
Self-determination for trans and gender diverse Territorians

Submission to the Legislative Assembly of the Northern
Territory's Social Policy Scrutiny Committee on the Births, Deaths
and Marriages Registration and other Legislation Amendment Bill
2018 (NT)

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1. Introduction

We welcome the opportunity to provide a submission to the Legislative Assembly of the Northern Territory's Social Policy Scrutiny Committee (**Committee**) on the Births, Deaths and Marriages Registration and other Legislation Amendment Bill 2018 (**the Bill**). We welcome the introduction of the Bill and consideration of relevant legal and policy issues raised.

As the Statement of Compatibility with Human Rights (**Statement of Compatibility**) tabled by the Attorney-General and the Explanatory Statement tabled by the Attorney-General and Minister for Justice on 30 October 2018 make clear, the Bill will promote human rights by facilitating greater equality before the law. The Bill includes important consequential amendments to give effect to marriage equality in the Territory, and we welcome these amendments.

Every person should be able to control their own life, and be able to be legally recognised as who they are. Yet the current *Births, Deaths and Marriages Registration Act* (NT) (**BDM Act**) denies trans and gender diverse Territorians any self-determination, instead imposing external standards and onerous processes to “prove” their gender. In the Northern Territory (**the Territory**), the majority of trans and gender diverse people cannot access accurate identity documents that respect their gender identity. Existing laws require a person to divorce their spouse or undergo surgery, and provide limited access to gender categories outside ‘male’ and ‘female’. These present unnecessary and discriminatory barriers to trans and gender diverse people.

The Bill is a very positive step towards removing discrimination against trans and gender diverse Territorians, and improving health and wellbeing. However, there are a number of important improvements that should be made for the Bill to comply with international best practice, based on principles of self-determination, dignity and respect.

2. Summary of recommendations

Recommendation 1:

We recommend that the word ‘identity’ be removed from references to ‘sex or gender identity’, and recommend that the Committee consider amending the category to ‘gender’.

Recommendation 2:

We support the Bill’s removal of the requirement for ‘sexual reassignment surgery’.

Recommendation 3:

We support that the Bill ensures that parents or guardians of children aged under 18 can access legal recognition of gender through a simple administrative process.

Recommendation 4:

We recommend that guidelines to accompany the Bill outline other reasons which would allow a parent to apply to legally change a child's gender, which include common 'special circumstances' which may arise.

Recommendation 5:

We support the Bill's amendment to the regulations to allow a person to be registered as 'female', 'male', 'non-binary' or 'unspecified', and oppose the use of 'intersex' as a 'sex or gender identity' category in recognition of the position of intersex community organisations. In addition, we recommend that the Territory Government make additional categories available in consultation with trans, gender diverse and intersex community organisations.

Recommendation 6:

We recommend that the clinical treatment and medical treatment requirements be replaced with a statement from the applicant that the person's gender is as nominated in the application.

Recommendation 7:

We recommend that the Territory Government consider removing sex markers from the Register and birth certificates entirely.

Recommendation 8:

We recommend that the Territory Government consider and act on the recommendations of the 2013 Australian Senate Community Affairs Committee's *Report on the Involuntary or Coerced Sterilisation of Intersex People in Australia*.

Recommendation 9:

We recommend that the Territory Government progress the review into modernising the *Anti-Discrimination Act (NT)*.

Recommendation 10:

We recommend investment in information, education, training, IT and systems infrastructure change and community support services as part of the implementation of future reforms.

Recommendation 11:

We recommend that the Northern Territory Government consider additional privacy protections in relation to gender information which may be reasonable, necessary or appropriate.

Recommendation 12:

We recommend that the Registrar have the discretion to waive application costs in situations of financial hardship.

3. Reasons for reform

The Statement of Compatibility outlines a number of reasons why the review was undertaken.

Trans and gender diverse people are already part of our communities – in our workplaces, neighbourhoods and schools. Yet our laws are not appropriately tailored to the needs and experiences of trans and gender diverse people. As a result, they experience inconvenience, embarrassment and distress because they are unable to change their birth certificate to reflect the gender they live as. Being able to access accurate identity documents is also a positive and affirming experience that supports the health and well-being of vulnerable trans and gender diverse people.

It remains extremely difficult for trans and gender diverse people born in the Territory to change their legal gender to reflect who they are, due to outdated legal barriers to recognition. Legal recognition is also profoundly important to a person's sense of self and to reduce the discrimination, stigma and practical difficulties faced in day to day activities – from applying for jobs, accessing education and accessing basic entitlements such as social security and healthcare.

Allowing trans and gender diverse people access to identity documents that reflect who they are will have a profoundly positive impact on their lives, reduce the discrimination and disadvantage they face, and support improved health and wellbeing for an already vulnerable cohort of people living in our community. In 2017, Trans Pathways – the largest ever survey into the mental health of trans young

people in Australia – found that almost 80% of young trans people had self-harmed and almost half had attempted suicide.¹

As outlined in the Statement of Compatibility, there are different federal and state approaches to laws which affect trans and gender diverse people, including in relation to accessing accurate identity documents. Inconsistencies between federal and state laws can lead to mismatching documents which causes practical difficulties in everyday life (e.g. being 'outed' as trans increases the risk of discrimination and mistreatment, difficulties providing sufficient points of ID, suspension of Centrelink payments due to data mismatches).

4. Northern Territory context

4.1 Overview of current process

The Explanatory Statement released by the Attorney-General and Minister for Justice on 30 October 2018 (**Explanatory Statement**) contains a succinct summary of the Bill, and we do not seek to duplicate this information.

However, we note that there are key features of the BDM Act which have operated to exclude many trans and gender diverse people from being legally recognised in accordance with their gender identity. In particular, the BDM Act:

- requires a person to be 'unmarried' to change their legal gender (**unmarried requirement**);
- requires a person to have undergone sexual reassignment surgery to change their legal gender (**surgery requirement**);
- in practice, does not allow a person under 18 to change their legal gender (**access for minors**);
- does not allow for legal recognition for gender diverse or non-binary people who identify outside categories of 'man' and 'woman' (**additional gender categories**); and
- requires a number of statements and documents to be provided by medical practitioners relating to the applicant's reassignment procedure (**medical evidence requirement**).

We discuss each of these key features of the BDM Act below in Part 7 of this submission.

¹ Ibid.

4.2 Case study: Rosalina's story

In September 2018, the Human Rights Law Centre (**HRLC**) spoke with Rosalina about what it would mean for her to access a Territorian birth certificate that accurately reflects who she is.²

Case study: Rosalina's story

Rosalina was born in Alice Springs and is a Central Islander Sistergirl. This is a term used by Indigenous transgender women to describe their identity.

Rosalina can't change the gender on her birth certificate, which has caused practical difficulties in her life. For example, when Rosalina went to the Commonwealth Bank to register her change of name, the bank refused to put 'female' on the system. Rosalina felt "very embarrassed and very ashamed" because this discussion took place in public in front of a number of other people.

"On my birth certificate, I would really love to have female, because I am female," Rosalina said.

"Everyone has a choice, and everyone makes their own decisions. I should be able to make my own decisions for my life," Rosalina added.

5. Cross-jurisdictional comparison

5.1 Federal discrimination protections and guidelines

In 2013, the *Sex Discrimination Act 1984* (Cth) (**SDA**) was amended by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) to provide protections against unlawful discrimination on the grounds of gender identity and intersex status. As outlined below, there are key aspects of the BDM Act which do not comply with the SDA. The Bill is an important step towards removing this discrimination which trans and gender diverse people experience under existing laws.

Federal guidelines do not include the same legal barriers to gender recognition that are enshrined in the BDM Act. The *Australian Government Guidelines on the Recognition of Sex and Gender*³ (**Australian Guidelines**) and *Australian Passport Office's policy on sex and gender diverse passport applicants*⁴ (**Australian Passport Policy**) set out an alternative proposal. Under the Australian

² Human Rights Law Centre website, 'My ID, my identity: Rosalina's story' (6 September 2018) <https://www.hrlc.org.au/video/2018/9/6/rosalinas-story>.

³ Australian Government, *Australian Government Guidelines on the Recognition of Sex and Gender* (July 2013) <https://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.pdf>.

⁴ Australian Passport Office, *Sex and gender diverse passport applicants*, <https://www.passports.gov.au/passports-explained/how-apply/eligibility-citizenship-and-identity/sex-and-gender-diverse-passport>.

Guidelines and Australian Passport Policy, the surgery requirement and unmarried requirement do not exist, and there is no age restriction so parent/s and guardian/s of children under 18 can apply for a legal change of gender on behalf of that child.

However, federal guidelines still require medical evidence for a person to change their legal gender, by allowing a legal change of gender with a statement from a medical practitioner or psychologist, rather than a self-identification model. In addition, it only provides limited gender categories outside of male and female, which have been criticised by LGBTI advocates and organisations.⁵ It should be noted that these guidelines were released in 2013 and 2011, respectively, and practice has developed since that time.

