The South Australian Law Reform Institute (SALRI) is compiling a list of South Australian laws and regulations that discriminate against individuals and families on the grounds of sexual orientation, gender, gender identity, or intersex status. SALRI would like to hear from you about the current South Australian laws that apply to how a person’s sex is legally registered, and the process for changing a person's sex once registered. We hope this fact sheet helps you get started.

How do you register your sex or change your registered sex under South Australian law?

Every State and Territory in Australia has a system for registering a person's birth, death, marriage, name and sex so that accurate records can be kept and to enable people to provide legally acceptable proof of their personal details.

The registration of a child's birth is a significant life event and a right protected by the United Nation’s Convention on the Rights of the Child, to which Australia is a party (Article 3).

A child becomes legally visible when their birth is registered and the child's parents can apply for a birth certificate. Birth certificates are important legal documents that we rely upon in many of our interactions with the state. They are usually required for school enrolments, Medicare, government benefits, passports and eventually, a driver's licence. Without a birth certificate a person can feel legally invisible and unable to invoke their full rights as a citizen.

In South Australia, this system is governed by the Births Deaths and Marriages Registration Act 1996 (SA) (‘BDM Act’) and its regulations. The information is collected, registered and maintained by the Births, Deaths and Marriages Registration Office (‘BDM Office’).

Under the BDM Act, when a child is born, the parents of the child must register the birth with the BDM Office within 60 days by providing the information set out on the official form. This includes information about the child's sex. There is currently no way to indicate sex or gender diversity, such as intersex or trans* status, when registering a birth.

Once a person's sex is registered it is very difficult to change.

It is possible for a person to change their registered sex if the person has undergone a reassignment procedure under the Sexual Reassignment Act 1988 (SA). Section 3 of this Act describes ‘reassignment procedure’ as a medical or surgical procedure (or combination of both) to alter the genitals and other sexual characteristics of a person, so that the person will be identified as a person of the opposite sex. The Act also requires hospitals and doctors to be approved by the Minister before they can undertake reassignment procedures (s6).

Once the approved procedure has occurred, the person can apply to the Magistrates Court of South Australia for a Recognition Certificate, recognising their (new) sex (this process is set out in section 7 of the Sexual Reassignment Act 1988). Importantly, these certificates cannot be issued to a
person who is married (s10). This means that a married person will need to be legally divorced if they want to have their (new) sex legally registered.

A Recognition Certificate allows the person to be recognised in their new sex without any change being made to their birth certificate (s8). It also allows the person to ask the BDM Office to have their sex altered on their birth certificate (providing their birth is registered in this State) (s9).

What do you think about these laws?

We would like to know what you think about these current laws. To tell us your thoughts, complete the online feedback form, or visit the SA Government’s YourSAy website for other ways to get in touch.

Attempting to answer the following questions might help with your response:
> Is the current approach for registering sex under the BDM Act appropriate?
> Should it be possible to register a person as something other than ‘male’ or ‘female’?
> Is the current approach to obtaining a Recognition Certificate under the Sexual Reassignment Act 1988 (SA) appropriate?
> Should Recognition Certificates be available to a person who is married?
> Should alternative approaches to changing a person's registered sex be considered? For example, the process for changing a person's name under the BDM Act; or the approach adopted in the ACT that does not require reassignment surgery, but requires certain evidence to be provided before a person's sex can be changed on the Register.
> Please provide your views on the current approach to sexual reassignment procedures under the Sexual Reassignment Act 1988 (SA), including the requirement for hospitals and doctors to be approved by the Minister. What alternative processes for regulating sexual reassignment procedures should be considered? For example, what kind of evidence or proof should be required to demonstrate sexual reassignment?

Where to go for further information

Births Deaths and Marriages Registration Act 1996 (SA)

Births Deaths and Marriages Registration Regulations 2011 (SA)

Sexual Reassignment Act 1988 (SA)

Note: This Act is currently being reviewed by the Legislative Review Committee of the South Australian Parliament – click here for further information

Births Deaths and Marriages SA, via Consumer and Business Services SA

Births Deaths and Marriages ACT - Changes of Sex

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