



FTMA Association

FTM AUSTRALIA ASSOCIATION RESPONSE TO THE DISCUSSION PAPER
CHANGES TO BIRTH CERTIFICATES FOR TRANSEXUAL PEOPLE –
SEPTEMBER 2003

The FTM Australia Association makes the following response to the Victorian Attorney-General's Discussion Paper "Changes to Birth Certificates for Transsexual People" on behalf of FTM Australia Inc.'s membership in Victoria, who make up **twenty percent of our total membership**.

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About FTM Australia Incorporated

FTM Australia is a national representative body providing information and support principally, to men who experience transsexualism (sometimes called female-to-male transsexuals), their parents, families and partners.

As a representative association, FTMA has expertise in the issues affecting men with transsexualism ("men with ts" or "males with ts") their children and families and draws considerable input from a variety of experts and clinicians. The association maintains close links with a number of similar international organizations.

Scope of this Submission

Legislative needs of the broader 'gender-variant' community such as transgenders and cross-dressing women are not addressed in this submission.

This submission confines its material only to the smaller sector of the FTMA community of men with ts who have "a neuro-developmental condition of the brain" and consequent legislative needs for those who suffer from this endocrinological and physical medical condition. This submission addresses concerns for men with ts within the scope of "Changes to Birth Certificates for Transsexual People".

- Transsexualism is a medical condition, which can be readily diagnosed by medical practitioners.
- Transsexualism is a biological variation in the sexual formation of a human being.
- Transsexualism is alleviated by endocrinology treatment consisting of medication and surgical intervention under medical supervision.



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- Whilst not as visible to the naked eye as the majority of intersex conditions, people with the medically diagnosable condition of 'transsexualism' experience an intersex condition.ⁱⁱ

Summary of Responses

Terminology

- Legislation terminology to offer more accurate language describing a **correction** of recorded sex on the birth certificate rather than 'amendment'.

Age of Eligibility

- Proposed age-eligibility criteria as in the discussion paper is supported by the Association.

'Change of details certificate'

- Proposed 'Change of details certificate' to be termed a "Current Details Certificate" to reflect a more respectful and supportive response from the Victoria Government legislation for men living with this endocrinological and physical medical condition of transsexualism.

Medical Treatment - Requirements

- Testosterone therapy for men with ts be considered the single most effective sex affirmation treatment which permanent, irreversible effects renders men with ts indistinguishable from other men.

Medical Treatment – proof of

- Proof of medical treatment to be by two statutory declarations – one being from the attending surgeon, or other surgeon practising in the field; the other being the statutory declaration of a psychiatrist, endocrinologist, urologist, gynaecologist or general practitioner ordinarily treating the applicant.
- The legislation to contain "a compassionate exception for those who are medically deemed unable to undergo the procedures."

Marital Status

- Men (and women) of ts should not be required to denounce their existing marriage and risk the destruction of their family relationships simply on the basis of a physical endocrinological medical condition.

Certificates in other jurisdictions

- Proposed legislation as in the discussion paper is supported by the Association.



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Terminology

Proposed: "It is proposed to avoid using descriptive terms where possible. However, it is necessary to use a term to refer to the process that is usually referred to as "gender reassignment". The proposed term is "sex affirmation"."

- The above proposal is endorsed by the FTMA Association.

The FTMA Association welcomes the proposal by the Victorian Attorney General to provide an inexpensive, accessible, efficient and dignified mechanism for transsexual people in Victoria to "affirm their birth certificates to reflect their affirmed sex, by presenting evidence to the Registrar of Births, Deaths and Marriages."

- The above proposal is only *partially endorsed* by the FTMA Association. The legislative process required is a correction to the sex recorded rather than a change of sex as reflected in the legislation.

Eligibility Criteria

Age of Eligibility

Proposed: "It is proposed that the Victorian scheme require a person to be 18 years of age or over in order to be eligible to apply for an amendment to a birth certificate to reflect their affirmed sex...If the scheme adopted by Victoria includes the making of applications on behalf of people under 18, it is proposed that it be based on the model that already operates under the *Births, Deaths and Marriages Registration Act 1996* in relation to applications for a change of name for a child."

- The above proposals are endorsed by the FTMA Association.

