

South Australia

## Sexual Reassignment Act 1988

An Act to allow the reassignment of sexual identity; to regulate the performance of reassignment procedures; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Sexual Reassignment Act 1988*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

**adult** means a person of or above the age of 18 years;

**child** means a person under the age of 18 years;

**corresponding law** means—

- (a) a law of another State, or of a Territory, of the Commonwealth; or
- (b) a law of another country,

declared by the regulations to be a corresponding law;

**equivalent certificate** means a certificate under a corresponding law that corresponds to a recognition certificate under this Act;

**hospital** has the same meaning as in the *South Australian Health Commission Act 1976*;

**medical practitioner** means a person registered as a medical practitioner under the law of the State or of another State, or a Territory, of the Commonwealth;

**reassignment procedure** means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other sexual characteristics of a person, identified by birth certificate as male or female, so that the person will be identified as a person of a different sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's sexual characteristics;

**recognition certificate** see section 4;

**the Registrar** means the Principal Registrar of Births, Deaths and Marriages;

**sexual characteristics** means the physical characteristics by virtue of which a person is identified as male or female.

### 4—Recognition certificates

A recognition certificate is a certificate, issued under this Act, that identifies a person who has undergone a reassignment procedure as being of the sex to which the person has been reassigned.

### 5—Act binds Crown

This Act binds the Crown.

## Part 2—Reassignment procedures

### 6—Approvals

- (1) A person must not carry out a reassignment procedure unless—
  - (a) the procedure is carried out at a hospital approved by the Minister for the purposes of this Act; and
  - (b) the person is a medical practitioner approved by the Minister to carry out reassignment procedures of the relevant kind.

Penalty: \$8 000.

- (2) The Minister will not approve a hospital unless satisfied—
  - (a) that the hospital is a suitable place for the carrying out of reassignment procedures; and
  - (b) that appropriate staff and facilities are available at the hospital to ensure that patients in relation to whom reassignment procedures are carried out receive proper counselling and care.
- (3) The approval of a hospital will be subject to—
  - (a) a condition defining the kinds of reassignment procedures authorised to be carried out at the hospital; and
  - (b) a condition preventing the carrying out of reassignment procedures at the hospital unless appropriate staff and facilities for the counselling and care of the patient are available; and
  - (c) a condition requiring the hospital to keep specified records in relation to reassignment procedures carried out at the hospital, and in relation to any associated treatment; and
  - (d) such other conditions as the Minister thinks fit.
- (4) The Minister will not approve a medical practitioner to carry out reassignment procedures of a particular kind unless satisfied that he or she is suitably qualified to carry out reassignment procedures of the relevant kind.
- (5) The approval of a medical practitioner will be subject to—
  - (a) a condition defining the kinds of reassignment procedures authorised by the Minister; and
  - (b) such other conditions as the Minister thinks fit.
- (6) It is an offence to contravene, or fail to comply with, a condition imposed under this section.  
Penalty: \$8 000.
- (7) The Minister may, if satisfied that a hospital or medical practitioner has contravened, or failed to comply with, a condition of approval under this section, revoke the approval.
- (8) Before the Minister acts under subsection (7), the Minister must allow the hospital or medical practitioner a reasonable opportunity to make submissions to the Minister in relation to the proposed action.

## **Part 3—Recognition certificates**

### **7—Applications for recognition certificates**

- (1) The Governor may—
  - (a) authorise one or more magistrates to issue recognition certificates for the purposes of this Act;
  - (b) revoke an authorisation under paragraph (a).

