

Authorised Version

Births, Deaths and Marriages Registration Amendment Act 2019

No. 25 of 2019

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Authorised Version



Victoria

Births, Deaths and Marriages Registration Amendment Act 2019[†]

No. 25 of 2019

[Assented to 3 September 2019]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Births, Deaths and Marriages Registration Act 1996**—
 - (i) to provide for applications to alter a record of sex in a birth registration to a sex descriptor nominated by an applicant; and

- (ii) to provide for the issuing of a document acknowledging the name and sex of a person who is aged 18 years or over and whose birth is registered in a place other than Victoria; and
 - (iii) to remove the requirement that a person has undergone sex affirmation surgery in respect of applications to alter a record of sex in a birth registration or for the issuing of a document acknowledging name and sex; and
 - (iv) to provide for alteration of the record of a child's sex in a child's birth registration; and
 - (v) to provide for the issuing of a document acknowledging the name and sex of a child whose birth is registered in a place other than Victoria; and
 - (vi) to provide for the requirements in respect of applications to the Registrar to alter the record of a person's sex in a birth registration or for the issuing of a document acknowledging name and sex by restricted persons; and
 - (vii) to further provide for the disclosure of information by the Registrar; and
 - (viii) to make other minor and consequential amendments; and
- (b) to consequentially amend the **Children, Youth and Families Act 2005**, the **Corrections Act 1986**, the **Serious Offenders Act 2018** and the **Sex Offenders Registration Act 2004**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 May 2020, it comes into operation on that day.

3 Principal Act

In this Act, the **Births, Deaths and Marriages Registration Act 1996** is called the Principal Act.

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

4 Objects of Act

In section 3 of the Principal Act—

(a) for paragraph (ca) **substitute**—

"(ca) the alteration of the record of sex in a birth registration; and";

(b) for paragraph (ea) **substitute**—

"(ea) the issue of documents acknowledging the name and sex of persons whose birth is registered in a place other than Victoria; and".

5 Definitions

In section 4(1) of the Principal Act—

(a) for the definition of *interstate recognition certificate* **substitute**—

"*interstate recognition certificate* means a current certificate identifying a person as being of a particular sex that is issued under a law of another State that relates to the recognition of a person's sex;";

(b) for the definition of *registrable event* **substitute**—

"*registrable event* means—

- (a) a birth; or
- (b) a change of name; or
- (c) an alteration of the record of sex in a birth registration; or
- (d) a death; or
- (e) a marriage; or

- (f) an adoption; or
- (g) a surrogacy arrangement;";
- (c) in the definition of *sex affirmation surgery*, for "the opposite" **substitute** "a particular";
- (d) **insert** the following definitions—
 - "acknowledgement of sex application* means an application by or on behalf of a restricted person under section 30A, 30B, 30E or 30EA;
 - approval* means a decision approving the making of an acknowledgement of sex application given by—
 - (a) the Secretary under section 488Q of the **Children, Youth and Families Act 2005**; or
 - (b) the Secretary under section 47P of the **Corrections Act 1986**; or
 - (c) the Adult Parole Board under section 79HD of the **Corrections Act 1986**; or
 - (d) the Post Sentence Authority under section 265D of the **Serious Offenders Act 2018**; or
 - (e) the Chief Commissioner of Police under section 70S of the **Sex Offenders Registration Act 2004**;
 - Justice Secretary* means the Secretary to the Department of Justice and Community Safety;
 - prohibited sex descriptor* means a sex descriptor—
 - (a) that is obscene or offensive; or

- (b) that could not practicably be established by repute or usage—
 - (i) because it is too long; or
 - (ii) because it consists of or includes symbols without phonetic significance; or
 - (iii) for some other reason;

restricted person means a person who is—

- (a) a detainee within the meaning of section 482A of the **Children, Youth and Families Act 2005**; or
- (b) a prisoner within the meaning of section 3(1) of the **Corrections Act 1986**; or
- (c) a prisoner on parole within the meaning of section 79HA of the **Corrections Act 1986**; or
- (d) an offender within the meaning of section 265A of the **Serious Offenders Act 2018**; or
- (e) a registrable offender within the meaning of section 3(1) of the **Sex Offenders Registration Act 2004**;

sex descriptor includes—

- (a) male; or
- (b) female; or
- (c) any other sex;".

6 Registration of change of name

In section 28(2) of the Principal Act, after "court" insert "(including a court of another State or the Commonwealth)".

