

House of Assembly—No 142

As introduced under suspension of Standing Orders and read a first time,
4 August 2016

South Australia

**Births, Deaths and Marriages (Gender Identity)
Amendment Bill 2016**

A BILL FOR

An Act to amend the *Births, Deaths and Marriages Registration Act 1996*; and to repeal the *Sexual Reassignment Act 1988*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Births, Deaths and Marriages (Gender Identity) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996*

4—Amendment of section 3—Objects of Act

Section 3—after paragraph (b) insert:

(ba) the registration of changes in sex or gender identity; and

5—Amendment of section 4—Definitions

Section 4, definition of *registrable event*—after "name," insert:

change of sex or gender identity,

6—Insertion of Part 4A

After Part 4 insert:

Part 4A—Change of sex or gender identity

Division 1—Preliminary

29H—Preliminary

(1) In this Part—

clinical treatment—clinical treatment need not involve invasive medical treatment (and may include or be constituted by counselling);

designated certificate means a certificate relating to the recognition of sex or gender identity issued under the law of another jurisdiction and recognised by the Registrar for the purposes of this Part;

identity acknowledgement certificate means a certificate issued under section 29Q;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

prescribed notification means a notification issued by another registering authority and recognised by the Registrar for the purposes of this Part;

psychologist means a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student).

- (2) For the purposes of this Part, a reference to a change of a person's sex or gender identity includes, in the case of a person whose sex or gender identity has not been determined, a reference to the determination of the person's sex or gender identity.

Division 2—Applicants born in South Australia

29I—Application to change sex or gender identity

- (1) Subject to this Part, a person of or above the age of 16 years whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's sex or gender identity.
- (2) An application under this section must—
- (a) specify a sex or gender identity of a kind recognised by the regulations that the person is seeking to have registered; and
 - (b) include the material required under section 29K.
- (3) An application under this section may be made by a person who has not attained the age of 18 years even though the application is not made with the consent of any parent or guardian of the person (and, if relevant, the Registrar may deal with such an application despite any objection made by a parent or guardian of the person).
- (4) An application may be made under this section even if the person is married.

29J—Application to change child's sex or gender identity

- (1) Subject to this Part, a child under the age of 16 years, or a parent or guardian of a child under the age of 16 years, may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the child's sex or gender identity.
- (2) However, an application under subsection (1) may only be made if—
- (a) the child's birth is registered in the State; and
 - (b) the Court approves the making of the application.
- (3) An application under subsection (1) must—
- (a) specify a sex or gender identity of a kind recognised by the regulations that the person is seeking to have registered; and
 - (b) include the material required under section 29K.
- (4) The Court may, on application by the person who made the application under subsection (1), grant an approval for the purposes of subsection (2)(b) if the Court is satisfied that it is in the best interests of the child that the approval be granted.

- (5) In determining whether or not to grant an approval, the Court must take into account—
- (a) whether the child understands the meaning and implications of the making of an application to the Registrar; and
 - (b) whether the child has the capacity to consent to the application and, if so, the child's position in relation to the making of the application; and
 - (c) whether the child is receiving or has received appropriate clinical treatment in relation to the child's sex or gender identity; and
 - (d) whether a designated certificate or a prescribed notification has been provided.
- (6) In proceedings under this section, the Court is not bound by the rules of evidence, but may inform itself as the Court thinks fit.
- (7) A child is to be taken to have the capacity to make an application under this section.

29K—Material supporting application

An application under this Division must be accompanied by—

- (a) a statement by a medical practitioner or psychologist certifying that the person is receiving or has received appropriate clinical treatment in relation to the person's sex or gender identity (including in the case of a person whose sex or gender identity has now become determinate); or
- (b) in the case of an applicant in relation to whom a designated certificate or a prescribed notification has been issued—
 - (i) a copy of the designated certificate or prescribed notification (as the case may be); and
 - (ii) a statement—
 - (A) of a kind described in paragraph (a); or
 - (B) by a medical practitioner or psychologist certifying that the person is receiving or has received appropriate clinical treatment in the jurisdiction that issued the designated certificate or prescribed notification.

29L—Change of sex or gender identity

If, on an application under this Division, the Registrar is satisfied that the applicant is receiving or has received appropriate clinical treatment in relation to their sex or gender identity, the Registrar may make an entry about the change of the person's sex or gender identity in the Register, including the particulars required by regulation.

29M—Special provision relating to access to Register and issue of extracts and certificates

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- (1) An extract or certificate issued by the Registrar in relation to a person after the registration of a change in the person's sex or gender identity under this Part must only disclose and certify up-to-date particulars contained in the relevant entry.
- (2) In addition, the Registrar must not, in relation to a person who has changed their sex or gender identity—
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- (a) allow access to particulars contained in an entry in the Register relating to the person's sex or gender identity before the registration of the change; or
- (b) issue an extract or certificate from the Register showing a person's sex or gender identity before the registration of the change,
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- unless application for access to the information or issue of the extract or certificate is made by—
- (c) the person; or
- (d) a child of the person; or
- (e) a person or body specified by regulation.

