The discussion paper says that there is a view in the medical community that surgery should be a requirement for anyone who wishes to have their birth certificate amended. TGV however are clear that they don't wish to impose a legislative framework on the people of Victoria that forces Transsexual people to have dangerous, painful and expensive surgery in order to be legally accepted as a member of their affirmed gender. While many people who experience Transsexualism tend toward gender affirmation surgery, some do not, whether it be because of the dangers of surgery, the costs involved, or the inadequacy and success of the surgery itself. Certainly, the surgery available for female-to-male Transsexual people is considered largely experimental and produces far from satisfactory results in many cases.

TGV believes that the people who have endured the surgical gender affirmation process should be eligible to have their Birth Certificate amended without question. The surgery is typically recommended

by a psychiatrist experienced in treatment of people with Gender Identity Disorders and a medical professional with similar experience.

TGV similarly supports the premise that any person diagnosed with and receiving medical treatment for Transsexualism and can produce appropriate documentation supporting the diagnosis of the condition, should be eligible to apply for an amendment to their Birth Certificate. They also hold that that the production of the above evidence to the Registrar should be sufficient to provide appropriate levels of comfort in clarity and certainty. If the Victorian medical professionals currently charged with the responsibility of determining whether the applicant has satisfied the criteria for gender affirmation surgery, then the actual performance of the surgery should not be necessary in affording full legal recognition via the amendment of the Birth Certificate.

The establishment of a Gender Recognition Panel as in the UK and WA model could be adopted to determine if the applicant has satisfied the required criteria where the applicant has not undergone gender affirmation surgery. This would provide an optional process for those applicants who cannot undergo the surgery, however, TGV believes that if the medical profession is convinced that the applicant has been diagnosed with gender dysphoria, has lived in their affirmed gender for a period of two years and will continue to live in that gender for the rest of their life, there should not be a requirement to have a Panel or Magistrate make a further determination, since they would in the vast majority of cases accept the medical opinion provided.

Conflicts with the Federal Marriage Act

All Australian jurisdictions with existing change of sex provisions for birth certificates require that applicants who seek to have the recorded sex on their birth certificate amended must not be married at the time of application. According to the TGV removing the requirement to be unmarried may prove difficult to achieve on a political level.

According to the TGV Co-Convenor Lauren Christopher, it is imperative to TGV and all Victorian Transsexual people that this legislation is implemented and a mechanism for amendment of Victorian Birth Certificates be available as soon as possible. "We are prepared to accept the requirement that the applicant be unmarried in order to achieve the Legislative Change. We would, however, suggest that the legislation be prepared in such a way to prescribe that 'the applicant is required to comply with the requirements of the Federal Marriage Act' so that if there is a subsequent change in that legislation to provide for same sex marriages, then there will be no need to revisit this legislation to remove the marital status restriction."

Recognition by other State or federal territories of Victoria law may still pose some difficulties as they may not recognise birth certificates amended in relation to sex in Victoria. Offering an olive branch, however, it is proposed that the Victorian scheme does provide for the recognition by Victoria of birth certificates amended in other States and Territories.

A useful resource for TG sex workers to discuss the proposed legislation is Lauren Christopher, Co-Convenor of TransGender Victoria, telephone number 0403 214 320. 🍓