5.2 State and territory birth certificate laws

There have been a number of positive recent reforms in other Australian jurisdictions. South Australia and the Australian Capital Territory have removed the surgery requirement. New South Wales, the Northern Territory, South Australia and the Australian Capital Territory allow for limited gender categories outside 'male' and 'female'. All jurisdictions except the Northern Territory, Western Australia and Tasmania have removed the unmarried requirement.

In addition, there have been proposals to remove the gender marker entirely from birth certificates by the *Law Reform Commission of Western Australia's Discussion Paper*⁶ (**WA Discussion Paper**) and potential amendments by the Labor Party to the Tasmanian Government's Justice and Related Legislation (Marriage Amendments) Bill 2018 (Tas)⁷ (**Tasmanian amendments**). In 2016, the Victorian Government tabled the Births, Deaths and Marriages Registration Amendment Bill 2016 (Vic)⁸ (**Victorian Bill**), which failed by one vote in the upper house. The Victorian Bill represents the model that aligns most closely with international best practice, of models that continue to record gender on identity documents.

We refer to **Appendix 1** which contains a brief summary of current state and territory birth certificate laws, and key proposals for reform.

⁵ The Sex and Gender Advisory Group of the National LGBTI Health Alliance, 'A joint submission on a review of the Australian Government Guidelines on the Recognition of Sex and Gender' (24 September 2015) <https://lgbtihealth.org.au/resources/submission-review-agd-guidelines/>.

⁶ Law Reform Commission of WA, *Project 108 – Discussion Paper: Review of Western Australian legislation in relation to the recognition of a person's sex, change of sex or intersex status* (2018) https://www.lrc.justice.wa.gov.au/_files/LRC-Project-108-Discussion-Paper.pdf.

⁷ Carla Howart, 'Push to rid gender from birth certificates could have 'serious consequences', Government warns', *The Age* (24 October 2018) <https://www.abc.net.au/news/2018-10-24/birth-certificates-gender-tasmania-government-against-amendments/10423686>. These amendments are not yet publicly available.

⁸ Births, Deaths and Marriages Registration Amendment Bill 2016 (Vic) http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/ca257cca00177a46ca25801300117077!OpenDocument.

5.3 International human rights principles

All human beings are born free and equal in dignity and rights.⁹ This is the foundational principle of universality and equality which underpins international human rights law, and applies to trans, gender diverse and intersex people.¹⁰

There is increasing international concern about reports of human rights violations experienced by trans and gender diverse people. Recent developments in comparative jurisdictions and commentary and views of United Nations human rights mechanisms, including treaty bodies and special procedures, provide guidance to governments on the importance of protecting the human rights of trans and gender diverse people across all areas of public life.

UN treaties

The human rights protections found in international human instruments apply to all people regardless of their gender identity or expression, or sex characteristics. The International Covenant on Civil and Political Rights (**ICCPR**),¹¹ the International Covenant on Economic, Social and Cultural Rights,¹² the Convention against Torture,¹³ the Convention on the Rights of the Child,¹⁴ the Convention on the Rights of Persons with Disabilities¹⁵ and other human rights treaties are relevant for understanding human rights protections for trans, gender diverse and intersex people. These include fundamental and universal human rights to privacy, freedom from discrimination, and recognition before the law, also described in the Universal Declaration of Human Rights. In particular, the right to recognition before the law underpins people's access to state entitlements, including healthcare, education, housing, social security and employment.

UN treaty body recommendations

Recently, a number of UN treaty bodies have made recommendations for Australia to reform its birth certificate laws.

On 15 June 2017, the United Nations Human Rights Committee handed down its decision in *G v Australia*, finding that:

⁹ UN General Assembly, *Universal Declaration of Human Rights* (10 December 1948) 217 A (III).

¹⁰ See e.g. Opening remarks by High Commissioner for Human Rights at the Expert meeting on ending human rights violations against intersex persons (16 September 2015) www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16431&LangID=E.

¹¹ UN General Assembly, *International Covenant on Civil and Political Rights* (16 December 1966) UN Treaty Series 999, 171.

¹² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (16 December 1966) UN Treaty Series 993, 3.

¹³ UN General Assembly, *Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment* (10 December 1984) UNTS 1465, 85.

¹⁴ UN General Assembly, *Convention on the Rights of the Child* (20 November 1989) UNTS 1577, 3.

¹⁵ UN General Assembly, *Convention on the Rights of Persons with Disabilities* (24 January 2007) A/RES/61/106.

the differential treatment between married and unmarried persons who have undergone a sex affirmation procedure and request to amend their sex on their birth certificate is not based on reasonable and objective criteria, and therefore constitutes discrimination on the basis of marital and transgender status, under article 26 of the Covenant.¹⁶

On 1 December 2017, the Committee also recommended as part of its periodic review of Australia's compliance with the International Covenant on Civil and Political Rights that Australian governments:

Take the measures necessary to remove surgery and marital status requirements for sex change on birth, death and marriage certificates, taking into account the Committee's Views in communication No. 2172/2012, G. v. Australia.¹⁷

In addition, on 25 July 2018, the Committee on the Elimination of Discrimination against Women recommended that Australian governments:

Abolish requirements regarding medical treatment for transgender women who wish to obtain legal recognition of their gender, ensure that those requirements are abolished throughout the State party's territory and guarantee the rights of transgender women to bodily integrity, autonomy and self-determination.¹⁸

These clear directions from international human rights bodies support urgent law reform to protect the human rights of trans, gender diverse and intersex Australians.

UN Independent Expert on Sexual Orientation and Gender Identity

On 12 July 2018, the United Nations' Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity delivered a report on *Protection against violence and discrimination based on sexual orientation and gender identity*.¹⁹

The report highlights "[a]busive requirements for gender recognition" that "violate human rights when a change of gender or name is sought in official records", including:

- forced, coerced or otherwise involuntary sterilisation;
- medical procedures related to transition, including surgeries and hormonal therapies;
- undergoing medical diagnosis, psychological appraisals or other medical procedures or treatment;
- third-party consent for adults; and

¹⁶ UN Human Rights Committee, *Views: Communication No 2172/2012*, 119th sess, UN Doc CCPR/C/119/D/2172/2012 (15 June 2017) 18 [7.15] ('G v Australia').

¹⁷ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Australia* (1 December 2017) UN Doc CCPR/C/Aus/CO/6.

¹⁸ UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Australia* (25 July 2018) UN Doc CEDAW/C/AUS/CO/8.

¹⁹ UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Protection against violence and discrimination based on sexual orientation and gender identity* (12 July 2018) UN Doc A/73/152.

- forced divorce.²⁰

The report also highlights a number of recommendations from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the European Court of Human Rights and treaty body recommendations.²¹ For example, the World Health Organisation has recognised that “sterilization requirements run counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination against transgender and intersex persons”.²²

The report also makes recommendations for taking into account identified best practices for legal gender recognition systems to respect the rights of trans and gender diverse people in a way which respects free and informed choice, and bodily autonomy.

Any legal recognition processes should:

- be based on self-determination by the applicant;
- be a simple administrative process;
- be confidential;
- be based solely on the free and informed consent of the applicant without requirements such as medical and/or psychological or other certifications that could be unreasonable or pathologising;
- acknowledge and recognise non-binary identities, such as gender identities that are neither “man” nor “woman” and offer a multiplicity of gender marker options;
- be accessible and, to the extent possible, cost-free; and
- examine seemingly neutral requirements that are prerequisites for change of name, legal sex or gender for potential or actual disproportionate effects in the light of the realities of the trans populations in each given context.²³

Yogyakarta Principles plus 10

The primary international human rights principles relating to sexual orientation and gender identity are the Yogyakarta Principles, which affirm binding international legal standards all States must comply with. In 2017, the Yogyakarta Principles were updated to reflect increased knowledge and understanding of the needs of human rights protections on the basis of sexual orientation, gender identity and sex characteristics.²⁴

²⁰ Ibid 9.

²¹ Ibid 10.

²² World Health Organisation, *Eliminating Forced, Coercive and Otherwise Involuntary Sterilisation*.

²³ Above n 20, 24.

²⁴ *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and Sex*

Principle 31 of the Yogyakarta Principles plus 10 relevantly states that:

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics.²⁵

5.4 International jurisdictions

The growing international recognition of the importance of ensuring legal recognition of gender promotes human rights principles has led to a proliferation of law reform in a number of international jurisdictions.

The requirement that a person undergo surgery has been rejected in a number of jurisdictions, including Argentina, Austria, Belgium, Denmark, Ecuador, France, Greece, Iceland, Ireland, Malta, Norway and Switzerland, most of which have also removed requirements of medical evidence for legal recognition of gender. A number of jurisdictions also allow children to change their legal gender, including Argentina, Austria, Belgium, Ecuador, Greece, Malta, Norway and Sweden. There have also been significant recent developments in relation to law reform in Portugal, Austria, Switzerland, Luxembourg, the Netherlands, New Zealand and New York City in the US. Similar to Australia, Canadian laws vary by province and US laws vary by state.