7 Heading to Part 4A substituted

For the heading to Part 4A of the Principal Act
substitute—

**"Part 4A—Acknowledgement of
sex".**

**8 Sections 30A and 30B substituted and new
sections 30BA and 30BB inserted**

For sections 30A and 30B of the Principal Act
substitute—

**"30A Application to alter record of sex in
person's birth registration**

- (1) A person who is aged 18 years or over may apply to the Registrar for the record of the person's sex in the person's birth registration to be altered if—
 - (a) the person's birth is registered in Victoria; and
 - (b) the person believes the person's sex to be as nominated in the application; and
 - (c) the record of the person's sex has not been altered within the 12 months preceding the date of making the application.
- (2) The applicant must nominate a sex descriptor in the application.
- (3) The application must—
 - (a) be in the form approved by the Registrar; and
 - (b) include a statutory declaration made by the applicant that addresses the requirements of subsection (1); and

- (c) be accompanied by—
 - (i) a supporting statement in accordance with subsection (4); and
 - (ii) the prescribed fee (if any); and
 - (iii) any other documents or information reasonably required by the Registrar.
- (4) A supporting statement must—
 - (a) be in the form approved by the Registrar; and
 - (b) be made by a person who is aged 18 years or over and who has known the applicant for at least 12 months; and
 - (c) state that the person making the supporting statement—
 - (i) believes that the applicant makes the application to alter the record of the sex of the applicant in good faith; and
 - (ii) supports the application.

30B Application to alter record of sex in child's birth registration

- (1) Subject to section 30BA, the parents of a child may apply to the Registrar for the record of the child's sex in the child's birth registration to be altered if—
 - (a) the child's birth is registered in Victoria; and
 - (b) the child consents to the alteration of the record of the child's sex to the sex descriptor nominated in the application; and

- (c) the parents believe on reasonable grounds that the alteration of the record of the child's sex is in the best interests of the child; and
 - (d) the record of the child's sex has not been altered within the 12 months preceding the date of making the application.
- (2) The applicants must nominate a sex descriptor in the application.
- (3) The application must—
- (a) be in the form approved by the Registrar; and
 - (b) include a statutory declaration made by each of the applicants addressing the requirements of subsection (1); and
 - (c) be accompanied by—
 - (i) a supporting statement in accordance with subsection (4), unless the Court has made an order under section 30BB(3); and
 - (ii) the prescribed fee (if any); and
 - (iii) any other documents or information reasonably required by the Registrar.
- (4) A supporting statement must—
- (a) be in the form approved by the Registrar; and
 - (b) be made by a relevant person; and

- (c) state that the relevant person is of the opinion that—
 - (i) the alteration of the record of the child's sex is in the best interests of the child; and
 - (ii) if the child is under 16 years of age, the child has capacity to consent to the alteration of the record of the child's sex.
- (5) In this section, *relevant person* means—
 - (a) a doctor; or
 - (b) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
 - (c) a person who is a member of a prescribed class of persons.

30BA Application made by one parent or guardian to alter record of sex in child's birth registration

- (1) An application under section 30B for the alteration of the record of a child's sex in the child's birth registration may be made by one parent if—
 - (a) the applicant is the sole parent named in the registration of the child's birth under this Act; or
 - (b) there is no other surviving parent of the child; or

- (c) the Court makes an order under section 30BB(3) approving the alteration of the record of the child's sex.
- (2) An application under section 30B for the alteration of the record of a child's sex in the child's birth registration may be made by the child's guardian if—
 - (a) the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child; or
 - (b) the Court makes an order under section 30BB(3) approving the alteration of the record of the child's sex.

30BB Court order approving alteration of record of sex in child's birth registration

- (1) A parent of a child may apply to the Court for an order to approve the alteration of the record of the child's sex in the child's birth registration.
- (2) A child's guardian may make an application under subsection (1) if the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child.
- (3) The Court may make an order approving the alteration of the record of the child's sex in the child's birth registration if the Court is satisfied that the alteration is in the child's best interests."

9 Sections 30C and 30D substituted

For sections 30C and 30D of the Principal Act
substitute—

"30C Alteration of Register

- (1) The Registrar must determine an application made under section 30A by altering the record of the person's sex in the person's birth registration or by refusing to do so.
- (2) The Registrar must determine an application made under section 30B by altering the record of the child's sex in the child's birth registration or by refusing to do so.
- (3) Before determining an application made under section 30A or 30B, the Registrar may require the applicant to provide any further information or documentation that the Registrar considers necessary, including evidence to establish to the Registrar's satisfaction—
 - (a) the identity and age of the person or the child whose record of sex is to be altered; and
 - (b) that the alteration of the record of sex is not sought for a fraudulent or other improper purpose.
- (4) The Registrar may alter the record of a person's sex in the person's birth registration or a child's sex in the child's birth registration if the Registrar is satisfied that—
 - (a) a court (including a court of another State or the Commonwealth) has ordered that the sex recorded in the person's birth registration or the child's birth registration be altered; or

- (b) the record of the person's sex or the child's sex has been altered under another law.
- (5) The Registrar may refuse to alter the record of a person's sex in the person's birth registration or a child's sex in the child's birth registration if the alteration would result in the recorded sex being a prohibited sex descriptor.