Place of Birth

Proposed: "It is noted that the proposed Victorian scheme could provide for a person whose birth was not registered in Victoria but who has been a resident in Victoria for 12 months or more to apply to the Registrar of Births, Deaths and Marriages, to be issued with a 'change of details certificate', instead of a new birth certificate. However, the transsexual history of the person will be fairly evident from the 'change of details certificate'."

- FTMA concurs with the suggestion from the Australian Women's Network regarding provision of a "Current Details Certificate" rather than the provision of a "Change of Details Certificate". As per the AWN submission: "A "Current Details Certificate" is preferred to the proposed "Change of details Certificate" for persons not born in Victoria, but resident here for more than 12 months, who are unable to obtain a corrected Birth Certificate from the relevant jurisdiction, The current details of the person could be entered on the certificate after verification from other suitable documentation provided by the person, including a relevant



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“Change of Name Certificate”, and the legislation could provide that such a certificate is, prima facie, a correct statement of the person’s identity. “

Medical Treatment - requirements

By the very nature of the condition as a medical diagnosis, men who experience the medical condition *transsexualism*, desire irreversible permanent sex affirmation. Permanent and irreversible treatment for men with ts is successfully afforded by testosterone therapy, which introduces the secondary sex characteristics causing the man with ts to be indistinguishable from other men in all areas of life.

The most commonly sought after surgical procedure by men with ts is chest reconstructive surgery and men who are physically able to undergo this surgical procedure, financially and physically, readily undertake it. Lower surgery procedures at present are extremely expensive, debilitating, not recommended by any of the leading physicians in the field, imitative (non-functioning) at best, and pose unacceptable health risks to most of our men.

The Commonwealth Government Health Insurance Commission has already advised males with ts that "...HIC does recognise the hazards associated with female to male gender reassignment and would not insist that a person have this type of surgery completed as a prerequisite to amending Medicare records." (*Correspondence from the Health Insurance Commission to the Men's Australian Network, 1 May 2000*).

It is our strong representation that the interpretation of "reassignment procedures" and the application be in compliance with Common Law of Australia as expressed in *Re Kevin: Validity of Marriage of Transsexual (2001) FamCA 1074 and (2001) FLC 93-087 ("Re: Kevin")* and not require imitative (phalloplasty) surgical procedures nor lower abdominal invasive surgical procedures.

- FTMA endorses the view that testosterone therapy for men with ts be considered the single most effective sex affirmation treatment.

Medical Treatment – proof of

- FTMA concurs with the AWN submission that proof of medical treatment should be by the statutory declaration of the attending surgeon, or other surgeon practising in the field, together with the statutory declaration of a psychiatrist, endocrinologist, urologist, gynaecologist or general practitioner ordinarily treating the applicant.
- FTMA concurs with the AWN submission that the legislation contains “a compassionate exception for those who are medically deemed unable to undergo the procedure.”



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Marital Status

Marriage in Australia permits the dissolution for a valid marriage by divorce or by death of one of the parties.

Men with ts, who have borne their own biological children within a legal marriage, and who after medical treatment for the condition of transsexualism have a spouse (male) who is willing to remain legally and socially recognised by the law within that legal marriage, should not be required to denounce their existing marriage and risk the destruction of their family relationships simply on the basis of this unfortunate physical endocrinological medical condition.

Certificates in other jurisdictions

Proposed: "... it is not considered necessary to include in the proposed Victorian scheme, a clause warning that it may be an offence to show the amended certificate in another jurisdiction... it is proposed that the Bill contains a clause similar to that used in the ACT, which would be to the effect that a certificate from another jurisdiction will be accepted for the purposes of Victorian law."

- The above proposals are endorsed by the FTMA Association.

ⁱ "Definition and Synopsis of the Etiology of Adult Gender Identity Disorder and Transsexualism", a very recent statement to the UK Parliament co-authored by an international consortium of 17 medical practitioners specialising in the area of transsexualism, in which they describe transsexualism as "a neurodevelopmental condition of the brain".

ⁱⁱ The Attorney-General for the Commonwealth & "Kevin and Jennifer" & Human Rights and Equal Opportunity Commission [2003] Fam CA 94, fn 10 at 235.