The notable trend across these jurisdictions is growing awareness and acknowledgement of the need to update existing laws to respect self-identification, moving away from a pathologisation model.

A table comparing the legal and practical framework for each of these jurisdictions is set out in **Appendix 2**.²⁶

6. Amending laws to reflect the new definition of 'marriage'

We support the Bill's proposals to amend provisions in various Northern Territory laws to ensure that they reflect the new definition of 'marriage' in the *Marriage Act 1961* (Cth), including amendments for gender-neutral language such as 'spouse' and 'surviving spouse'. With the passage of marriage equality, the exemption for the Territory Government to include an unmarried requirement in birth certificate laws under s 40(5) of the SDA will be removed on 9 December 2018.

Characteristics to complement the Yogyakarta Principles (10 November 2017) http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

²⁵ Ibid, Principle 31.

²⁶ Due to resource constraints, international research in non-English speaking jurisdictions contained in Appendix 1 have been translated using online translations, not official translations.

During the postal survey in 2017, 60.6% of Territorians voted ‘yes’ for marriage equality.²⁷ Since marriage equality became law in Australia less than a year ago, 45 same-sex couples have now married in the Territory.²⁸

In particular, we welcome the amendments to remove the unmarried requirement under s 28B(1)(c) of the BDM Act to implement marriage equality in the territory and urge its swift passage through Parliament before 9 December 2018. As marriage is no longer defined as the union of ‘a man and a woman’, the fact that a person is married should not prevent them from changing their legal gender.

Accordingly, we do not consider the unmarried requirement in detail in this submission.

7. Increasing compliance with the *Sex Discrimination Act 1984 (Cth)*

The Bill also seeks to ensure compatibility with the *Sex Discrimination Act 1984 (Cth)* (**SDA**) by amending the BDM Act primarily by removing requirements for a person to register a change of sex. In this submission, we refer to this process as ‘changing legal gender’, to more accurately reflect the data being collected by the government in registering a person’s gender on the Register and legal documentation.

7.1 Conflation of sex, gender and gender identity

The Bill amends references to “sex” to “sex or gender identity”, similar to the equivalent South Australian legislation.²⁹ There is an important distinction between sex and gender, which have often been unhelpfully conflated in the BDM Act and other laws.

The WA Discussion Paper sets out the distinction as follows:

- “Sex is a biological concept that describes, in part, a person’s physical features, including genitalia, other sexual reproductive anatomy, chromosomes, hormones and secondary physical features emerging from puberty.
- Gender is a social concept that describes the way in which a person identifies or expresses their masculine or feminine traits and the way they are recognised within a community. A

²⁷ Hayley Sorensen, ‘Same-sex marriage vote: 60.6 per cent of Territorians vote ‘yes’ in postal survey (15 November 2017) <https://www.ntnews.com.au/lifestyle/samesex-marriage-vote-606-per-cent-of-territorians-vote-yes-in-postal-survey/news-story/d4f44a22471b26a1df554bbbfc50b92>.

²⁸ Josh Taylor, ‘Close to 5,000 Australian Same-Sex Couples Have Married Since It Became Legal’, (8 November 2018) <https://www.buzzfeed.com/joshtaylor/almost-5000-same-sex-couples-have-married-in-australia>.

²⁹ *Births, Deaths and Marriages Registration Act 1996* (SA) Part 4A.

person's gender identity may not always be exclusively male or female and may not always correspond with their sex assigned at birth."³⁰

The Australian Guidelines require Commonwealth agencies to collect gender information, and only collect information about sex where the agency has a legitimate need for this information.

There may be some limited situations in which information about a person's sex is required, but in most situations the information being collected is about a person's gender. An example of a limited situation where sex information is relevant is medical contexts where a doctor treating a transgender patient for gender dysphoria may describe in medical records the sex assigned at birth and the subsequent gender identity of that patient.

The use of the term "identity" in the legislation is confusing and unhelpful. The change that is to be achieved is one of legally recognised "gender". Identity can exist outside legal recognition. For example, someone who has not changed their legal gender may experience discrimination on the basis of their gender identity and should be protected from such unfair treatment, regardless of whether such identity is recognised legally. While "gender" is a more accurate description of the information recorded on the Registry and birth certificates, careful consideration is required as to how these amendments may interact with other legislation which use the term "sex", and potential consequential amendments required to other legislation, or the *Acts Interpretation Act* (NT).

Recommendation 1:

We recommend that the word "identity" be removed from references to "sex or gender identity", and recommend that the Committee consider amending the category to "gender".

7.2 Surgery requirement

Currently, sections 28B(1)(b) and 28B(2)(b) of the BDM Act require a person to have undergone 'sexual reassignment surgery'. This is defined as "a surgical procedure involving the alteration of a person's reproductive organs carried out: (a) to assist a person to be considered to be a member of the opposite sex; or (b) to correct or eliminate ambiguities relating to the sex of the person."³¹

Our view is that the 'sexual reassignment surgery' requirement constitutes unlawful discrimination. It constitutes indirect discrimination in the provision of services on the basis of a person's gender identity, contrary to s 22 of the SDA. It follows that the requirement in the BDM Act is invalid by reason of s 109 of the Constitution.

The requirement that a person undergo sex affirmation surgery is likely to disadvantage trans and gender diverse people, in particular those who have not undergone genital surgery. The High Court

³¹ *Births, Deaths and Marriages Registration Act* (NT) s 28A.

³¹ *Births, Deaths and Marriages Registration Act* (NT) s 28A.

has acknowledged that disadvantage may arise for trans people if they are not permitted to change their legal gender.

In *AB v Western Australia* (2001) 244 CLR 390, the High Court considered the meaning of provisions in the *Gender Reassignment Act 2000* (WA), which permitted transgender people who satisfied certain conditions to change their legal gender. There is also Canadian authority to a similar effect. In *XY v Ontario (Government and Consumer Services)* (2012) HRTO 726, the applicant contended that s 36 of the *Vital Statistics Act 1980* (Ontario), which required a person to undergo surgery before being permitted to change their legal gender, constituted discrimination on the basis of sex and disability under the Ontario Human Rights Code.

In addition, the surgery requirement is inconsistent with international human rights law.

Recommendation 2:

We support the Bill's removal of the requirement for 'sexual reassignment surgery'.

7.3 Access for minors

We support a process for children under 18 to be able to access birth certificates and identity documents which reflect their correct gender.

It is critically important that children are able to access identity documents which reflect their gender in situations where this is required. This is particularly the case given the vulnerability and poor mental health outcomes associated with trans and gender diverse children who are not allowed to live their life as their true gender. In 2017, *Trans Pathways*³² – the largest ever survey into the mental health of trans young people in Australia – found that almost 80% of young trans and gender diverse people had self-harmed and almost half of young trans and gender diverse people had attempted suicide.

The current legal regime, which requires medical treatment as a precondition of legal recognition, places pressure on parents and children to undergo medical transition in order to access legal recognition. We strongly support decisions about medical treatment being made in a medical context on the guidance of medical experts, without pressure from external legal processes for children and parents seeking to avoid the discrimination facilitated by being unable to provide accurate proof of gender when required.

In relation to children, the Independent Expert on Sexual Orientation and Gender Identity's report states that:

States should take the best interests of the child as a primary consideration and respect the child's right to express views in accordance with the age and maturity of the child, in line with the Convention on the

³² Above n 1.

Rights of the Child and, in particular, in keeping with the safeguards established pursuant to article 19 of the Convention, which must not be excessive or discriminatory in relation to other safeguards that give recognition to the autonomy and decisional power of children of a certain age in other areas.³³

The Bill proposes a simple administrative process for one parent or guardian to submit an application with proof of identification.³⁴ The proposed model suggests that applicants should also provide a statement confirming their consent to the application, and a statement from a child aged 14 or over confirming that the child is aware of the meaning and implication of the change and provides their consent.

Recommendation 3:

We support the Bill ensuring that parents or guardians of children aged under 18 can access legal recognition of gender for those children through a simple administrative process.

Clauses 28B(3) and 28B(4) of the Bill allow a guardian to apply for registration of a change of a child's sex or gender identity where:

- the applicant is the sole parent named in the registration of the child's birth;
- the applicant is the only surviving parent of the child; or
- the parents of a child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to a child.

Clause 28B(4) provides a broad provision for 'some other reason'. Unfortunately, we are aware of a number of family situations in which parents have been unable to agree on key decisions involving the child, particularly in relation to a child's gender identity. In most of these cases, the child is raised and spends all of their time with the parent who affirms and supports their gender identity, and generally does not have any, or very minimal, contact with the other parent, who typically does not play an active role in their child's life. In some of these cases, the parent who has no contact with the child has been violent or abusive, and there may be a family violence restraining order or violence restraining order in place protecting the child from family violence.