30D Issue of new birth certificate

After the record of a person's sex in the person's birth registration or a child's sex in the child's birth registration is altered, any certificate issued by the Registrar concerning that birth registration—

- (a) must state the person's sex or the child's sex in accordance with the record as altered; and
- (b) must not state that the record of the person's sex or the child's sex has been altered; and
- (c) must not state the person's former name or the child's former name (if any)."

10 Section 30E substituted and new sections 30EA, 30EB and 30EC inserted

For section 30E of the Principal Act **substitute—**

"30E Application for document acknowledging name and sex

- (1) A person who is aged 18 years or over may apply to the Registrar for a document that acknowledges the person's name and sex if—
 - (a) the person's birth is registered in a place other than Victoria; and

- (b) the person's principal place of residence is, and has been for at least 12 months, in Victoria; and
 - (c) the person believes the person's sex to be as nominated in the application; and
 - (d) a document acknowledging the person's name and sex has not been issued by the Registrar within the 12 months preceding the date of making the application.
- (2) The applicant must nominate a sex descriptor in the application.
- (3) A person must not make an application under subsection (1) for the issue of a document to acknowledge a name that is not the name of the person.

Note

See Part 4 for making an application to change a person's name.

- (4) The application must—
- (a) be in the form approved by the Registrar; and
 - (b) include a statutory declaration made by the applicant that addresses the requirements of subsection (1); and
 - (c) be accompanied by either—
 - (i) a supporting statement in accordance with subsection (5); or
 - (ii) an interstate recognition certificate (if any) issued to the applicant; and
 - (d) be accompanied by the prescribed fee (if any); and

- (e) be accompanied by any other documents or information reasonably required by the Registrar.
- (5) A supporting statement must—
 - (a) be in the form approved by the Registrar; and
 - (b) be made by a person who is aged 18 years or over and who has known the applicant for at least 12 months; and
 - (c) state that the person making the supporting statement—
 - (i) believes that the applicant makes the application for a document that acknowledges the applicant's name and sex in good faith; and
 - (ii) supports the application.

30EA Application for document acknowledging child's name and sex

- (1) Subject to section 30EB, the parents of a child may apply to the Registrar for a document that acknowledges the child's name and sex if—
 - (a) the child's birth is registered in a place other than Victoria; and
 - (b) the child's principal place of residence is, and has been for at least 12 months, in Victoria, unless—
 - (i) subsection (6) applies; or
 - (ii) the grounds under subsection (7) are met; and

- (c) the child consents to the acknowledgement of the child's sex as the sex descriptor nominated in the application; and
 - (d) the parents believe on reasonable grounds that a document acknowledging the child's name and sex is in the best interests of the child; and
 - (e) a document acknowledging the child's name and sex has not been issued by the Registrar within the 12 months preceding the date of making the application.
- (2) The applicants must nominate a sex descriptor in the application.
 - (3) The applicants must not make an application under subsection (1) for the issue of a document to acknowledge a name that is not the name of the child.

Note

See Part 4 for making an application to change a child's name.

- (4) The application must—
 - (a) be in the form approved by the Registrar; and
 - (b) include a statutory declaration made by each of the applicants addressing the requirements of subsection (1); and
 - (c) be accompanied by—
 - (i) a supporting statement in accordance with subsection (5), unless the Court has made an order under section 30EC(3); or

- (ii) an interstate recognition certificate (if any) issued to the child; and
 - (d) be accompanied by the prescribed fee (if any); and
 - (e) be accompanied by any other documents or information reasonably required by the Registrar.
- (5) A supporting statement must—
 - (a) be in the form approved by the Registrar; and
 - (b) be made by a relevant person; and
 - (c) state that the relevant person is of the opinion that—
 - (i) the application for a document that acknowledges the child's name and sex is in the best interests of the child; and
 - (ii) if the child is under 16 years of age, the child has capacity to consent to the acknowledgment of the child's name and sex.
- (6) The 12-month requirement under subsection (1)(b) is waived if the Court has made an order under section 30EC(3).
- (7) The Registrar may waive the 12-month requirement under subsection (1)(b) if the Registrar is satisfied that the document acknowledging the child's name and sex is sought for the purpose of protection of the child.

- (8) In this section, *relevant person* means—
- (a) a doctor; or
 - (b) a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
 - (c) a person who is a member of a prescribed class of persons.