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29N—Use of old birth certificate to deceive

- (1) A person who—
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- (a) produces a birth certificate to someone else that shows a person's sex or gender identity before the registration of a change in the person's sex or gender identity under this Part; and
- (b) produces the certificate with intent to deceive,
- is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
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- (2) It is not a defence to a prosecution for an offence against this section that the document in relation to which the prosecution is brought refers to the defendant.
- (3) In this section—
- birth certificate* includes—
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- (a) a copy of a birth certificate; and
- (b) an extract from a birth certificate.

Division 3—South Australian residents born outside Australia

29O—Application for identity acknowledgement certificate

- (1) Subject to this Part, a person—
- (a) who is of or above the age of 16 years; and
 - (b) who was born outside Australia; and
 - (c) whose birth is not registered in another State or Territory;
and
 - (d) who has been resident in the State for at least 12 consecutive
months immediately before the date of the application,
- may apply to the Registrar, in a form approved by the Registrar, for
an identity acknowledgement certificate.
- (2) An application under this section must—
- (a) specify a sex or gender identity of a kind recognised by the
regulations that the applicant is seeking to have specified on
the identity acknowledgement certificate; and
 - (b) include a statement by a medical practitioner or psychologist
certifying that the person is receiving or has received
appropriate clinical treatment in relation to the person's
gender identity.
- (3) An application under this section may be made by a person who has
not attained the age of 18 years even though the application is not
made with the consent of any parent or guardian of the person (and,
if relevant, the Registrar may deal with such an application despite
any objection made by a parent or guardian of the person).
- (4) An application may be made under this section even if the person is
married.

29P—Application for identity acknowledgement certificate in respect of child

- (1) Subject to this Part, a child under the age of 16 years, or a parent or
guardian of a child under the age of 16 years, may apply to the
Registrar, in a form approved by the Registrar, for an identity
acknowledgement certificate.
- (2) However, an application under subsection (1) may only be made if—
- (a) the child was born outside Australia; and
 - (b) the child's birth is not registered in another State or
Territory; and
 - (c) the child has been resident in the State for at least
12 consecutive months immediately before the date of the
application; and
 - (d) the Court approves the making of the application.

- (3) An application under this section must—
- (a) specify a sex or gender identity of a kind recognised by the regulations that the applicant is seeking to have recorded specified on the identity acknowledgement certificate; and
 - (b) include a statement by a medical practitioner or psychologist certifying that the child is receiving or has received appropriate clinical treatment in relation to the child's gender identity.
- (4) The Court may, on application by the person who made the application under subsection (1), grant an approval for the purposes of subsection (2)(b) if the Court is satisfied that it is in the best interests of the child that the approval be granted.
- (5) In determining whether or not to grant an approval, the Court must take into account—
- (a) whether the child understands the meaning and implications of the making of an application to the Registrar; and
 - (b) whether the child has the capacity to consent to the application and, if so, the child's position in relation to the making of the application; and
 - (c) whether the child is receiving or has received appropriate clinical treatment in relation to the child's sex or gender identity.
- (6) In proceedings under this section, the Court is not bound by the rules of evidence, but may inform itself as the Court thinks fit.
- (7) A child is to be taken to have the capacity to make an application under this section.

29Q—Issue of identity acknowledgement certificate

If, on an application for an identity acknowledgement certificate, the Registrar is satisfied that the person is receiving or has received appropriate clinical treatment in relation to the person's sex or gender identity, the Registrar may issue a certificate that acknowledges the person's sex or gender identity.

29R—Effect of identity acknowledgement certificate

If an identity acknowledgement certificate is issued to a person under this Division, the person is of the sex or gender identity specified in the identity acknowledgement certificate.

Division 4—General provisions

29S—Registrar may limit number of applications

- (1) The Registrar may determine and publish on a website determined by the Registrar a limit on the number of applications that may be made under this Part in respect of a person.

- (2) If—
- (a) the number of applications that have been made under this Part in respect of a person is equal to or greater than the limit determined by the Registrar; and
 - (b) a further application in respect of the person is made, the Registrar may reject the application.
- (3) A person aggrieved by a decision of the Registrar to reject an application under this section may appeal against the decision to the Court.
- (4) An appeal under this section must be made within 28 days after the person received notice of the decision of the Registrar to reject the application.
- (5) On an appeal under this section, the Court may—
- (a) confirm the Registrar's decision; or
 - (b) set aside the Registrar's decision and send the matter back to the Registrar with a direction that the application be accepted and dealt with in accordance with this Part.

29T—Entitlement not affected by change of sex or gender identity

A person who has an entitlement under a will, trust or other instrument does not lose the entitlement only because of a change in the person's sex or gender identity or the issue of an identity acknowledgement certificate under this Part, unless the will, trust or other instrument provides otherwise.

29U—Change of sex or gender identity—interaction with other laws

A person who has changed their sex or gender identity or has been issued an identity acknowledgement certificate under this Part will be taken to have satisfied a requirement under another Act or law that the person provide details of their sex if the person provides details of their sex or gender identity as changed.

Schedule 1—Repeal and transitional provision

1—Repeal of *Sexual Reassignment Act 1988*

The *Sexual Reassignment Act 1988* is repealed.

2—Transitional provision

Despite the repeal of the *Sexual Reassignment Act 1988*, a recognition certificate issued under that Act in force immediately before the commencement of this clause will continue in force and effect and may be registered under section 9 of that Act as if that section had not been repealed by this Act.