- (2) Subject to this section, where a person has undergone a reassignment procedure (before or after the commencement of this Act and within this State or elsewhere), application may be made to a magistrate authorised under subsection (1)(a) for the issue of a recognition certificate.
- (3) An application may be made under this section—
  - (a) by the person to whom it relates; or
  - (b) if that person is a child—by the child's guardian.
- (4) An application must be made in the prescribed form and accompanied by the prescribed fee.
- (5) A copy of the application must be served on—
  - (a) the Minister; and
  - (b) any other person who should, in the magistrate's opinion, be served with notice of the application.
- (6) A person referred to in subsection (5) is entitled to appear at the hearing of the application and to make submissions to the magistrate.
- (7) In proceedings on an application, the magistrate is not bound by the rules of evidence, but may inform himself or herself on any matter in such manner as the magistrate thinks fit.
- (8) Where an application under this section relates to an adult, the magistrate may issue a recognition certificate if—
  - (a) either—
    - (i) the reassignment procedure was carried out in this State; or
    - (ii) the birth of the person to whom the application relates is registered in this State;
  - (b) the magistrate is satisfied that the person—
    - (i) believes that his or her true sex is the sex to which the person has been reassigned; and
    - (ii) has adopted the lifestyle and has the sexual characteristics of a person of the sex to which the person has been reassigned; and
    - (iii) has received proper counselling in relation to his or her sexual identity.
- (9) Where an application under this section relates to a child, the magistrate may issue a recognition certificate if—
  - (a) either—
    - (i) the reassignment procedure was carried out in this State; or
    - (ii) the birth of the child is registered in this State; and
  - (b) the magistrate is satisfied that it is in the best interests of the child that the certificate be issued.
- (10) A recognition certificate cannot be issued to a person who is married.

(11) Proceedings under this section must be conducted in private.

### **8—Effect of 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.

### **9—Registration of certificates**

- (1) Subject to this section, if a recognition certificate (or an equivalent certificate issued under a corresponding law) relating to a person whose birth is registered in this State is produced to the Registrar, the Registrar must—
  - (a) register the reassignment of sex; and
  - (b) make such other entries and alterations on any register or index kept by the Registrar as may be necessary in view of the reassignment.
- (2) A person must not produce a recognition certificate to the Registrar until at least one month after the day on which the certificate is issued (and, if an appeal is commenced against the decision to issue the certificate, until the appeal is determined).

Penalty: \$2 000.

- (3) A certificate produced to the Registrar under this section must be accompanied by an application in a form approved by the Registrar and by the prescribed fee.
- (4) If the Registrar issues a copy of, or extract from, a register or index that shows the sex to which a person has been reassigned, a person (knowing of the reassignment of sex) must not supply the copy or extract to another person for the purposes of a law of another place unless—
  - (a) the laws of that other place expressly allow a copy or extract that shows a reassigned sex to be used; or
  - (b) the person, in supplying the copy or extract, informs the other person of the reassignment of sex.

Penalty: \$500.

### **10—Cancellation of recognition certificates on the ground of fraud**

- (1) The Supreme Court may cancel a recognition certificate if it appears that the certificate was obtained by fraud or other improper means.
- (2) The Supreme Court may, on cancelling a recognition certificate, make any consequential orders that may be necessary or desirable in the circumstances of the case.

## Part 4—Miscellaneous

### 11—Appeals

- (1) An appeal lies to the Supreme Court against—
  - (a) a refusal of the Minister to grant an approval under this Act;
  - (b) a decision of the Minister to impose a particular condition in relation to an approval;
  - (c) a decision of the Minister to revoke an approval;
  - (d) a decision of a magistrate on an application for the issue of a recognition certificate.
- (2) Subject to any contrary order of the Supreme Court, an appeal cannot be commenced after one month from the day on which the appellant receives notice of the decision against which the appeal lies.
- (3) On an appeal, the Supreme Court may—
  - (a) confirm, reverse or annul the decision subject to appeal; and
  - (b) in relation to an appeal under subsection (1)(d)—
    - (i) if it considers that a recognition certificate should be issued—issue the certificate;
    - (ii) if it considers that a recognition certificate should be cancelled—cancel the certificate; and
  - (c) make any consequential or ancillary orders.

### 11A—Delegation

- (1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being holding or acting in a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.

