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## Briefing paper: reforms to the Births, Deaths and Marriages Registration Amendment Bill 2019 (Vic)

Liberty Victoria and Ashlea Johnson

Liberty Victoria, in conjunction with Ashlea Johnson - a transgender Melbourne woman - fully support amendments to the law to allow transgender, gender diverse and intersex Victorians to record their preferred gender on their birth certificates.

We provide this briefing paper to provide background to the issue, and a summary of the basis on which we support the reforms.

### **About Liberty Victoria**

The Victorian Council for Civil Liberties Inc —Liberty Victoria— is an independent non-government organisation which traces its history back to the first civil liberties body established in Melbourne in 1936. Liberty Victoria is committed to the defence and extension of human rights and civil liberties. We seek to promote Australia's compliance with the rights and freedoms recognised by international law. Liberty Victoria has campaigned extensively in the past on issues concerning human rights and freedoms and government accountability.

### **About Ashlea Johnson**

Ashlea is a transgender woman from Melbourne. She has recently changed her gender presentation to present as female.

### **Background**

Victorian transgender, gender diverse (**TGD**) and intersex adults currently face great difficulty changing the sex on their birth certificate. In particular, a person's birth certificate can only be changed if they have had sex affirmation surgery and they are unmarried.

It is vital that TGD and intersex people are treated with dignity and respect, and that they are able to record their correct gender on their official documents. The current outdated

and burdensome requirements cause increased distress, trauma and barriers to participation in daily life for these members of our community.

### Current legislation

The *Birth, Deaths and Marriages Registration Act 1996* (Vic) (**the Act**) is the legislation that regulates the granting and alteration of birth certificates in Victoria.

To have their sex changed on their birth certificate, a person must make an application to alter the register of births deaths and marriages (**the register**). Their application will be determined by the Registrar of Births, Deaths and Marriages. If a person's application is granted, the register will be altered, and the person will be granted a new birth certificate.<sup>1</sup>

The Act currently sets out strict requirements for the alteration of a person's sex on their birth certificate. To alter their birth certificate, a person must have undergone 'sex affirmation surgery'.<sup>2</sup> This is defined in the Act as:

A surgical procedure involving the alteration of a person's reproductive organs carried out for the purpose of assisting the person to be considered to be a member of the opposite sex.<sup>3</sup>

An applicant must provide statutory declarations from two medical practitioners confirming that the person has undergone sex affirmation surgery.<sup>4</sup>

### History of reforms

Prior to 2018, the Act required a person to have undergone sex affirmation surgery *and* be unmarried.

In 2016, the Victorian Parliament voted on the *Births, Deaths and Marriages Registration Amendment Bill 2016*, which aimed to remove the requirements that a person have undergone sex affirmation surgery and be unmarried.

The Bill was passed in the Legislative Assembly in September 2016.

The Bill was defeated by one vote in the Legislative Council in December 2016.

In 2018, following the passage of marriage equality legislation in the Federal Parliament, Victorian Parliament removed the requirement that a person be unmarried to change their gender on their birth certificate.<sup>5</sup>

### **Proposed reforms**

The *Births, Deaths and Marriages Registration Amendment Bill 2019* (Vic) (**the Bill**) re-introduces the reforms that were defeated in 2016. The Bill removes the requirement for

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<sup>1</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) ss 30A – 30D.

<sup>2</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) ss 30A(1)(c).

<sup>3</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) s 3.

<sup>4</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) ss 30B.

<sup>5</sup> *Justice Legislation Amendment (Access to Justice) Act 2018* (Vic), Part 3.

an applicant seeking to alter the sex recorded on their birth certificate to have undergone sex affirmation surgery.

Importantly, the Bill moves away from medicalising a person's gender identity. It requires only that a person provide:

- a statutory declaration that states that their sex is as nominated in their application;<sup>6</sup> and
- a supporting statement by a person who is 18 years or older and who has known the applicant for at least 12 months.<sup>7</sup>

A person may not alter the record of their sex if they have done so within the last 12 months.<sup>8</sup>

The Bill also provides for parents to apply to change a child's birth certificate where the child consents to the alteration of the record.<sup>9</sup>

### **Why should we change these laws?**

The current laws are outdated, burdensome and discriminatory towards an already marginalised part of our community.