30EB Application made by one parent or guardian for document acknowledging child's name and sex

- (1) An application under section 30EA to the Registrar for a document that acknowledges a child's name and sex may be made by one parent if—
- (a) the applicant is the sole parent named in the registration of the child's birth; or
 - (b) there is no other surviving parent of the child; or
 - (c) the Court makes an order under section 30EC(3) that the Registrar issue a document that acknowledges the child's name and sex.
- (2) An application under section 30EA to the Registrar for a document that acknowledges a child's name and sex may be made by the child's guardian if—
- (a) the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child; or

- (b) the Court makes an order under section 30EC(3) that the Registrar issue a document that acknowledges the child's name and sex.

30EC Court order for issue of document acknowledging child's name and sex

- (1) A parent of a child may apply to the Court for an order that the Registrar issue a document acknowledging the name and sex of the child under section 30F(1A).
- (2) A guardian of a child may make an application under subsection (1) if the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities in relation to the child.
- (3) The Court may make an order that the Registrar issue a document acknowledging the child's name and sex if satisfied that the issuing of the document under section 30F(1A) is in the child's best interests."

11 Issue of document acknowledging name and sex

- (1) In the heading to section 30F of the Principal Act, for "**identity**" substitute "**name and sex**".
- (2) In section 30F(1) of the Principal Act, after "application" insert "made".
- (3) After section 30F(1) of the Principal Act insert—
- "(1A) The Registrar must determine an application made under section 30EA by issuing a document acknowledging the child's name and sex or refusing to do so."

(4) In section 30F(2) of the Principal Act, for "the application" **substitute** "an application made under section 30E or 30EA".

(5) In section 30F(3) of the Principal Act, after "the applicant's" **insert** "or the child's".

(6) For section 30F(4) of the Principal Act **substitute**—

"(4) If the Registrar considers it appropriate to do so, the Registrar may include in the document any other information concerning the applicant's birth or the child's birth that the applicant has requested (in writing) be included."

(7) After section 30F(5) of the Principal Act **insert**—

"(6) The Registrar may refuse to issue a document acknowledging the name and sex of a person or a child if that document would acknowledge a prohibited sex descriptor."

12 New section 30FA inserted

After section 30F of the Principal Act **insert**—

"30FA Notification to registering authority of issuing of document acknowledging name and sex

If the Registrar issues a document under section 30F(1) in respect of a person whose birth is registered under a corresponding law or under section 30F(1A) in respect of a child whose birth is registered under a corresponding law, the Registrar must notify the relevant registering authority of the name and sex acknowledged in the document."

13 New Division 2A of Part 4A inserted

After Division 2 of Part 4A of the Principal Act
insert—

"Division 2A—Acknowledgement of sex applications—detainees, prisoners, prisoners on parole, offenders and registrable offenders

30FB Acknowledgement of sex application accompanied by approval

In addition to the requirements of section 30A, 30B, 30E or 30EA, an acknowledgement of sex application made to the Registrar must be accompanied by the appropriate approval.

30FC Determination of acknowledgement of sex application

- (1) If the Registrar is satisfied that an acknowledgement of sex application is accompanied by the appropriate approval, the application must be determined in accordance with section 30C or 30F (as the case requires).
- (2) The Registrar must give a copy of any refusal of an acknowledgement of sex application under section 30C or 30F to the person or body which gave the approval that accompanied the application.

30FD Notification that acknowledgement of sex application not accompanied by approval

If an acknowledgement of sex application is not accompanied by the appropriate approval, the Registrar must notify the relevant person or body whose approval was

required of the failure to provide that approval by—

- (a) the restricted person; or
- (b) the person who applied on the restricted person's behalf."

14 Effect of alteration of Register, issuing of documents acknowledging name and sex and interstate recognition certificates

- (1) In the heading to section 30G of the Principal Act, after "**Register**" **insert** ", **issuing of documents acknowledging name and sex**".
- (2) After section 30G(1) of the Principal Act **insert**—
 - "(1A) If the record of a child's sex in the child's birth registration is altered under this Part, the child is a child of the sex as altered.
 - (1B) If a document is issued under section 30F(1) acknowledging a person's name and sex, the person is a person of the sex stated in the document.
 - (1C) If a document is issued under section 30F(1A) acknowledging a child's name and sex, the child is a child of the sex stated in the document."
- (3) After section 30G(2) of the Principal Act **insert**—
 - "(2A) If an interstate recognition certificate is issued to a child, the child is a child of the sex stated in the certificate."
- (4) In section 30G(3) of the Principal Act, for "and (2)" **substitute** ", (1A), (1B), (1C), (2) and (2A)".

