



LRC

Legal Resources Centre

LEGAL GENDER RECOGNITION

**A step-by-step guide to applying to
alter gender markers and forenames
in terms of South African law**



Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.

[Yogyakarta Principles + 10 Principle 31:
The Right to Legal Recognition]

INTRODUCTION



THE PURPOSE OF THIS BOOKLET is to provide the reader with information about what legal gender recognition is, the way in which a person's identity is captured in law and the process applicable when you want to apply to the Department of Home Affairs (DHA) for the alteration of your personal details.



Legal gender recognition is the process in which the law enables a person to change their name and gender information on official key documents and in the population register in order to legally recognise a person's gender identity.

Without legal gender recognition, the legal gender recorded on one's legal identity card does not match one's gender identity. As a result, ordinary activities like picking up a parcel or driving a car, can become a daily source of struggle.

It is often necessary for one to legally identify oneself when interacting with police, prisons, revenue collectors and various service providers, as well as when accessing certain buildings.

Legal gender recognition therefore enables a person to access and enjoy their constitutional rights and a variety of services including access to justice, shelter, housing, social grants, health, employment, financial services, communication and education, among others.

THE LEGAL RECOGNITION JOURNEY:

What information is captured when a person is born in South Africa



IDENTIFICATION ACT 68 OF 1997

The Identification Act is an important piece of legislation that creates the National Population Register (NPR) under the custodianship of the Department of Home Affairs (DHA). All citizens and permanent residents in South Africa are issued with an identification (ID) number when their birth is registered. The process of registering your birth is how your details will be included in the NPR.

The following information is captured in the NPR: your ID number, forename(s), surname, gender, date of birth, place of birth, citizen or non-citizen, and after turning 16, your fingerprints, recent photograph and, later, marital status.

BIRTHS AND DEATHS REGISTRATION ACT 51 OF 1992

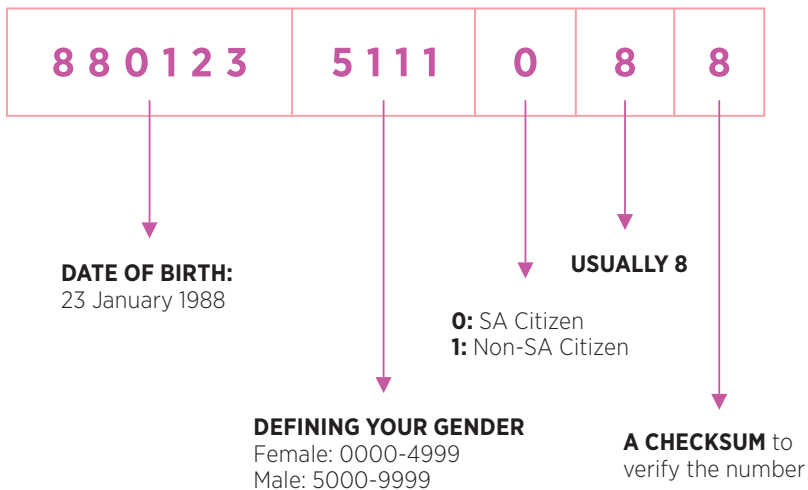
The purpose of the Births and Deaths Registration Act (BDRA) is to regulate the manner in which births and deaths are registered at the DHA in South Africa. As discussed above, the registration of birth is how details are included into the NPR which enables the DHA to issue a person with an ID number. The BDRA is also the legislation under which a person can apply to change their personal details captured in the NPR.

WHAT IS CAPTURED IN AN IDENTIFICATION NUMBER?

The South African ID number is a 13-digit number containing information about a person for the purposes of identification. The first six digits are based on your date of birth, the next 4 digits are used to define your gender, the digit thereafter shows whether you are a South African citizen or a permanent resident, the second last digit should be 8, and the last digit is used as a checksum to verify the number.



HERE IS AN EXAMPLE OF A FICTIONAL ID NUMBER OF A PERSON RECORDED IN THE POPULATION REGISTER AS A MALE SOUTH AFRICAN:





HOW TO APPLY TO ALTER YOUR PERSONAL DETAILS

Before we dive into how you apply to change your forename(s) and sex descriptor (also called gender marker so we use them together in this booklet), it is important to know that these laws do not require a ‘two-step process’.

In other words, you don't need to first apply for an alteration of your forename, before you can apply for an alteration of your sex descriptor (or the other way round). If you wish to change your forename(s) and your sex descriptor, **you can apply for both alterations at the same time.**

As you have the option of applying for both alteration applications simultaneously, or submit individual applications, you can decide which route you feel more comfortable with. We note, however, that some people have experienced delays submitting both applications, while some applications were processed speedily because both applications were submitted at the same time.

