

**T A S M A N I A**  
**LAW REFORM**  
**I N S T I T U T E**

## **Submission Template**

### **Legal Recognition of Sex and Gender**

This Issues paper addresses several key issues in relation to a person's sex and gender.

Firstly, it explains and evaluates recent changes to the way that sex and gender are recorded on birth certificates and procedures for registering a change of gender. The Issues Paper considers how these changes interact with existing laws, how Tasmania's laws compare with laws in other jurisdictions, and any further reforms that may be needed to give effect to the objectives of the new laws and satisfy human rights obligations.

Secondly, the Issues Paper looks at rules regarding consent to medical treatment to alter sex characteristics in children. This is an issue of particular concern for children with intersex variations. Surgical interventions affecting these variations are often performed in early childhood, before children are competent to provide their consent. These surgeries can have significant consequences for the long-term health and well-being of intersex people.

The Issues Paper also discusses the age at which gender diverse children are able to give informed consent to medical procedures.

A range of options for legislative or policy reforms to address these issues are outlined in the Paper.

The Institute invites responses to any or all of the questions asked in the Issues Paper, and on any other matter considered relevant to the issues discussed in the paper by **20 August 2019**.

**You can answer any or all of the questions and provide as little or as much information as you wish.**

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

**Email:** [law.reform@utas.edu.au](mailto:law.reform@utas.edu.au)

**Post:** Tasmania Law Reform Institute

Private Bag 89  
Hobart TAS 7001

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the HREC (Tasmania) Network on +61 3 6226 6254 or email [human.ethics@utas.edu.au](mailto:human.ethics@utas.edu.au). The Executive Officer is the person nominated to receive complaints from research participants. Please quote ethics reference number H0016752.

## Personal Information

**Name**

**Organisation (if any)**

**Address**

**Email**

**Phone number**

## Publication of Submissions

The Institute uses any submissions received to inform its research. Submissions may be referred to or quoted from in a final report which will be published on the Institute's website. Extracts may also be used in published scholarly articles and/or public media releases. However, if you do not wish your response to be referred to or identified, the Institute will respect that wish.

**Therefore, when making a submission to the Institute, please tick the applicable box to identify how you would like it to be treated based on the following categories:**

Public submission – the Institute may refer to or quote directly from my submission and name me as the source of the submission in relevant publications.

Anonymous submission – the Institute may refer to or quote directly from my submission in relevant publications but must not identify me as the source of the submission.

Confidential submission – the Institute must not refer to or quote directly from my submission but may aggregate information in my submission with other submissions for inclusion in any report or publication.

Confidential submissions will only be used to inform the Institute generally in its deliberations of the particular issue under investigation, and/or provide publishable aggregated statistical data.

Providing a submission is completely voluntary. You are free to withdraw your participation at any time, by contacting Kira White on (03) 6226 2069 or email [Law.Reform@utas.edu.au](mailto:Law.Reform@utas.edu.au). You can withdraw without providing an explanation. However, once the report has been sent for publication, it will not be possible to remove your comments.

All responses will be held by the Tasmania Law Reform Institute for a period of five (5) years from the date of the first publication and then destroyed. Electronic submissions will be stored on a secure, regularly backed-up University network drive. Hard copy submissions will be stored in a locked filing cabinet. At the expiry of five years, submissions be deleted from the server, in the case of electronic submissions, or shredded and securely disposed of in the case of paper submissions.

## **QUESTIONS**

### **Question 1**

What, if any, administrative changes will be required to allow government agencies, notaries, or other officials to verify a person's sex or gender identity if their birth certificate does not include sex or gender information?

### **Question 2**

Should guidelines be developed to guide the exercise of the Registrar's discretion to refuse an application to register a change of gender?

### **Question 3**

Are there potential implications for the interaction of the *JRL Act* with existing legislation that are not discussed in section 2.2 of this Issues Paper?

### **Question 4**

What policies are currently in place relating to access by sex and gender diverse people to gender-based locations or events? In your experience, what has been the outcome of implementing those policies?

## Question 5

What, if any, reforms should be made in relation to consent to medical treatment to alter the sex characteristics of an intersex minor? In particular:

- In what, if any, situations should Court approval be required for medical intervention on minors to alter sex characteristics?
- Should sex reassignment surgery on a minor be excluded from offences relating to female genital mutilation?
- Should Tasmanian laws prevent medical intervention to address sex characteristics in minors without their consent to the procedures (other than in emergency situations)? Should 'emergency situations' be defined by legislation for the purpose of this exception?
- What form should that prohibition take? Should it be a criminal offence to perform such surgery or should some alternative approach be adopted and, if so, what approach would best address this issue?
- Should there be any additional exceptions to that prohibition apart from emergency situations and, if so, what should those exceptions be?
- In what, if any, situations should an independent advocate be appointed to act on behalf of a minor where approval is sought for medical intervention to address sex characteristics?
- If parents are able to consent to medical procedures, should they be required to show that they have received counselling or advice (other than from the treating physician) about the implications of the proposed procedures?
- Should a specialist tribunal be established to consider applications for medical procedures to alter the sex characteristics of minors and, if so, who should be members of the Tribunal?

### **Question 6**

What, if any, reforms should be enacted to enable minors to consent to medical treatment to alter their sex characteristics and to enable medical practitioners to act on their consent?

### **Question 7**

Should there be an age requirement for valid consent to medical treatment to alter sex characteristics?

## **Question 8**

Should there be additional conditions attached to the consent to enable medical practitioners to act on it, such as a requirement that minors receive expert counselling regarding the consequences of the surgery?

## **Question 9**

Should medical practitioners be able to act on the consent of minors under 16 years of age to medical treatment to alter their sex characteristics and, if so, in what circumstances? For example, should there be a requirement that two medical professionals (defined to include clinical psychologists) are satisfied that:

- the child is capable of understanding the nature, consequences and risks of the treatment; and
- the treatment is consistent with the ‘will and preference’ of the child; and
- the treatment is consistent with the child’s health and well-being.