15 Re-issue of interstate birth certificates

In section 30H(a) of the Principal Act **omit** "or a Territory".

16 New sections 30J and 30K inserted

After section 30I of the Principal Act insert—

"30J Registrar to disclose alterations of record of sex or issuing of document acknowledging name and sex

- (1) This section applies if the Registrar has been notified of the details of a person by the Justice Secretary—
 - (a) under section 47M of the **Corrections Act 1986**; or
 - (b) under section 79H of the **Corrections Act 1986**; or
 - (c) under section 264 of the **Serious Offenders Act 2018**.
- (2) As soon as practicable after altering the record of a person's sex in the person's birth registration or issuing a document acknowledging the person's name and sex, the Registrar must give the Justice Secretary written notice of the alteration of the record of the person's sex or the issuing of a document acknowledging the name and sex of the person.
- (3) A notice under subsection (2) must include information about all alterations made to the record of the person's sex in the person's birth registration or all documents issued acknowledging the name and sex of the person.

30K Registrar to disclose alterations to record of sex on request of Secretary

If a request is made under section 47R of the **Corrections Act 1986**, the Registrar must disclose to the Justice Secretary information about—

- (a) all alterations made to the record of a person's sex in the person's birth registration; or
- (b) all documents issued acknowledging the name and sex of the person."

17 Correction and amendment of Register

In section 43(5) of the Principal Act, for "addition" **substitute** "addition, alteration or deletion".

18 Registrar to provide certain information to Minister

In section 56(b) of the Principal Act—

- (a) **omit** "altered the Register under section 30C, or";
- (b) for "30F," **substitute** "30F".

19 New section 65 inserted

After section 64 of the Principal Act **insert**—

"65 Transitional provision—Births, Deaths and Marriages Registration Amendment Act 2019

- (1) This section applies if—
 - (a) an application has been made under section 30A or 30E before the substitution of each section by the **Births, Deaths and Marriages Registration Amendment Act 2019**; and
 - (b) the Registrar has not determined the application before that substitution.
- (2) Subject to this section, despite the amendments made by the **Births, Deaths and Marriages Registration Amendment Act 2019**, the application is to be determined in accordance with Part 4A of this Act as if

that Part had not been amended by the
**Births, Deaths and Marriages
Registration Amendment Act 2019.**

- (3) Before the Registrar determines an application made under section 30A or 30E to which this section applies the Registrar may ask the applicant to nominate a sex descriptor.
- (4) The Registrar may refuse to alter the record of the applicant's sex in the applicant's birth registration if the alteration would result in the recorded sex being a prohibited sex descriptor.
- (5) The Registrar may refuse to issue a document acknowledging the name and sex of the applicant if that document would acknowledge a prohibited sex descriptor."

20 Statute law revision

In section 4(1) of the Principal Act, in the definition of *VARTA*, for "**2008**;" substitute "**2008**".

Part 3—Consequential amendment of other Acts

Division 1—Amendment of Children, Youth and Families Act 2005

21 Delegation

After section 17(1)(fa) of the **Children, Youth and Families Act 2005** insert—

- "(fb) the power to approve under section 488Q the making of an acknowledgement of sex application; and".

22 Definitions

In section 482A of the **Children, Youth and Families Act 2005** insert the following definitions—

"acknowledgement of sex application means an application—

- (a) under section 30A, 30B, 30E or 30EA of the **Births, Deaths and Marriages Registration Act 1996**; or
- (b) under a corresponding section referred to in paragraph (a) of an equivalent law of another State or a Territory;

Registrar means—

- (a) the Victorian Registrar; or
- (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages;

Victorian Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**;

23 Definitions

In section 488I of the **Children, Youth and Families Act 2005**—

- (a) in the definition of *detainee*, for "centre;" **substitute** "centre.";
- (b) the definition of *Victorian Registrar* is **repealed**.

24 Applications for change of name by or on behalf of a detainee

Section 488J(3) of the **Children, Youth and Families Act 2005** is **repealed**.

25 New Division 4A of Part 5.8 inserted

After Division 4 of Part 5.8 of the **Children, Youth and Families Act 2005** insert—

"Division 4A—Approval of making of acknowledgement of sex applications by detainees

488O Offence to make acknowledgement of sex application without approval

- (1) A detainee must not make an acknowledgement of sex application to a Registrar without having first obtained the written approval of the Secretary.

Penalty: 5 penalty units.

- (2) A person must not make an acknowledgement of sex application to a Registrar on behalf of a detainee unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

- (3) A person must not make an acknowledgement of sex application on behalf of a detainee who is under the age of 18 years to a Registrar unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

Note

For the definition of *detainee*, see section 482A.