In the majority of key legal decisions involving a child, the consent of both parents is required. However, there are generally allowances for exceptional circumstances where it is not practically possible or appropriate to obtain consent from an absent parent.

For example, the *Australian Passports Act 2005* (Cth) and section 10 of the *Australian Passports Determination 2015* (Cth) sets out 'special circumstances' in which a parent who is unable to obtain the consent of all persons with parental responsibility for a child can explain why they cannot obtain consent and request that an application be considered without requiring a court order.

³³ Above n 20, 11.

³⁴ Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018 (NT) cl 6.

These 'special circumstances' include:

- the non-consenting parent being presumed missing or dead;
- inability to contact a non-consenting parent for a reasonable period of time;
- the non-consenting parent being medically incapable of providing consent;
- the existence of a family violence order against the non-consenting parent;
- no contact between the child and the non-consenting parent for a substantial period before the application is made; or
- the child being the subject of a child welfare order.³⁵

We recommend that which set out common 'special circumstances' which would fall under 'other reason', to provide guidance for parents seeking to apply.

Recommendation 4:

We recommend that guidelines to accompany the Bill outline other reasons which would allow a parent to apply to legally change a child's gender, which include common 'special circumstances' which may arise.

7.4 Additional gender categories

The Bill proposes replacing regulation 4A of the *Births, Deaths and Marriages Registration Regulations* (NT) with the following recognised categories:

- (a) female;
- (b) male;
- (c) non-binary;
- (d) intersex;
- (e) unspecified.

Providing gender diverse people with access to identity documents that reflect who they are will have a profoundly positive impact on their lives, reduce the discrimination and disadvantage they face, and support improved health and wellbeing for an already vulnerable cohort of people living in our community.

³⁵ *Australian Passports Determination 2015* (Cth) s 10.

The provision of options outside male and female categories was recommended by the Australian Human Rights Commission in its recent *Resilient Individuals Report*,³⁶ and aligns with national and international human rights principles.³⁷

The High Court has also considered this issue, including most recently in *NSW Registrar of Births, Deaths and Marriages v Norrie (Norrie)*.³⁸ When *Norrie* was decided in 2014, the High Court stated that “[t]he chief, perhaps the only, case where the sex of the parties to the relationship is legally significant is marriage, as defined in the fashion found in s 5(1) of the Marriage Act 1961 (Cth).³⁹ The High Court’s comments resonate more strongly following the amendments to the definition of marriage in *Marriage Act 1961 (Cth)* achieved by the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth)* in December 2017.

In *Norrie*, the High Court refused to issue their birth certificate as ‘intersex’. The Darlington Statement provides that “attempts to classify intersex people as a third sex/gender do not respect our diversity or right to self determination”.⁴⁰ As highlighted above, Intersex Human Rights Australia and a number of LGBTI organisations do not support ‘intersex’ being available as a legal sex category.⁴¹

While legal classification of gender continues, the Darlington Statement supports individuals being able to “to choose between female (F), male (M), non-binary, alternative gender markers, or multiple options”.⁴²

The term “non-binary” is used by many people who do not identify with male or female sex/gender classifications and often as a catch-all term for the multitude of identities such as genderqueer, agendered and nongendered. However, some people who identify outside the male and female categories do not wish to use this term. For example, in consultations in Victoria some people expressed a wish to be identified as “male and female”. As part of the Victorian Bill, the Victorian Government proposed allowing individuals the freedom to select a gender classification that matches their gender identity and avoid the need to determine and predict the exact categories that will be used. The proposal would have allowed LGBTI community organisations to supply the Registrar with a list of the most commonly used descriptors and could continue to provide advice on any additional descriptors over time. As with change of name applications, the Registrar could have the discretion to

³⁶ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights* (2015) <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual>.

³⁷ Office of the High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (4 May 2015) http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc.

³⁸ [2014] HCA 11.³⁹ *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 [42].

³⁹ *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 [42].

⁴⁰ *Darlington Statement: Joint consensus statement from the intersex community retreat in Darlington* (March 2017) [16] <https://ihra.org.au/darlington-statement/>.

⁴¹ Above n 6. See also, Intersex Human Rights Australia, ‘Why intersex is not a gender identity, and the implications for legislation (12 March 2012) <https://ihra.org.au/17680/intersex-sex-not-gender-identity/>.

⁴² *Ibid.*

refuse any applications not made in good faith in order to ensure the integrity of the Register. We support the same gender classifications being made available to adults and minors, regardless of age.

Recommendation 5:

We support the Bill's amendment to the regulations allow a person to be registered as 'female', 'male', 'non-binary' or 'unspecified', and oppose the use of 'intersex' as a 'sex or gender identity' category in recognition of the position of intersex community organisations. In addition, we recommend that the Territory Government make additional categories available in consultation with trans, gender diverse and intersex community organisations.

7.5 Clinical treatment and medical evidence requirements

The Bill's proposals to remove the surgery and unmarried requirements are significant advances for trans and gender diverse people to be able to access accurate identity documents. The Bill is consistent with the Australian Passport Policy, which require a person to obtain a statement from a medical practitioner or psychologist confirming that: (a) you have had or are receiving appropriate clinical treatment for gender transition; or (b) you are of indeterminate sex or are intersex.

However, the Bill and the Australian Passport Policy still require the person seeking the legal change of gender to have received appropriate clinical treatment in relation to their sex or gender identity (**clinical treatment requirement**). In addition, the application must be accompanied by a statement by a medical practitioner or a psychologist that the adult or child has received this appropriate clinical treatment (**medical evidence requirement**).

We consider that the clinical treatment and medical evidence requirements impose a discriminatory burden on trans and gender diverse people. These requirements impose administrative and financial burden, and send a damaging message to these cohorts that there is something "wrong" with them that requires medical intervention and diagnosis. The idea that a medical practitioner can or should also "verify" an individual's own sense of their gender identity is damaging to a person's sense of self. This harm is compounded by the generally negative experiences trans and gender diverse people have with the medical profession.

Internationally, it is now recognised that individuals should be able to self-declare their gender with supporting documentation that does not include medical certificates. As outlined in Appendix 2 of this submission, countries such as Ireland, Argentina, Belgium, Ecuador, France, Greece, Iceland, Denmark and Malta have reformed their laws to allow individuals to change the sex or gender on their birth certificates through simple administrative processes, similar to a change of name. These changes have been in effect for a number of years without any ill effects.

Requirements for medical evidence should be replaced with the approach of self-affirmation by way of a simple administrative process, to reflect international best practice. This should be a simple

administrative process, similar to jurisdictions such as Argentina, and recent guidance from the Independent Expert on Sexual Orientation and Gender Identity.⁴³

Recommendation 6:

We recommend that the clinical treatment and medical treatment requirements be replaced with a statement from the applicant that the person's gender is as nominated in the application.

8. Other issues

8.1 Removal of sex category from all birth certificates

There have also been recent proposals to remove gender markers from the Registry and birth certificates entirely.

In March 2017, a group of intersex advocates and organisations compiled the Darlington Statement, a joint consensus statement on intersex human rights and policy issues.⁴⁴ The Darlington Statement states that: “[a]s with race or religion, sex/gender should not be a legal category on birth certificates or identification documents for anybody.”⁴⁵ The Darlington Statement provides the rationale that:

Undue emphasis on how to classify intersex people rather than how we are treated is also a form of structural violence. The larger goal is not to seek new classifications but to **end legal classification systems** [sic] and the hierarchies that lie behind them.⁴⁶

The Independent Expert on Sexual Orientation and Gender Identity has recently made a clear recommendation about considering the reasoning for including gender markers on identity documents. The report recommends that States should:

Carefully review the reasoning behind the gathering and exhibition of certain data, and the rules governing data management, which must include separate considerations for the need to gather and the need to exhibit, as well as rigorous adherence to risk assessment and management considerations under the “do no harm” principle, and the participation of the affected populations and communities in the design, implementation and evaluation of the data-gathering systems. States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose and ensure that, when data must be collected, it should be done on the basis of self-determination, while respecting privacy and confidentiality.⁴⁷

⁴³ *Gender Identity Law 2012* (Argentina); above n 19.

⁴⁴ Above n 43.

⁴⁵ *Ibid* [8]a.

⁴⁶ *Ibid* [8].

⁴⁷ Above n 20, 23.

Principle 31(A) of the *Yogyakarta Principles plus 10* also provides that States should:

Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality.⁴⁸

The WA Discussion Paper and amendments proposed recently to the Justice and Related Legislation (Marriage Amendments) Bill 2018 (Tas) in Tasmania propose removing sex/gender markers from the Register and birth certificates entirely and therefore lift the burden of any kind of change process for trans and gender diverse people. Under these proposals, sex markers would be removed from all newly issued birth certificates – both for infants and for anyone who is issued a new birth certificate following a legal change of name or correction of other details. The rationale for this option is to remove sex markers from birth certificates entirely, recognising the sex/gender information can be private and important to an individual's sense of self (like race or religion) and it is not appropriate for the state to have in place a formal system of collection and recognition. Routinely collecting sex/gender information causes difficulties for trans and gender diverse people and increases the risk of discrimination.