## 12—Confidentiality

A person who holds or formerly held a position involving duties related to the administration of this Act must not divulge confidential information obtained by virtue of that position except as may be required for the purposes of official duties, or as may be permitted in writing by the person to whom the information relates.

Penalty: \$2 000 or imprisonment for six months.

## 13—False or misleading statements

A person must not make a statement knowing it to be false or misleading in a material respect for the purposes of, or in connection with, an application under this Act.

Penalty: \$2 000 or imprisonment for six months.

## 14—Offences

- (1) An offence against this Act is, if not punishable by imprisonment, a summary offence.
- (2) An offence against this Act is, if punishable by imprisonment, a minor indictable offence.
- (3) A prosecution for an offence against this Act cannot be commenced without the consent of the Minister.
- (4) In proceedings for an offence against this Act a document apparently signed by the Minister stating that the Minister consents to a particular prosecution will be accepted, in the absence of proof to the contrary, as proof of that consent.

## 15—Age

Where the age of a person is material to an application before a magistrate under this Act and there is no certain evidence of age, the magistrate may act on his or her own estimate of the age of that person.

## 16—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe or make provision for—
  - (a) the keeping of records by hospitals and by persons who carry out reassignment procedures or provide associated treatment; and
  - (b) the regulation of access to records kept by hospitals and by persons who carry out reassignment procedures or provide associated treatment; and
  - (c) the regulation of access to documents in the Registrar's possession, or entries in registers or indexes kept by the Registrar, relating to sexual reassignment; and
  - (d) the provision of information, including periodic returns, by hospitals and by persons who carry out reassignment procedures or provide associated treatment; and
  - (e) the practices and procedures to be followed on applications to magistrates under this Act; and

- (f) penalties, not exceeding \$2 000, for a breach of, or non-compliance with, a regulation.
- (3) A regulation may only be made under subsection (2)(e) on the recommendation of, or after consultation with, the Chief Magistrate.



## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Sexual Reassignment Act 1988* was repealed by Sch 1 cl 1 of the *Births, Deaths and Marriages Registration (Gender Identity) Amendment Act 2016* on 23.5.2017.

### Principal Act and amendments

Year	No	Title	Assent	Commencement
1988	49	<i>Sexual Reassignment Act 1988</i>	5.5.1988	15.11.1988 ( <i>Gazette 10.11.1988 p1711</i> )
2000	34	<i>South Australian Health Commission (Administrative Arrangements) Amendment Act 2000</i>	6.7.2000	Sch 1 (cl 16)—6.7.2000 ( <i>Gazette 6.7.2000 p5</i> )
2016	35	<i>Statutes Amendment (Gender Identity and Equity) Act 2016</i>	4.8.2016	Pt 12 (s 37)—8.9.2016 ( <i>Gazette 8.9.2016 p3676</i> )

### Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
<i>the Commission</i>	<i>deleted by 34/2000 Sch 1 cl 16(a)</i>	6.7.2000
reassignment procedure	amended by 35/2016 s 37	8.9.2016
Pt 2		
s 6		
s 6(1)	amended by 34/2000 Sch 1 cl 16(b)	6.7.2000
s 6(2)	amended by 34/2000 Sch 1 cl 16(c)	6.7.2000
s 6(3)	amended by 34/2000 Sch 1 cl 16(d)	6.7.2000
s 6(4)	amended by 34/2000 Sch 1 cl 16(e)	6.7.2000
s 6(5)	amended by 34/2000 Sch 1 cl 16(f)	6.7.2000
s 6(7)	amended by 34/2000 Sch 1 cl 16(g)	6.7.2000

**Sexual Reassignment Act 1988—8.9.2016 to 22.5.2017—repealed**  
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s 6(8)	amended by 34/2000 Sch 1 cl 16(h), (i)	6.7.2000
Pt 4		
s 11		
s 11(1)	amended by 34/2000 Sch 1 cl 16(j)	6.7.2000
s 11A	inserted by 34/2000 Sch 1 cl 16(k)	6.7.2000

**Historical versions**

Reprint No 1—6.7.2000