488P Application by detainee or other person for approval of Secretary

A detainee or other person who intends to make an acknowledgement of sex application may apply to the Secretary for approval of the making of the acknowledgement of sex application by the detainee or the person.

488Q Approval by Secretary of the making of acknowledgement of sex application

- (1) Subject to subsection (2), on an application under section 488P, the Secretary may approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is in all the circumstances reasonable.

- (2) The Secretary must not approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—
- (a) to be a threat to the security of a youth residential centre or youth justice centre; or
 - (b) to jeopardise the safe custody or welfare of any detainees; or
 - (c) to be used to further an unlawful activity or purpose; or
 - (d) to be regarded as offensive by a victim of crime or an appreciable sector of the community.

488R Copy of approval or refusal of Secretary

- (1) If the Secretary approves the making of an acknowledgement of sex application, the Secretary as soon as practicable must give a copy of the approval to—
- (a) the person who sought the approval; and
 - (b) the Victorian Registrar.
- (2) If the Secretary refuses to approve the making of an acknowledgement of sex application, the Secretary must give a copy of that refusal to the person who sought the approval."

Division 2—Amendment of Corrections Act 1986

26 Definitions

In section 3(1) of the **Corrections Act 1986** insert the following definitions—

"acknowledgement of sex application means an application—

- (a) under section 30A or 30E of the **Births, Deaths and Marriages Registration Act 1996**; or
- (b) under a corresponding section referred to in paragraph (a) of an equivalent law of another State or a Territory;

Registrar means—

- (a) the Victorian Registrar; or
- (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages;

Victorian Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**;"

27 Definitions

In section 47G of the **Corrections Act 1986**—

- (a) in paragraph (b) of the definition of *change of name application*, for "prisoner;" substitute "prisoner.";
- (b) the definition of *Victorian Registrar* is repealed.

28 Applications for change of name by or on behalf of a prisoner

Section 47H(3) of the **Corrections Act 1986** is repealed.

29 New Division 6 of Part 6 inserted

After Division 5 of Part 6 of the **Corrections Act 1986** insert—

"Division 6—Approval of making of acknowledgement of sex applications—prisoners

47N Offence to make acknowledgement of sex application without approval

- (1) A prisoner must not make an acknowledgement of sex application to a Registrar without having first obtained the written approval of the Secretary.

Penalty: 5 penalty units.

- (2) A person must not make an acknowledgement of sex application to a Registrar on behalf of a prisoner unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

47O Application by prisoner or other person for approval of Secretary

A prisoner or other person who intends to make an acknowledgement of sex application may apply to the Secretary for approval of the making of the acknowledgement of sex application by the prisoner or the person.

47P Approval by Secretary of the making of acknowledgement of sex application

- (1) Subject to subsection (2), on an application under section 47O, the Secretary may approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is, in all the circumstances, necessary or reasonable.
- (2) The Secretary must not approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—
 - (a) to be a threat to prison security; or
 - (b) to jeopardise the safe custody or welfare of any prisoners; or
 - (c) to be used to further an unlawful activity or purpose; or
 - (d) to be regarded as offensive by a victim of crime or an appreciable sector of the community.

47Q Copy of approval or refusal of Secretary

- (1) If the Secretary approves the making of an acknowledgement of sex application, the Secretary as soon as practicable must give a copy of the approval to—
 - (a) the person who sought the approval;
and
 - (b) the Victorian Registrar.

- (2) If the Secretary refuses to approve the making of an acknowledgement of sex application, the Secretary must give a copy of that refusal to the person who sought the approval.

Note

See section 47M for information shared between the Secretary and the Victorian Registrar.

47R Request for information from the Victorian Registrar

- (1) The Secretary may—
- (a) request the Victorian Registrar to give the Secretary information concerning—
 - (i) all of the alterations of the record of a prisoner's sex in the prisoner's birth registration; or
 - (ii) all of the documents issued acknowledging the name and sex of a prisoner; and
 - (b) for the purpose of that request, give the Victorian Registrar any information concerning the prisoner that is necessary to conduct a search of the birth registration of the prisoner or for documents issued acknowledging the name and sex of the prisoner.
- (2) The Secretary must not make a request under subsection (1) unless the request is reasonably necessary to receive information in respect of a prisoner for—
- (a) the administration of Corrections legislation as defined in section 104ZX; or
 - (b) the purpose of the provision of services related to the health of the prisoner."

30 New Division 6A of Part 8 inserted

After Division 6 of Part 8 of the **Corrections Act 1986** insert—

**"Division 6A—Approval of making of
acknowledgement of sex applications—
prisoners on parole**

79HA Definition

In this Division—

prisoner on parole means a prisoner released on parole that is not subsequently cancelled or deemed to have been cancelled.