Recommendation 7:

We recommend that the Territory Government consider removing sex markers from the Register and birth certificates entirely.

8.2 Distinct issues facing intersex people

Our submission focuses on access to legal recognition for trans and gender diverse people. While some intersex people may wish to correct their birth certificate, legal recognition of gender is not the primary advocacy priority for intersex human rights organisations in Australia at this time.

The current primary concern of intersex human rights organisations including Intersex Human Rights Australia and the Androgen Insensitivity Support Group of Australia is to prohibit non-urgent and deferrable medical interventions on intersex children and infants without their full, prior and informed personal consent, except in cases of absolute medical necessity. The human rights violations which continue to be experienced by intersex people in Australia in the context of medical interventions have been highlighted in the *Yogyakarta Principles plus 10*⁴⁹ and recent concluding observations from the United Nations Human Rights Committee⁵⁰ and the Committee on the Convention on the Elimination

⁴⁸ Above n 25, Principle 31(A).

⁴⁹ Above n 25.

⁵⁰ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Australia* (2017) at [25]-[36].

of Discrimination against Women,⁵¹ as well as numerous human rights experts and bodies. The Darlington Statement sets out the call for criminal sanctions for medical procedures which violate the human rights of intersex people.⁵²

While this issue falls outside the Terms of Reference of this review, we urge the Territory Parliament to further consider and act upon the recommendations made by the 2013 Australian Senate Community Affairs Committee's *Report on the Involuntary or Coerced Sterilisation of Intersex People in Australia*⁵³. We also recommend that the Parliament be guided by the forthcoming report from the Australian Human Rights Commission as a result of its project *Protecting the human rights of people born with variations in sex characteristics in the context of medical interventions*.⁵⁴

Recommendation 8:

We recommend that the Territory Government consider and act on the recommendations of the 2013 Australian Senate Community Affairs Committee's *Report on the Involuntary or Coerced Sterilisation of Intersex People in Australia*.

8.3 Discrimination on the basis of gender identity or sex characteristics

The Territory is the only remaining jurisdiction in Australia where trans and gender diverse people are not protected from discrimination in public life on the basis of their gender identity or expression under state or territory based discrimination laws. In addition, intersex people are not protected from discrimination on the basis of their sex characteristics in public life. This is inconsistent with existing protections for LGBTI people under the SDA, and leaves open the door for mistreatment and discrimination against a cohort of members of our community who experience disproportionate rates of poverty, unemployment and underemployment.

In September 2017, a review into modernising the *Anti-Discrimination Act* (NT) considered these issues. Unfortunately, as a result of the discrimination trans and gender diverse people experience, they continue to face significant socioeconomic disadvantage, poorer mental health outcomes, and high levels of unemployment and underemployment. We refer to our submission to this review,⁵⁵ and

⁵¹ UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on Australia* (CEDAW/C/AUS/CO/8), 25 July 2016, at [26].

⁵² Above n 44 [7].

⁵³ Australian Senate Community Affairs Reference Committee, 'Involuntary or Coerced Sterilisation of Intersex People in Australia - Second Report' (2013) *The Australian Senate Printing Unit Parliament House*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index.

⁵⁴ Australian Human Rights Commission, *Protecting the human rights of people born with variations in sex characteristics in the context of medical interventions* (2018) <https://www.humanrights.gov.au/consultation-process>.

⁵⁵ Human Rights Law Centre, 'Realising the Right to Equality: Discrimination protections for a modern and inclusive Northern Territory' (31 January 2018)

urge the Territory to modernise its discrimination laws to provide stronger protections for trans and gender diverse Territorians.

Recommendation 9:

We recommend that the Territory Government progress the review into modernising the *Anti-Discrimination Act* (NT).

8.4 Public education and awareness

The reforms proposed in this submission will assist in reducing some of the ill-treatment experienced by trans and gender diverse people in their day to day lives, but they will not remove discrimination completely. Successful implementation of any future reforms will require care and investment by the Territory Government. Similar to the ACT Law Reform Advisory Council, we recommend investment in reviews of data collection policies and systems across government, training in sex and gender diversity and LGBTI cultural competency, and appropriate support services for trans and gender diverse people and their families.

Recommendation 10:

We recommend investment in information, education, training, IT and systems infrastructure change and community support services as part of the implementation of future reforms.

8.5 Rights to privacy

It may be that further privacy protections are necessary in light of the reforms proposed above. Under the *Births, Deaths and Marriages Registration Act 1997* (ACT), a range of provisions are included to protect privacy for those who change their legal sex/gender. These are:

- the requirement that a new birth certificate only shows the altered record of sex, and does not include any word or statement to the effect that the person to whom the certificate relates has changed their sex;⁵⁶
- a general prohibition on accessing a birth certificate showing a person's sex before the alteration of the record to anyone other than the person, a child of the person or a prescribed person;⁵⁷ and
- provisions that prohibit the use of old birth certificates that shows a person's sex before the record was altered with the intent to deceive.⁵⁸

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a72acc253450a892aac3be8/1517464775843/HRLC+Submission+-+Realising+the+Right+to+Equality+2017.pdf>.

⁵⁶ *Births, Deaths and Marriages Registration Act 1997* (ACT) s 27.

⁵⁷ *Births, Deaths and Marriages Registration Act 1997* (ACT).

⁵⁸ *Births, Deaths and Marriages Registration Act 1997* (ACT) s 28.

Recommendation 11:

We recommend that the Northern Territory Government consider additional privacy protections in relation to gender information which may be reasonable, necessary or appropriate.

8.6 Application costs and financial hardship

Trans and gender diverse people are more likely to experience unemployment and underemployment. As a result, people applying to change their legal gender are more likely to be experiencing financial hardship and have difficulties paying the administrative costs of a certificate. Financial means should not act as a barrier to legal recognition. We note that the Bill does not currently contain information about a potential waiver of application costs, and consider that a waiver to avoid financial hardship should be included in the regulations.

Recommendation 12:

We recommend that the Registrar have the discretion to waive application costs in situations of financial hardship.

9. Conclusion

A birth certificate is the first document a person has – it says who you are, and where you belong. It is the foundational document on which your other identity documents are based. Being forced to use official documents that doesn't match your identity creates daily problems when applying for a job, going to Centrelink or enrolling to study. Being told that you cannot change your legal gender to reflect who you are is particularly damaging for trans and gender diverse Territorians.

This Bill is an important step forward to removing discrimination against LGBTI Territorians, and to respecting self-determination of trans and gender diverse Territorians. We welcome the introduction of the Bill and urge the Committee to undertake a thorough consideration of the important policy issues at play to ensure that all trans, gender diverse and intersex people are treated fairly and equally in the Territory. In addition, we welcome the removal of the unmarried requirement and other necessary legislative amendments to ensure that Territory law fully respects marriage equality, nearly one year after this was legislated at a federal level.

The Bill proposes a model which better implements the key principles from the SDA, and would bring Territory practice closer to federal guidelines and policies. However, we urge the Committee to consider our recommendations to strengthen the Bill and align it with international best practice, based on the principle of fully respecting self-determination on the basis of gender identity.

Appendix 1: Comparison of Australian states and territories

Jurisdiction	Surgery requirement removed	Clinical treatment requirement removed	Medical evidence requirement removed	Unmarried requirement removed	Additional gender categories available	Children under 18 can apply
CURRENT LAWS						
Commonwealth	Yes	No	No	Yes	Limited	Yes
Australian Capital Territory	Yes	No	No	Yes	Limited	Yes
New South Wales	No	No	No	Yes	Limited	No
Northern Territory	No	No	No	No	Limited	No
Queensland	No	No	No	Yes	No	No
South Australia	Yes	No	No	Yes	Limited	Need court order
Tasmania (current situation)	No	No	No	No	No	No
Victoria (current situation)	No	No	No	Yes	No	No
Western Australia (current situation)	Yes	No	No	No	No	No
ALTERNATIVE PROPOSALS						
Tasmanian Amendments	Yes	Yes	Yes	Yes	N/A	N/A
Victorian Bill	Yes	Yes	Yes	Yes	Yes	Yes
WA Discussion Paper	Yes	Yes	Yes	Yes	N/A	N/A
NT BILL						
NT Bill	Yes	No	No	Yes	Limited	Yes