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APPLICATION TO ALTER FORENAMES

If you wish to alter the forename(s) recorded on your ID and your birth certificate, you can apply in person at the DHA for the alteration.

This process will alter the forename(s) captured in your entry of the NPR. There is no digit on your ID number referencing your name, so your ID number and sex descriptor/gender marker will stay the same if you only apply for an alteration of your forename(s).

WHO CAN APPLY?

Any person can apply for alteration of their forename(s). You can only apply for a change of your forename(s) one time unless there exist exceptional circumstances, or your forename(s) was changed whilst you were still a minor. If exceptional circumstances exist for a second amendment, you must attach an affidavit to your application setting out the exceptional circumstances.

CAN MINOR CHILDREN APPLY?

Yes minor children can apply to alter their forenames. A minor must be assisted by their parent or legal guardian. The BDR provides that any parent can assist the minor with the application. This means that the assistance of both parents is not necessary.

HOW TO APPLY?

- You have to complete Form DHA-85 (also called BI-85) to apply for alteration of your forename(s).
- You can obtain this form from your closest DHA branch.
- Make a copy of your application – if this is not possible, then we suggest that you take pictures of the application with your phone in case the DHA misplaces your application and you have to resubmit again.
- After you submit your application, you must receive an acknowledgement of receipt from the DHA office, which you need to keep safe.

HOW LONG DOES THE APPLICATION TAKE?

The BDRA does not stipulate how long the application will take. However, if your application takes longer than 3 months, then you should follow up with the DHA to see why it is taking long.

You can follow up by going back to the office where you submitted your application, or calling the **Contact Centre of Home Affairs at 0800 601 190**, or emailing the Contact Centre at **hacc@dha.gov.za** and ask for the status of your application.

Keep a record of all your visits, calls and/or emails when following up on your application. If your application takes longer than 6 months, we advise that you contact organisations focusing on transgender or intersex persons' rights to assist you with your application and possibly link you with a lawyer to assist further.

WHAT HAPPENS AFTER YOUR FORENAME(S) ALTERATION?

- Once you have received notification that your forename(s) have been altered, you can apply for a new ID, birth certificate and passport (if applicable) reflecting your correct personal details.
- An important document that will assist you in showing that your forename(s) have legally been changed is the confirmation letter received by the DHA. However, a confirmation letter can only be issued after the change in your forename(s) has been published in the *Government Gazette*.
- To find out whether your alterations have been published in the *Government Gazette*, you can either contact your DHA office where you collected your ID from, or you can access the *Government Gazettes* published weekly by following this link: <http://www.gpwonline.co.za/Gazettes/Pages/Published-National-Government-Gazettes.aspx>
- After the change in your forename(s) is placed in the *Government Gazette*, you can apply for your confirmation letter from the DHA. The confirmation letter is important because you will need the confirmation letter to change your personal details at the bank, on your driver's license, student record, school and university qualifications, medical aid, insurance policies, bond registration, and at all other institutions that captured your forename when offering services to you.

APPLICATION TO ALTER SEX DESCRIPTION

The Alteration of Sex Description and Sex Status Act 49 of 2003 (Act 49) is the law that provides for legal gender recognition in South Africa.

Applying for the alteration of your gender marker (or sex descriptor) is different from the alteration of forename(s) as you will require supporting documentation and your ID number has to change once your application is successful.



HERE ARE SOME DEFINITIONS NECESSARY TO UNDERSTAND ACT 49:

GENDER CHARACTERISTICS:

“the way in which a person expresses his or her social identity as a member of a particular sex by using a style of dressing, the wearing of prostheses or other means.”

GENDER REASSIGNMENT:

“a process which is undertaken for the purpose of reassigning a person’s sex by changing physiological or other sexual characteristics, and includes any part of such process.”

INTERSEX:

“means a person whose congenital sexual differentiation is atypical, to whatever degree.”

MEDICAL PRACTITIONER:

“a person providing health services in terms of any law including Allied Health Professions Act, 1982 (Act No. 63 of 1982); Health Professions Act, 1974 (Act No. 56 of 1974); Nursing Act, 1978 (Act No. 50 of 1978); Pharmacy Act, 1974 (Act No. 53 of 1974); Dental Technicians Act, 1979 (Act No. 19 of 1979); and Mental Health Care Act, 2002 (Act No. 17 of 2002);

PRIMARY SEXUAL CHARACTERISTICS:

“the form of genitalia at birth.”

SECONDARY SEXUAL CHARACTERISTICS:

“those which develop throughout life and which are dependent upon the hormonal base of the individual person.”

SEXUAL CHARACTERISTICS:

“primary or secondary sexual characteristics or gender characteristics.”