79HB Offence to make acknowledgement of sex application without approval

- (1) A prisoner on parole must not make an acknowledgement of sex application to a Registrar without having first obtained the written approval of the Board.

Penalty: 5 penalty units.

- (2) A person must not make an acknowledgement of sex application to a Registrar on behalf of a prisoner on parole unless the written approval of the Board is first obtained.

Penalty: 5 penalty units.

79HC Application by prisoner on parole or other person for approval of Board

A prisoner on parole or other person who intends to make an acknowledgement of sex application may apply to the Board for approval of the making of the acknowledgement of sex application by the prisoner on parole or the person.

79HD Approval by Board of the making of acknowledgement of sex application

- (1) Subject to subsection (2), on an application under section 79HC, the Board may approve the making of an acknowledgement of sex application if the Board is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is, in all the circumstances, necessary or reasonable.
- (2) The Board must not approve the making of an acknowledgement of sex application if the Board is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—
 - (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
 - (b) to be used to evade or hinder supervision of the prisoner on parole during the parole period.

79HE Copy of approval or refusal of Board

- (1) If the Board approves the making of an acknowledgement of sex application, the Board as soon as practicable must give a copy of the approval to—
 - (a) the person who sought the approval; and
 - (b) the Victorian Registrar; and
 - (c) the Secretary.

- (2) If the Board refuses to approve the making of an acknowledgement of sex application, the Board must give a copy of that refusal to—
- (a) the person who sought the approval; and
 - (b) the Secretary.

Note

See section 79H for information shared between the Secretary and the Victorian Registrar.

79HF Lapse of application on cancellation of parole

An acknowledgement of sex application by or on behalf of a prisoner on parole lapses if—

- (a) the prisoner's parole is cancelled or taken to be cancelled under section 77; and
- (b) the Victorian Registrar has not registered the alteration of the record of sex or issued the document acknowledging name and sex before that cancellation."

Division 3—Amendment of Serious Offenders Act 2018

31 Definitions

In section 3 of the **Serious Offenders Act 2018** insert the following definitions—

"acknowledgement of sex application means an application—

- (a) under section 30A or 30E of the **Births, Deaths and Marriages Registration Act 1996**; or

- (b) under a corresponding section referred to in paragraph (a) of an equivalent law of another State or a Territory;

Registrar means—

- (a) the Victorian Registrar; or
- (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages;

Victorian Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**;

32 Definitions

In section 258 of the **Serious Offenders Act 2018**—

- (a) in the definition of *offender*, for "order;" substitute "order.";
- (b) the definition of *Victorian Registrar* is repealed.

33 Applications for change of name by or on behalf of an offender

Section 259(1) of the **Serious Offenders Act 2018** is repealed.

34 New Part 17A inserted

After Part 17 of the **Serious Offenders Act 2018**
insert—

**"Part 17A—Approval of making of
acknowledgement of sex
applications—offenders**

265A Definition

In this Part—

offender means an offender who is subject
to a supervision order or an interim
supervision order.

**265B Offence to make acknowledgement of sex
application without approval**

- (1) An offender must not make an
acknowledgement of sex application to a
Registrar without having first obtained the
written approval of the Authority.

Penalty: 5 penalty units.

- (2) A person must not make an
acknowledgement of sex application to a
Registrar on behalf of an offender unless the
written approval of the Authority is first
obtained.

Penalty: 5 penalty units.

**265C Application by offender or other person
for approval of Authority**

An offender or other person who intends to
make an acknowledgement of sex
application may apply to the Authority for
approval of the making of the
acknowledgement of sex application by the
offender or the person.

265D Approval by Authority of the making of acknowledgement of sex application

- (1) Subject to subsection (2), on an application under section 265C, the Authority may approve the making of an acknowledgement of sex application if the Authority is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is, in all the circumstances, necessary or reasonable.
- (2) The Authority must not approve the making of an acknowledgement of sex application if the Authority is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—
 - (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
 - (b) to be used to evade or hinder supervision of the offender during the period of the supervision order or the interim supervision order.

265E Copy of approval or refusal of Authority

- (1) If the Authority approves the making of an acknowledgement of sex application, the Authority as soon as practicable must give a copy of the approval to—
 - (a) the person who sought the approval; and
 - (b) the Victorian Registrar; and
 - (c) the Secretary.

- (2) If the Authority refuses to approve the making of an acknowledgement of sex application, the Authority must give a copy of that refusal to—
- (a) the person who sought the approval;
and
 - (b) the Secretary.

Note

See section 264 for information shared between the Secretary and the Victorian Registrar."