Appendix 2: Comparison of relevant international jurisdictions

Jurisdiction	Sex categories recognised	Medical requirements	Evidence of medical requirements	Marriage and the divorce requirement	Effect of age on gender recognition	Procedures for under 18 to comply to achieve gender recognition
Argentina	The <i>Ley de Genero (Gender Identity Law)</i> does not prohibit gender X.	Gender reassignment surgery and hormonal treatments are not required, but provided by the state as part of their public or private health care plans.	No medical evidence required.	Same sex marriage was legalised on 15 July 2010, by modifying article 2 of the Argentine Civil Code.	For minors under the age of 18, request must be made through their legal representatives with explicit agreement by the minor, taking into account the evolving capacities and best interests of the child. A minor must be assisted by a children's lawyer.	Where consent of a minor's legal representative is denied or impossible to obtain, can resort to summary proceedings where a judge will decide, taking into account the evolving capacities and best interests of the child.
Austria	Austria recognises two categories of gender: male and female. It currently does not recognise a third gender. This may soon change following a recent decision by the Austrian Constitutional Court (G 77/2018), in which the Court determined that intersex individuals should be permitted to register as "X" in the civil register and other official documents.	Pursuant to an administrative court decision in 2009 , Austria does not require an individual to undergo any medical procedures to apply for a legal gender change.	Government bodies consider evidence of the individual living as the opposite gender and any "gender corrective measures" in order to meet the test that "it is very likely that the sense of opposite sex will not change".	The Constitutional Court recently directed parliament to amend its laws by the end of 2018. Same sex marriage will become legalised in Austria on 31 December 2018. Austria's Constitutional Court overruled the divorce requirement in respect to a change of legal gender in 2006, declaring the requirement void.	Based on the drafting of the <i>Civil Status Act</i> , it appears that Austria does not impose an age restriction on gender recognition.	Accordingly, a minor is permitted to apply for a change in legal gender but it is likely that the government body will require sufficient medical opinion. In the G 77/2018 Constitutional Court decision, it was noted by the Court that medical procedures on infants and children should be avoided and only justifiable on grounds of "sufficient medical indication".
Belgium	Belgium recognises two categories of gender: male and female. It currently does not recognise a third gender. The <i>Reforming Transgender Regime Act</i> , an amendment to the <i>Civil Code</i> came into effect by Belgium	Pursuant to the amendments to the <i>Civil Code</i> , Belgium does not impose any medical requirements on individuals prior to applying for a declaration	No evidence of medical procedures is required under Belgian law.	Same sex marriage was legalised in Belgium in 2003, pursuant to the article 143 of the Belgian Civil Code.	Article 3 of the Civil Code applies to an "emancipated minor Belgian".	An individual over the age of 16 must undergo treatment by a child psychiatrist who must confirm to the registrar that the child's sex mentioned in the child's birth certificate does not

Jurisdiction	Sex categories recognised	Medical requirements	Evidence of medical requirements	Marriage and the divorce requirement	Effect of age on gender recognition	Procedures for under 18 to comply to achieve gender recognition
	Parliament on 1 January 2018, allowing for change of sex registration in birth certificates.	for change of sex registration in a birth certificate.				correspond to the child's current gender.
Canada	<p>Gender 'X' is recognised in Canada. Since 31 August 2017, transgender Canadians can indicate on their passports that they don't identify as either male or female. This is an ongoing effort by the federal government to eventually allow individuals to indicate their sex as 'X' on government issued identification.</p> <p>Ontario health cards no longer display a sex designation and Ontario drivers have the option to display X as a gender identifier on their driver's license.</p> <p>In July 2017, Northwest Territories began allowing X as a non-binary option on birth certificates.</p> <p>The procedure for amending an individuals' birth certificate depends on the law in the province/territory the person was born.</p>	<p>Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon (all 13 provinces and territories of Canada) all allow change of gender identity without surgery.</p>	<p>This differs from province to province. For example:</p> <p>Prince Edward Island: Individuals must present a letter from doctor attesting to the applicant's gender identity.</p> <p>Alberta: The applicant must submit a "statement confirming that the person identifies with and is maintaining the gender identity that corresponds with the requested amendment to the sex on the record of birth," as well as a letter from a physician or psychologist attesting that the amendment is appropriate.</p> <p>Quebec: For all applicants, a change of sex designation requires an affidavit from a person who knows the applicant. For applicants under 18, application forms require a letter from a physician or psychologist.</p>	<p>Same-sex marriage and divorce was legalised in Canada via the <i>Civil Marriage Act</i> which received assent on 20 July 2005.</p> <p>Divorce between same-sex partners married in Canada but resident in other jurisdictions was added to the <i>Act</i> in 2013.</p>	<p>This differs from province to province. For example:</p> <p>British Columbia: Legal change of gender is accessible to those under 19 as long as Proof of Parentage form completed.</p> <p>Nova Scotia: Legal change of gender available to those who are 16 years old and above, and those younger than 16 with parental permission unless waived by court order.</p> <p>Quebec: Legal change of sex designation is available to individuals under 18. Individuals under the age of 14 must have a parent or guardian apply on their behalf. Individuals 14-17 can apply with their own form in addition to the parent's application form.</p>	<p>This differs from province to province but must be completed in the individual's province of birth. For example:</p> <p>Alberta: For minors aged 12-17, the parent, guardian or ward must complete the Request and Affidavit, and all parents must consent to the change.</p> <p>British Columbia: minors (under 19) must complete Minor's Application forms including a Proof of Parentage or Legal Guardianship form and submit a physician or psychologist's confirmation form.</p> <p>Ontario: For minors under 15, the parent must complete the Application forms. For 16-17 year olds, the individual can apply as a child or adult and complete the Application forms.</p>
Denmark	In June 2014, the Danish Parliament passed a gender recognition law amending the Act on the Central Personnel Register, permitting	Denmark has adopted a self-determination model. Since 2014, Denmark no longer requires	Denmark does not impose any medical requirements. There is no requirement to obtain a medical 'opinion'.	Same-sex marriage was legalised in Denmark in 2012 via the <i>Act amending the Act on Marriage</i>	Denmark's gender recognition laws impose a minimum age requirement of 18 years old, meaning	

Jurisdiction	Sex categories recognised	Medical requirements	Evidence of medical requirements	Marriage and the divorce requirement	Effect of age on gender recognition	Procedures for under 18 to comply to achieve gender recognition
	<p>individuals to amend their gender identity in official documents including birth certificates.</p> <p>Under this law, individuals are also equipped with the right to apply to amend official documents such as passports to recognise the “X” category without approval from an external committee.</p>	<p>sterilisation, or a diagnosis of gender identity disorder to change legal sex.</p> <p>In 2016 the Danish Parliament also deleted transgender as a mental disorder from its National Board of Health.</p>		<p><i>Conclusion and Resolution, Law on Marriage’s Legal and Judicial Procedure Act and the repeal of the Registered Partnership Act.</i></p>	<p>gender recognition is not available to minors.</p>	
Ecuador	<p>Since 2016, transgender people can change their birth name and gender identity (instead of the sex assigned at birth) on legal documents and ID cards under the <i>Gender Identity Law</i>. This is based on self-determination.</p> <p>Only male and female genders are recognised.</p>	<p>No requirement for surgery to apply for legal gender change.</p>	<p>No medical evidence required.</p>	<p>Same-sex civil unions are legal in Ecuador. Article 67 of the Ecuadorian Constitution limits marriage to be between a man and a woman.</p> <p>In January 2018, the Inter-American Court of Human Rights required recognition of same-sex marriage and ruling is binding on Ecuador (Ecuador Supreme Court has upheld that ruling is fulling binding).</p> <p>On 28 July 2018, announced that majority of judges are in favour of legalisation of same-sex marriage, and confirmed the Court will vote to legalise it.</p>	<p>Age of consent in Ecuador is 14.</p> <p>Age of majority is 18 years old, but there may be mechanisms in the act to apply with consent of legal representatives.</p>	
France	<p>France recognises two categories of gender: male and female. It currently does not recognise a third gender.</p> <p>In 2016 the French Parliament (via the National Assembly) amended the</p>	<p>As of October 2016, individuals are no longer required to undergo sterilisation or medical procedures in order to</p>	<p>No evidence of medical procedures is required under French law.</p>	<p>Same-sex marriage was legalised in France in May 2013 via the <i>“ouvrant le mariage aux couples de personnes de meme sexe.</i></p>	<p>French gender recognition laws only apply to individuals over the age of 18 and emancipated minors.</p>	<p>Accordingly, individuals under the age of 18 cannot achieve gender recognition currently, unless the</p>

