



Committee Secretary  
Senate Legal and Constitutional Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia.

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## **EFFECT OF REASSIGNMENT OF SEX**

I was asked by a Trans friend “are we considered to be human?”

We abide by the many laws imposed on the Trans community, only to find that under the “Sex Discrimination Act 1984 Review” we will gain nothing, not even the recognition of male or female after sex affirmation surgery.

This is altogether frightening, scary even, when we look at the statements made by all States and Territories in the laws they have enacted in Australia, that concern us after sex affirmation surgery. We are then considered to be “Anatomically male or female” so why are we treated this way?

All States and Territories in Australia state in their laws, in one form or another, that “A person’s sex is noted under the Act, the person is of the sex stated on their birth certificate or recognition certificate. They are also, but subject to any law, a person of the sex so stated or altered”

## **QUEENSLAND**

### **Section 24**

1. a person who has had the reassignment of the person’s sex entered into a register maintained under a corresponding law is a person of the sex as reassigned
2. A person who is the subject of a recognition certificate is a person of the sex stated in the recognition certificate. *( do not recognise recognition certificates from the UK or outside of Australia, even then, they may not recognise them from within Australia)*
3. However, the person must comply with section 23 (10) for the reassignment of the person’s sex to be noted under the Act
4. If the reassignment of a person’s sex is noted under this Act, the person is a person of the sex as reassigned.

## **SOUTH AUSTRALIA**



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## Part 3 section 8

- 1 A recognition certificate is conclusive evidence that the person to whom it refers
  - (a) *has undergone a reassignment procedure*
  - (b) *Is of the sex stated in the certificate*
  
- 2 An equivalent certificate issued under a corresponding law has the same effect as a recognition certificate under this Act (*Does this include the UK Gender Recognition certificate?*)

## NEW SOUTH WALES BDMR Act 1995

### Section 321

#### Effect of alteration of register and interstate recognition certificates

- 1 A person the record of whose sex is altered under this part is, for all purposes of, but subject to, any law of NSW, a person of the sex as so altered
- 2 A person to whom an interstate recognition certificate relates is, for the purposes of, but subject to, any law in NSW, a person of the sex as stated in the certificate (On shore and off shore?)
- 3 An interstate Recognition certificate is a certificate s prescribed by the regulation for the purpose of this section. (*Do they accept from off shore?*)

## WESTERN AUSTRALIA

### Section 16

#### Effect of the Recognition Certificate

- 1 A recognition certificate is conclusive evidence that the person to whom it refers
  - (a) *Has undergone a reassignment procedure; and*
  - (b) *Is of the sex stated in the certificate*
  
- 2 An equivalent certificate issued under a corresponding law has the same effect as a recognition certificate under this Act (*Off shore recognition certificates?*) (*Length of residency status in WA?*)

## TASMANIA BDMR Act 1999

### Section 28G



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## Effect of registration of change of sex

- 1 Where a person's change of sex is registered under this grant, the person is, for the purposes of, but subject to any law in force in this State, a person of the sex as so changed
- 2 A person's change of sex does not affect any relationship of that person arising from consanguinity or by operation of law

## Section 28H Recognition of certificates issued outside of Tasmania

A person in respect of whom there is a recognition certificate is taken to be, for the purposes of, but subject to, any law in force in the State, a person of the sex stated in the recognition certificate? . (*Does this include on and off shore certificates?*) (*Any length of residency in Tasmania?*)

## NORTHERN TERRITORY

### Section 28H effect of registration of person's change of sex

Where a person's change of sex is registered under this part, the person is, for the purposes of (but subject to) any law in force in the Northern Territory, a person of the sex as so changed

### Section 28 J Recognition Certificate

A person in respect of whom there is a recognition certificate is, for the purposes of (but subject to) any law in force in the Territory, a person of the sex stated in the recognition certificate. (*Does this apply to on and off shore certificates?*) (*any length of residency in NT?*)

## ACT BDMR Act 1997

### Section 29

#### Effect of certificates issued in relation to transsexual people

- 1 A birth certificate in relation to a transsexual person is, for the purposes of any territory law, conclusive evidence of the person's sex as stated in the certificate
- 2 An interstate recognition certificate, for the purposes of any territory law, is evidence that the person mentioned in it is of the sex as stated in the certificate
- 3 In this section: "Interstate recognition certificate" means a certificate issued, under the law of a State or another Territory prescribed for this section, in relation to a person, who has undergone sex reassignment surgery. (*Does not stipulate if in Australia or off shore certificates are acceptable*)

## VICTORIA

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



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- (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. (*Off shore not included again?*)
- (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

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(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.'

Even the DRAFT (prepared by Parliamentary Counsel's Office)

BDMR Amendment Bill 2005 looked at these details. Not adopted at the SCAG meeting in July 2005

## Division 4.4 Effect of certificates issued if change of sex recorded

### 29c effect of certificates issued if change of sex recorded

- 1 A certificate issued under section 27(2) or section 29B in relation to a person is, for the purposes of any Territory law, conclusive evidence that the person's sex is as stated in the certificate. *Drafting notes*
- 2 . *Other jurisdictions will need to change the reference to "Territory law" in this section*
- 3 A certificate issued in relation to a person under a corresponding provision is, for the purpose of Territory law, conclusive evidence that the person's sex is as stated in the certificate
- 4 In this section: (*corresponding provision*) means a provision of a law of a State or another Territory that substantially corresponds to section 27(2) or section 29B or is declared by regulation to substantially correspond to either section (*again no mention of off shore certificates, but equally, no specific mention of within Australia*)

Yours Sincerely, Kathy Anne Noble.

President, Changeling Aspects

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