The current requirements represent an unjustifiable barrier to people recording their correct gender identity on their birth certificate in the following ways:

- Not all TGD or intersex people want to have surgery to reflect their gender;
- Surgery is almost never covered by Medicare, and so comes at a very significant cost. This places surgery out of reach of many people, and accordingly makes changes to a person's birth certificate very difficult;
- For people who are assigned female at birth, (who may identify as trans-masculine, or identify with the acronym "FTM" or female to male), 'alteration to reproductive organs' would likely require a phalloplasty or hysterectomy. These are not common surgeries, and they are complicated and can be risky. Phalloplasty is also exorbitantly expensive and is not a viable option for most trans-masculine people. "Top surgery", or surgery to a person's chest, which is a more common surgery for trans-masculine people, is not likely to satisfy the strict legislative requirements; and
- Gender affirming surgery can be complicated and risky.

The laws should be changed to ensure that TGD and intersex people are treated with dignity and respect and afforded basic human rights such as equality before the law, freedom from discrimination, and freedom of expression.<sup>10</sup>

The current laws also create unnecessary distress for TGD and intersex people and provide barriers to community inclusion and participation. While going through a gender

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<sup>6</sup> *Births, Deaths and Marriages Registration Amendment Bill 2019* (Vic) s 8.

<sup>7</sup> *Births, Deaths and Marriages Registration Amendment Bill 2019* (Vic) s 8.

<sup>8</sup> *Births, Deaths and Marriages Registration Amendment Bill 2019* (Vic) s 8.

<sup>9</sup> *Births, Deaths and Marriages Registration Amendment Bill 2019* (Vic) s 8.

<sup>10</sup> *Charter of Human Rights and Responsibilities Act 20016* (Vic), ss 8, 15.

transition, many TGD or intersex people face discrimination and hostility from others. Possessing a formal identity document that does not record a person's actual gender or gender presentation increases the risks of discrimination and exclusion on an ongoing basis. For example, some organisations require prospective employees or students to provide a copy of their birth certificate. For many TGD and intersex people, this means providing documentation that does not correlate with their gender identity. Presenting such documentation essentially requires people to "out" themselves to prospective employers or educators. This can be a traumatic experience.

### **In Ashlea's words**

I come from the viewpoint that people who want to transition, it's not just a simple "I'm going to change sex today". It's frequently incredibly emotional, painful and life-threatening. I've lost almost everyone I had before I transitioned. And going either way (M to F or F to M), the changes to your hormones plays havoc with one's emotions.

When I look at my certificate, everything else is female except the one word I need, to present as female now. I go to speech therapists to change my voice. I do everything I can possibly do to present as the gender that I know I am. To have a piece of paper say that, NO, because I can't afford the surgery I can't be recorded as female, it's so damned offensive and so archaic and incredibly upsetting.

At the end of the day, speaking for myself, as I think I can generally, we don't want to hurt anyone. It's our life, our story, our way of being who we are. It's nothing to do with anybody else. And to have all these outdated ideas, it's just so incredibly ignorant.

When I changed my name, I had to out myself as transgender to everyone. Some people weren't very cool with it. One person at Centrelink was downright cold. It's that kind of stuff that you have to expose yourself to just for the right to live and breathe.

I'm going back to university. I hope to get on with study and my life. But having a birth certificate that records me as male feels like a threat to everything, even just who I am as a student and in meeting potential friends. Coming out is one of the hardest things I have ever done, in fact it can be life threatening. That's what you risk by having a birth certificate that doesn't say your correct gender.

Stress, trauma and potential exclusion are particularly relevant given that it is understood that TGD people experience significantly higher rates of mental health issues and suicide rates, with transgender adults being eighteen times more likely than the general population to have thoughts of suicide.<sup>11</sup>

The Bill replaces these outdated, discriminatory and burdensome laws with regulation that encourages recognition and respect of gender diversity. Changing the law to allow TGD and intersex Victorians to change their birth certificate to accurately reflect their gender identity is a key step towards equality before the law and will increase opportunities for community participation and community inclusion.

We therefore encourage you to support this bill.

If you would like to discuss the contents of this letter, please do not hesitate to contact Liberty Victoria on (03) 9670 6422 or at [info@libertyvictoria.org.au](mailto:info@libertyvictoria.org.au).

Yours faithfully

**Ashlea Johnson**

**Gemma Cafarella**

Chair, Government Regulation  
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14 August 2019

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<sup>11</sup> LGBTI National LGBTI Health Alliance, 'The statistics at a glance: the mental health of lesbian, gay, bisexual, transgender and intersex people in Australia', LGBTI Health [website], 2016, <https://lgbtihealth.org.au/statistics/>.