



What is the position in Australia for transgender people and identity documents?

It should be noted that 'sex' and 'gender' are used interchangeably on Australian government records.

Federal government documents and records

The Australian Government Guidelines on the Recognition of Sex and Gender (July 2013, updated November 2015) apply and state at paragraph 26 that 'Sex reassignment surgery and/or hormone therapy are not pre-requisites for the recognition of a change of gender in Australian Government records.' Further, paragraph 24 states that the documents required to verify a person's sex and/or gender to confirm identity or determine eligibility for a service are:

- a) a statement from a Registered Medical Practitioner or a Registered Psychologist which specifies their gender,
- b) a valid Australian Government travel document, such as a valid passport, which specifies their gender, or
- c) a state or territory birth certificate, which specifies their gender. A document from a state or territory Registrar of Birth Deaths and Marriages recognising a change of sex and/or gender will also be seen as sufficient evidence.

The effect of these Guidelines is that a transgender person is able to change their sex and/or gender on Medicare, Centrelink, tax and education records and documents and on their passport on the basis of a letter from their treating doctor. Fortunately in Australia, unlike Finland, no diagnosis of a mental disorder is needed to change documents.

State government documents and records

In New South Wales, changes of sex and/or gender on government records (such as a driver's license), other than a birth certificate, may be obtained with a letter from a treating doctor.

Change of sex on a NSW birth certificate is set out in Part 5A of the *Births Deaths and Marriages Registration Act 1995* (NSW) and requires the person

- a) to have undergone a 'sex affirmation procedure' (a 'sex affirmation procedure means a surgical procedure involving the alteration of a person's reproductive organs' – sterilisation in other words) and
- b) to be unmarried (once the definition of marriage is changed in the *Marriage Act 1961* (Cth) this provision will need to be amended).

The effect of this is that in NSW, a transgender person may change their sex and/or gender on their driver's license, passport, tax, Medicare, and Centrelink records to 'male' but, because they have not undergone a sex affirmation procedure, their birth certificate will record their sex as 'female.'

For health, financial or other reasons not all transgender people wish to or are able to undergo a sex affirmation procedure. The NSW legislative requirement to do so in order to change their sex on their birth certificate places them in the same position as Sarkis. The surgical requirement also exists in the Northern Territory (Part 4A, *Births, Deaths and Marriages Registration Act*), Queensland (Part 4, *Births, Deaths and Marriages Registration Act 2003*), Tasmania (Part 4A, *Births, Deaths and Marriages Registration Act 1999*) and Victoria (Part 4A, *Births, Deaths and Marriages Registration Act 1996*).

Surgery is not required in the Australian Capital Territory ('the person believes their sex to be the sex nominated in the application...and has received appropriate clinical treatment' section 24, *Births, Deaths and Marriages Registration Act 1997*).

In Western Australia, the Gender Reassignment Board may issue a recognition certificate that identifies a person who has undergone a reassignment procedure as being the sex to which the person has been reassigned. A 'reassignment procedure' means a medical or surgical procedure or both to alter the genitals and other characteristics of a person (see *Gender Reassignment Act 2000* and *AH & AB v the State of Western Australia* (2011) HCA 42, which said that hormone treatment is sufficient and that surgery to remove and reconstruct a person's genitals and reproductive organs is not required for a grant of a recognition certificate.)

In South Australia, a person may change the gender on their birth certificate by providing 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 (Part 4A, *Births, Deaths and Marriages Registration Act 1996*). This application may be made if the person is married.

In the 2015 Australian Human Rights Commission Report 'Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights' stated that law reform should occur promptly and at a state and territory level to require that a self-identified legal declaration, such as a statutory declaration, is sufficient proof to change a person's gender for the purposes of government records and proof of identity documentation (page 3)

The United Nations Free & Equal campaign for LGBTI equality says

Everyone has the right to be recognized as a person before the law. The United Nations has affirmed the right of trans persons to legal recognition of their gender identity and a change of gender in official documents, including birth certificates, without being subjected to onerous and abusive requirements.

This right is violated in all regions. Many countries deny trans people any possibility of obtaining legal recognition of their gender identity. Many of those that do provide for legal recognition, force trans individuals to meet various conditions before their identity can be recognised – including sterilization, sex-assignment surgery or treatment, psychiatric diagnosis, divorce and confinement in psychiatric institutions.

Amnesty's NSW LGBTQI Network, with other organisations, will be advocating for amendments to the NSW *Births, Deaths and Marriages Registration Act* during 2018. Similar work may also be done in other states in the near future. We encourage you all the support us in this future work to remove discrimination under the law for trans people.

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