

## Changing Sex Listed on Identification Documents

If your sex or gender identity has changed, or you do not fit neatly within male/female gender categories, your sex may be listed on various official documents incorrectly. It can be important for these listings to be changed so as, for instance, to allow for a complete transition into your correct gender, to reflect full social and governmental recognition of your identity, or to prevent "outing" of transgender or intersex status.

In many (but not all) cases, records will be able to be changed. The following describes the requirements for altering NSW birth certificates, documents issued by the NSW Roads and Maritime Services, and Australian passports.

### Birth certificate

**You may be able to apply to the Registrar of Births, Deaths, and Marriages for the record of your sex to be changed.**<sup>1</sup> The only requirement is that you must have undergone a sex affirmation procedure.

"**Sex affirmation procedure**" is defined as "a surgical procedure involving the alteration of a person's reproductive organs carried out:

- (a) for the purpose of assisting a person to be considered to be a member of the opposite sex, or
- (b) to correct or eliminate ambiguities relating to the sex of the person.<sup>2</sup>

You must provide statutory declarations from two medical practitioners verifying that you have undergone a sex affirmation procedure and confirming your identity.<sup>3</sup>

Following a 2014 High Court case,<sup>4</sup> you may now

<sup>1</sup> *Births, Deaths and Marriages Registration Act 1995* (NSW) ("*BDMR Act*") s 32B (for people whose birth is already on the NSW Register); s 32DA (for people whose birth is not on any Australian Register).

<sup>2</sup> *BDMR Act* s 32A.

<sup>3</sup> *BDMR Act* s 32C (for applications made under s 32B),

have the record of your sex changed to "**nonspecific**". As with other record changes, it is a requirement that you have undergone a sex affirmation procedure.

**Children** may have the record of their sex changed on the application of their parents or guardians.<sup>5</sup>

**For forms and ID requirements please refer to** this Births, Deaths and Marriages factsheet (<https://www.nsw.gov.au/topics/name-changes-and-corrections/change-of-sex>).

### NSW Driver's Licence, Photo Card, or Mobility Parking Permit

You can apply to change your sex on the above documents.

**You must supply** (on top of the usual requirements for a NSW licence, photo card, or permit) **either**:

- A Birth Certificate or a Recognised Details Certificate from an Australian Registry of Births, Deaths, and Marriages showing your changed sex;
- A "list 1" proof of identity document showing your changed sex (this includes, among other things, a passport or other travel document – see list at link below); or
- A medical certificate from an Australian registered medical practitioner confirming the correct sex.

Note that your sex can be changed on these documents without having first obtained a Birth

s 32DB (for applications made under s 32DA); *Births, Deaths and Marriages Registration Regulation 2017* (NSW), rr 9-11.

<sup>4</sup> *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11.

<sup>5</sup> *BDMR Act* ss 32B, 32DA.

Certificate showing your correct sex, and regardless of whether any "sex affirmation procedure" has occurred.

The alteration must be made on a "**Replacement Application**" form, available here ([www.nsw.gov.au/sites/default/files/2021-02/rms-form-45070182-replacement-application.pdf](http://www.nsw.gov.au/sites/default/files/2021-02/rms-form-45070182-replacement-application.pdf)).

See also this RMS fact sheet which has further information (<https://www.service.nsw.gov.au/transaction/change-gender-transport-nsw>).

### Australian passport

You may apply for an Australian passport in a sex different from that of a previous passport, or different from your birth certificate.

Australian passports may be issued marked M (male), F (female), or X (indeterminate/unspecified/intersex/non-binary/other).

**You must supply** (on top of the usual requirements for an Australian passport application) **either**:

- A gender recognition certificate issued by an Australian Registry of Births, Deaths and Marriages (RBDM), or
- A copy of a Birth Certificate showing your correct (altered) sex, or
- A recognised details certificate, which records your new sex and current name, issued by a Registry of Births, Deaths and Marriages, or
- A letter from a registered medical practitioners or psychologist certifying that you have had, or are receiving, appropriate clinical treatment for transition to a new sex or gender, or that you are intersex and do not identify with the sex assigned to you at birth.

Note that your sex can be changed on these documents without having first obtained a Birth Certificate showing the correct sex, and regardless of whether any "sex affirmation procedure" has occurred.

If you already hold an Australian passport, and it has more than two years' validity remaining, you may be entitled to a free replacement.

For further information, please refer to this factsheet ([www.passports.gov.au/getting-passport-how-it-works/documents-you-need/sex-and-gender-diverse-passport-applicants](http://www.passports.gov.au/getting-passport-how-it-works/documents-you-need/sex-and-gender-diverse-passport-applicants)).

We recommend attending an Australian Passport Office (if possible), rather than your local post office.

*This information is current to 8 September 2021 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.*