Jurisdiction	Sex categories recognised	Medical requirements	Evidence of medical requirements	Marriage and the divorce requirement	Effect of age on gender recognition	Procedures for under 18 to comply to achieve gender recognition
	Civil Code to provide for new gender recognition laws, comprised of an application process to the court via a prosecutor to change the gender recorded in official documents.	apply to change an individual's legal sex.				individual is considered to be an emancipated minor.
Germany	<p>Germany permits change of legal gender for male and female under the '<i>Law about the change of first name and determination of gender identity in special cases</i>'.</p> <p>It has also been reported that German courts have directed parliament to recognise and legislate a third gender before the end of 2018 to introduce terms to the effect of "inter" and "various" (Constitutional Court, 1 BvR 2019/16, decision of 10 October 2017, available here).</p>	<p>Germany removed the requirement for sterilisation via its Constitutional Court.</p> <p>However, Germany is not based on a self-determination model and requires an applicant to provide expert evidence from two medical professionals.</p>	<p>Applicants are required to provide two expert medical opinions which attest that the applicant:</p> <ol style="list-style-type: none"> 1. does permanently belong to the other sex; 2. has lived as the corresponding gender for three years; and 3. is unlikely to change their gender identity in the future (this must be supported by evidence). 	<p>Same-sex marriage was legalised in Germany on 1 October 2017 via the Law on the Introduction of the Right to Marriage for Persons of the Same Sex. Accordingly, the 'divorce' requirement is no longer a requirement in Germany.</p> <p>The Constitutional Court in Germany also ruled in 2008 that the requirement that an individual had to be unmarried was unconstitutional.</p>	There is no minimum age requirement imposed on applying for a legal change in gender in Germany.	There are no express regulations as to individuals under the age of 18. The individual is required to provide the same medical evidence as an adult.
Greece	<p>In October 2017, Greece's Parliament passed updated gender recognition legislation, the <i>Legal Recognition of Gender Identity – National Mechanism for the Development, Monitoring and Evaluation of Action Plans on Children's Rights</i>.</p> <p>The law imposes a requirement for an applicant to apply for a gender change via the court system (male or female only). It has been reported that in February 2018, a Greek County Court (Marousi) ruled in favour of a non-binary individual</p>	The Civil Court of Athens in case no. 418/2016 ruled that sterilisation is no longer a requirement in applying to change gender on a birth certificate. The Court declared that sterilisation constitutes a violation of Article 8 of the ECHR and the right to equality and non-discrimination enshrined in Articles 2 & 26 per the ICCPR.	Accordingly, the new laws do not impose any medical requirements on applicants.	<p>Same sex marriage is currently not legalised in Greece.</p> <p>The gender recognition law in place in Greece also requires an applicant to be single, meaning Greece still enforces the divorce requirement.</p>	Per legislation, Greek citizens over the age of 15 are permitted to apply for a change of legal gender.	Minors between the age of 15 and 17 years old are required to undergo a mental health assessment and obtain a medical certificate from a medical council at Athens Children's Hospital as part of the process of applying for a change of legal gender.

Jurisdiction	Sex categories recognised	Medical requirements	Evidence of medical requirements	Marriage and the divorce requirement	Effect of age on gender recognition	Procedures for under 18 to comply to achieve gender recognition
	amending their birth name to a neutral name.					
Iceland	Iceland recognises two categories of gender: male and female. It currently does not recognise a third gender.	Sex reassignment surgery is not required for official name change and gender recognition.	Anyone who has received a diagnosis and approved treatment may request confirmation from the Gender Disciplinary Expert Group that they belong to the other sex. That application must be accompanied by a statement from the team of experts, which states that the applicant has been under their supervision for at least 18 months and has been in the opposite gender role for at least one year.	Same-sex marriage has been legal in Iceland since 2010.		
Ireland	<p>The <i>Gender Recognition Act 2015</i> gives adult individuals the ability to apply to legally change their gender according to their gender identity. The Act only provides for male and female recognition.</p> <p>The process is progressive and adopts a self-determination approach, where an individual must apply for a 'gender application certificate', provide identity documents and complete a statutory declaration.</p>	Ireland does not impose sterilisation, medical procedures or a mental health diagnosis on individuals in accessing gender recognition.	No evidence of medical requirements is required.	<p>Ireland legalised same-sex marriage in 2015 via the <i>Marriage Act 2015</i>.</p> <p>Irish Parliament also amended the <i>Gender Recognition Act 2015</i> via the <i>Marriage Act 2015</i> to remove the requirement to be single prior to applying for a legal gender change.</p>	<p>Ireland requires an individual to be 18 years or over to apply for a Gender Recognition Certificate.</p> <p>Minors between the age of 16 – 18 may apply to the court for an exemption to apply for a Gender Recognition Certificate.</p>	A minor between the age of 16 and 18 can apply for a Gender Recognition Certificate but must obtain a court order from the Circuit Family Court exempting the minor from the Act's imposed age requirement.
Italy	<p>Italy recognises two categories of gender: male and female. It currently does not recognise a third gender.</p> <p>Individuals are required to obtain a court ruling permitting the legal</p>	The investigating judge has the discretion to require the individual to undergo counselling.	No medical procedure evidence is required but the individual may be required to undergo counselling and provide evidence of treatment.	<p>Same-sex marriage is not legalised in Italy.</p> <p>However, in 2014, the Constitutional Court held that forced divorce for</p>	Only individuals 18 years and older are permitted to apply for a legal gender change.	N/A

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	gender change, pursuant to law 164, an amendment to the Italian Civil Code.	However, the Supreme Court in 2015 held that surgical procedures should not be a pre-requisite to legal gender: see judgment. Sterilisation was removed as a requirement by the Constitutional Court in 2015: see the decision here.		transgender people was unconstitutional pursuant to Article 2 of the Italian Constitution: see <i>Italy, Corte Costituzionale, sentenza 11/06/2014 n° 170/2014</i> .		
Luxembourg	Luxembourg currently only recognises two genders: male and female. A bill (Bill 7146 – Bill to amend the mention of sex and of the first names in civil status and amending the Civil Code) has very recently (27 July 2018) been approved by Luxembourg’s Parliament. The application must be accompanied by a number of documents (e.g. birth certificate, identity card national certificate, valid passport, extract of a criminal record or proof of marriage / partnership).	Article 2 of Bill 7146 states that failure to undergo medical treatment, surgery or sterilization cannot justify the refusal by the Minister of Justice to grant a request to change one’s gender on their birth certificate.	None required under Bill 7146.	Legislation was passed in 2014 to legalise same-sex marriage, which came into effect on 1 January 2015. Divorce is not a requirement where one party changes their gender.	Bill 7164 allows for minors to have their gender changed on their birth certificate.	The minor’s parents or guardians can make a reasoned request for the minor’s gender to be changed to the Minister of Justice. Where the holders of parental authority disagree, the most diligent parent shall refer the matter to the guardianship judge who will rule in the interests of the child. Article 4 states that holders of parental authority of a minor under the age of 5 need to submit the matter to the guardian judge, rather than to the Minister of Justice.
Malta	Section 3 of the <i>Gender Identity, Gender Expression and Sex Characteristics Act</i> states that all	There is no requirement to provide proof of a surgical procedure for total or partial genital	None are required.	A person’s rights, relationship and obligations arising out of parenthood or marriage	Individuals under 18 also have access to the right to recognition of their gender identity.	Section 7 of the Act allows the person exercising parental authority over the minor to file an application in

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	<p>Maltese citizens have a right to the recognition of their gender identity.</p> <p>To do this, the following process must occur:</p> <ol style="list-style-type: none"> the person shall make a request to the Director by means of a note of registration; the Director shall not require any other evidence other than the declaratory public deed. <p>The Director will enter a note in the act of birth of the applicant within 15 days from the filing of the note of registration.</p>	<p>reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity (section 3 of the Act).</p>		<p>shall in no way be affected: section 3 of the Act)</p>		<p>the registry of the Civil Court requesting the Court to change the recorded gender and first name of the minor in order to reflect the minor's gender identity.</p> <p>After an application has been made on behalf of the Minor, the Court will consider the best interests of the child as the paramount consideration, and give due weight to the views of the minor having regard to the minor's age and maturity.</p>
Netherlands	<p>The Netherlands recognises two categories of gender: male and female. It currently does not recognise a third gender.</p> <p>The Dutch government is currently examining the legal consequences of a ruling delivered on 28 May 2018 by the District Court of Limberg, which ruled in favour of a Dutch citizen who wished to be recognised as a "third gender" on their birth certificate. In that case, the judge granted the request for wording "sex cannot be determined".</p>	<p>Surgery is not required.</p> <p>An expert statement is required affirming the person's conviction to belong to another gender: see Act of 18 December 2013 amending Code re authority to change the indication of sex in the birth certificate.</p>	<p>The expert statement must affirm that the individual declared to the expert that they had a permanent conviction that they belong to another gender than stated on their birth certificate, and that they understand the repercussions of the decision to change their gender identification.</p>	<p>The Netherlands was the first country in the world to legalise gay marriage, in 2001.</p>	<p>The laws implemented in 2013 only apply to people aged 16 and over.</p> <p>In cases where a child is born and it is not immediately clear whether they are male or female, it is possible to have their gender marker remain empty.</p> <p>However, children under 16 cannot change their gender on their identity documents.</p>	N/A
New York City	<p>New York City has four categories for sex designation on a birth certificate issued at birth: male, female, undetermined and unknown.</p>	<p>The laws passed on 12 September 2018 which come into effect on 1 January 2019 will allow individuals to change the</p>	<p>From 1 January 2019 no medical evidence will be required.</p>	<p>Same-sex marriages have been legally recognised in the State of New York (and therefore New York City) since July 24, 2011.</p>	<p>Minors under the age of 18 may change their gender on their birth certificate in the same way as adults, However, the application</p>	<p>Both living parents named on the birth certificate, or the child's legal guardians, must make the request on the child's behalf.</p>