**Division 4—Amendment of Sex Offenders
Registration Act 2004**

35 Definitions

In section 3(1) of the **Sex Offenders Registration Act 2004**—

- (a) in the definition of *sworn IBAC Officer*, for "2011." substitute "2011;";
- (b) **insert** the following definitions—

"acknowledgement of sex application means an application—

- (a) under section 30A or 30E of the **Births, Deaths and Marriages Registration Act 1996**; or
- (b) under a corresponding section referred to in paragraph (a) of an equivalent law of another State or a Territory;

Registrar means—

- (a) the Victorian Registrar; or
- (b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages;

Victorian Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**."

36 Definitions

In section 70B of the **Sex Offenders Registration Act 2004**—

- (a) in the definition of *Interstate Registrar*, for "marriages;" **substitute** "marriages.";
- (b) the definition of *Victorian Registrar* is **repealed**.

37 New Part 5C inserted

Before Part 6 of the **Sex Offenders Registration Act 2004** insert—

"Part 5C—Approval of making of acknowledgement of sex applications—registrable offenders

70Q Offence to make acknowledgement of sex application without approval

- (1) A registrable offender must not make an acknowledgement of sex application to a Registrar without having first obtained the written approval of the Chief Commissioner of Police.

Penalty: 5 penalty units.

- (2) A person must not make an acknowledgement of sex application to a Registrar on behalf of a registrable offender unless the written approval of the Chief Commissioner of Police is first obtained.

Penalty: 5 penalty units.

70R Application by registrable offender or other person for approval of Chief Commissioner of Police

A registrable offender or other person who intends to make an acknowledgement of sex application may apply to the Chief Commissioner of Police for approval of the making of the acknowledgement of sex application by the registrable offender or the person.

70S Approval by Chief Commissioner of Police of the making of acknowledgement of sex application

- (1) Subject to subsection (2), on an application under section 70R, the Chief Commissioner of Police may approve the making of an acknowledgement of sex application if the Chief Commissioner of Police is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is, in all the circumstances, necessary or reasonable.
- (2) The Chief Commissioner of Police must not approve the making of an acknowledgement of sex application if the Chief Commissioner of Police is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—

- (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community; or
- (b) to frustrate the administration of this Act in respect of the registrable offender.

70T Copy of approval or refusal of Chief Commissioner of Police

- (1) If the Chief Commissioner of Police approves the making of an acknowledgement of sex application, the Chief Commissioner of Police as soon as practicable must give a copy of the approval to—
 - (a) the person who sought the approval; and
 - (b) the Victorian Registrar.
- (2) If the Chief Commissioner of Police refuses to approve the making of an acknowledgement of sex application the Chief Commissioner of Police must give a copy of that refusal to—
 - (a) the person who sought the approval; and
 - (b) the Secretary.

Note

See section 70I for information shared between the Secretary or the Chief Commissioner of Police and the Victorian Registrar.

70U Lapse of application where registrable offender ceases to be a registrable offender

An acknowledgement of sex application by or on behalf of a registrable offender lapses if—

- (a) the registrable offender ceases to be a registrable offender; and
- (b) the Victorian Registrar has not registered the alteration of the record of sex or issued the document acknowledging name and sex before the registrable offender ceases to be a registrable offender.

70V Registrable offender who is also subject to a supervision or detention order

- (1) This section applies to a registrable offender who is also subject to a supervision order, an interim supervision order, a detention order, an interim detention order or an emergency detention order within the meaning of the **Serious Offenders Act 2018**.
- (2) Despite this Part, an application by or on behalf of a registrable offender to whom this section applies for the appropriate approval to make an acknowledgement of sex application must be made under and in accordance with Part 17A of the **Serious Offenders Act 2018**.

70W Registrable offender who is also a prisoner on parole

Despite this Part, an application for the appropriate approval to make an acknowledgement of sex application by or on behalf of a registrable offender who is also a prisoner on parole within the meaning of Division 6A of Part 8 of the **Corrections Act 1986** must be made in accordance with Division 6A of Part 8 of the **Corrections Act 1986**."

Part 4—Repeal of this Act

38 Repeal of this Act

This Act is **repealed** on 1 May 2021.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 19 June 2019

Legislative Council: 15 August 2019

The long title for the Bill for this Act was "A Bill for an Act to amend the **Births, Deaths and Marriages Registration Act 1996** to provide for a person to alter the record of a person's sex in the person's birth registration and to further provide for the issuing of a document acknowledging a person's name and sex, to make consequential amendments to the **Children, Youth and Families Act 2005**, the **Corrections Act 1986**, the **Serious Offenders Act 2018** and the **Sex Offenders Registration Act 2004** and for other purposes."