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(New York City issues birth certificates separately from New York State)	On 12 September 2018 a bill was passed which will introduce the gender “x” as an option on birth certificates issued pursuant to this amendment process. Adults will be permitted to change the gender on their birth certificates to “x”, and minors under the age of 18 need their parents to make the application on their behalf. These laws will come into effect 1 January 2019.	gender on their birth certificate without an affidavit from a medical professional.			must be made on the child’s behalf by the living parents named on the original birth certificate (i.e. both parents, if two are named), or the child’s legal guardians.	
New Zealand	<p>The Births, Deaths, Marriages and Relationships Registration Bill (Bill) seeks to repeal and replace the current Births, Deaths, Marriages, and Relationships Registration Act 1995 (NZ) (BDMR Act).</p> <p>The Bill was sent to the NZ Governance and Administration Select Committee, which returned its report on 10 August 2018.</p> <p>The Committee recommended that the current Family Court process be replaced with an administrative process based on self-identification.</p> <p>The Committee recommended including the options of ‘intersex’ and ‘X (unspecified)’</p>	<p>Currently, the Family Court can make a declaration for change of a birth certificate if the individual is living with a different gender identity than the one on their birth certificate and they have had medical treatment to change their gender.</p> <p>The Committee recommended removing all references to ‘medical treatment’, ‘medical evidence’, ‘physical conformation’, ‘sexual assignment’ and ‘sexual reassignment’ from the proposed Bill.</p>	<p>Currently, per section 28(3)(c) of the BDMR Act, for a declaration for change of birth certificate, the Family Court must be satisfied, on the basis of expert medical evidence, that the applicant:</p> <ul style="list-style-type: none"> has assumed (or has always had) the gender identity of a person of the nominated sex; and has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and 	<p>Same-sex marriage is legal in NZ.</p> <p>There is no requirement in the BDMR Act to be single/divorced.</p>	<p>Currently, individuals aged under 18 years old are only eligible to apply to have the sex on their birth certificate changed if they are or have been in a marriage, civil union, or de facto relationship (section 27A(a) BDMR Act). Otherwise, the legal guardian of the minor can apply on their behalf.</p> <p>The Committee recommended that the Bill be amended to enable eligible 16 or 17 year olds to apply to change the sex on their birth certificate, with different requirements depending on the age of the child.</p>	<p>Currently, if the under 18 year old is or has been in a marriage, civil union, or de facto relationship then the procedure is the same as for adults (i.e. apply to the Family Court for a declaration).</p> <p>If the guardian of the under 18 year old is applying to the Family Court for a declaration about the child’s gender identity on their behalf, the Family Court will consider different issues than it does when making a declaration about an adult.</p>

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			<ul style="list-style-type: none"> will, as a result of the medical treatment undertaken, maintain a gender identity of a person of the nominated sex. 			
Norway	<p>Norway recognises two categories of gender: male and female.</p> <p>In 2016, Norway enacted the 'Lov om endring av juridisk kjønn' (<i>Legal Gender Amendment Act</i>).</p> <p>To amend legal gender, the individual may apply to the National Registry, based on a model of self-determination.</p>	<p>Medical requirements are no longer imposed in Norway.</p>	N/A	<p>Same-sex marriage is legal in Norway and incorporates gender neutral terms, as established by the <i>Marriage Act</i>.</p>	<p>Minors 16 and over are able to apply for a change of legal gender: section 4.</p> <p>Minors between the age of 6 and 16 years old can also apply for a change of legal gender but the application must be submitted by the adult who has custody of the minor.</p> <p>If one parent does not consent, the case is to be referred to the Country Governor of Oslo who has the discretion to assess 'what is in the best interest of the child' including considering:</p> <ol style="list-style-type: none"> the child's age and level of maturity; the gender expression the child inhibits, in what way and period of time; consistency regarding gender identity; any reasons for refusal of consent; and the relationship of parents to the child. 	<p>No procedures are required for minors.</p> <p>Children under the age of 6 may only amend their legal gender where it is proved that the child has "congenital somatic sex development uncertainty" with evidence to this effect provided by a medical expert.</p>

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Oregon	<p>Oregon recognises three genders: “male”, “female” and “nonbinary”.</p> <p>In 2016 the Oregon circuit court ruled that an individual may change their government recognised sex to “nonbinary”.</p> <p>Residents have the option of amending their birth certificate and drivers licence to show their gender as: “x (Non-binary)”.</p>	<p>There are no medical requirements required to amend the gender on your birth certificate as long as you were born in Oregon.</p> <p>This ‘administrative option’ can only be exercised once by each individual.</p> <p>If an individual wishes to change their gender a second time, they will be required to obtain a court order. This will require production of a letter from a medical professional.</p>	<p>No evidence required for first change of gender via administrative means.</p> <p>If a court order is necessary, such as where an individual is changing their gender for a second time, a letter from a medical professional stating that the individual has “undergone surgical, hormonal, or other treatment for the purpose of gender transition and that sexual reassignment has been completed” will be required.</p>	<p>Same-sex marriage has been legally recognised in Oregon since 19 May 2014.</p>	<p>Minors under the age of 18 may change their gender on their birth certificate via the same mechanism as adults, however, a parent or legal guardian is required to make the request on the child’s behalf.</p>	<p>A parent or legal guardian is required to make the request on the child’s behalf.</p>
Portugal	<p>In April 2018, the Portuguese parliament presented new gender recognition laws, which were vetoed by the President in respect to self-determination in the context of minors.</p> <p>In July 2018, the Portuguese parliament presented an amended version of the gender recognition laws, which are subject to the President’s signature: Decree (XIII 3 105) ‘Right to self-determination of gender identity and expression of gender and protection of the sexual characteristics of each person’.</p> <p>Portugal’s new law is considered to be progressive, based on the self-determination model where the only</p>	<p>Accordingly, with the President’s assent, individuals are no longer required to provide evidence of medical reports to apply for a legal change in gender.</p>	<p>No evidence required.</p>	<p>Same-sex marriage is legal in Portugal (Lei no. 9/2010 de 31 de Maio) and gender recognition laws do not require an individual to be single in order to change their gender.</p>	<p>Individuals aged 16 and over have access to changing their legal gender, however certain requirements are imposed on individuals between the ages 16 to 18 which act as a restriction to ultimate self-determination.</p>	<p>Minors between 16 and 18 years old are required to provide:</p> <ol style="list-style-type: none"> 1. parental consent; 2. a statement or report from a doctor or psychologist, which provides evidence that the choice in question is a free choice of the individual and confirms the absence of any obstacles. <p>It has also been reported that the law introduces a moratorium on genital surgeries on intersex infants but does not constitute a full</p>

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	<p>criteria to amend an individual's legal gender is the word of the relevant individual.</p> <p>Until the President's consent, individuals are currently bound by the current law via the Civil Code, available here.</p>					ban on surgeries on children who cannot consent.
Sweden	<p>Sweden recognises two categories of gender: male and female.</p> <p>According to the Gender Recognition Act (1972:119), a person can, after an application of his or her own, get recognised that he or she has another gender than the one indicated in the civil registration, provided he or she:</p> <ol style="list-style-type: none"> over a long period of time has perceived that he or she belongs to the other gender; for a while has presented in accordance with this gender identity; must be expected to live in accordance with this gender identity also in the future; and is at least eighteen years of age. 	<p>A person can, after an application of his or her own, get recognised that he or she has another gender than the one indicated in the civil registration, provided that:</p> <ol style="list-style-type: none"> he or she has a congenital deviation in sex development; and a change in gender is consistent with the development of their gender identity and the most consistent with their physical condition. 		The application cannot be approved if the applicant is in a registered partnership: Gender Recognition Act, section 3.	If the application is referring to someone who has turned eighteen then the application is made by himself or herself. The same applies for a person younger than eighteen who is not in the custody of someone else.	<p>The application for gender recognition must be made by the custodian of the applicant if they are under the age of 18 years old.</p> <p>In applications where the child is over 12 years old, the child must also give his or her consent.</p>
Switzerland	<p>Legal gender recognition is based on Art. 1 or 42 <i>Swiss Civil Code</i>, which are general rules and not trans specific. In May 2018, the Federal Council proposed amending Swiss legislation to allow transgender individuals to change their registered gender and first names by making a declaration to civil status registry officials.</p>	No surgical sterilisation or gender reassignment surgery required.		No compulsory divorce required.		