Act 49 allows transgender, gender diverse and intersex persons to change their legal gender if they meet certain requirements. Unfortunately, the requirements of Act 49 are so difficult to meet that most people who want to change their legal gender are not able to.

- Act 49 does not recognise the right to gender self-determination and self-identification, because it does not allow applicants to self-declare their gender identity. Instead, Act 49 demands the provision of two letters from medical practitioners, including physicians, psychologists or social workers, who must confirm that the requirements of gender reassignment have been met. Act 49, therefore, requires money and resources for those who wish to benefit from it.
- Act 49 only allows 'female' and 'male' gender markers. A choice has to be made between these two options when you make an application in terms of Act 49.
- Non-binary gender identities are excluded.
- There is no option to choose to have an ID without a gender marker/sex descriptor.

WHO CAN APPLY?

Act 49 provides for two main categories of people who are eligible to apply:

Gender reassignment applications and **applications by intersex persons.**

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GENDER REASSIGNMENT APPLICATIONS with two subcategories namely:

- (a) Anyone whose sexual characteristics have been altered through medical or surgical intervention, resulting in gender reassignment.

IMPORTANT THINGS TO NOTE:

- It is important to note that Act 49 does not mandate surgical intervention in order to apply. Receiving medical intervention like gender affirming hormones that results in gender reassignment is enough for the purposes of Act 49.
- Act 49 does not set a minimum period to be completed on hormones before you can apply to change your gender marker.
- 'Medical' is broadly defined in Act 49 as any health service given the definition of medical practitioner above, and could for instance include counselling and various other services. In practice, however, the DHA tends to want evidence of gender affirming hormones or surgery. This is unlawful as it limits the language of Act 49.

- (b) Anyone whose sexual characteristics have been altered through **natural evolvment**, resulting in gender reassignment.

MEDICAL REPORTS: Two medical letters must be filed with the application confirming that sexual characteristics of the person involved have been altered leading to gender reassignment.

02

APPLICATIONS BY INTERSEX PERSONS:

Any intersex person can apply to change their gender marker/sex description in the NPR.

It is important to note that intersex persons are not required to alter their sexual characteristics. Instead, Act 49 requires intersex persons to file two reports with their application to alter gender marker/sex description.

The reports that must be filed by intersex persons in order to qualify to change their gender marker/sex description in terms of Act 49 are as following:

The **first report** prepared by a medical practitioner confirming that the applicant is intersex.

The **second report** prepared by a qualified psychologist or social worker confirming that the applicant is living, and has lived stably and satisfactorily for an unbroken period of at least two years, in the gender role corresponding to the gender marker/sex description under which he or she seeks to be registered.



CAN MINOR CHILDREN APPLY?

Act 49 does not make a distinction between minors (a person under the age of 18) and adults in its provisions and requirements.

The application process and requirements therefore apply to both adults and minors. The minor needs to have a birth certificate entry with an ID number issued.

There is no requirement in Act 49 that minor children need to have received an ID book before they can apply.

It is important to note that Act 49 does not require parental consent for a minor child to apply to alter their gender marker.

Similar to an alteration of forenames, any parent can apply on behalf of a minor for alteration of their gender marker/sex descriptor with the minor's permission.



HOW TO APPLY?

- Before you can apply for alteration of your gender marker/sex descriptor, you are required to obtain two reports from two different medical practitioners as explained for the different categories above.
- When you are in possession of your two reports, you can approach the DHA to apply for alteration of your gender marker/sex descriptor.
- Take the two letters with you, your ID document and your birth certificate.
- You have to complete and submit **Form DHA-526** (also called **BI-526**), which can be obtained at your closest DHA branch.
- When you complete this form, you have to specifically state that you want to change your gender.

WHAT SHOULD THE MEDICAL REPORTS CONTAIN?

There is no set format for the medical reports that must be completed. However, as a guideline, it is vital that your reports contain the following information:

- ✓ Your name (as captured in the NPR) and ID number;
- ✓ Confirmation that you are a patient of the medical practitioner;
- ✓ The contact details of the medical practitioner;
- ✓ **For gender reassignment applications** - confirmation that your sexual characteristics have been altered by surgical or medical treatment such as gender affirming hormone therapy, resulting in gender reassignment; and the nature and result of such gender affirming healthcare accessed; **OR**
- ✓ **For intersex persons' applications** - confirmation that the applicant is intersex and is living, and has lived stably and satisfactorily for an unbroken period of at least two years, in the gender role corresponding to the gender marker/sex description under which he or she seeks to be registered.

You are less likely to encounter delays and obstacles at the DHA if your reports use the language that is used in Act 49. At the end of this booklet is an example of a medical practitioner's report for guidance for **gender reassignment applications**.

Please note that this is not a set template but an example to simply provide some guidance on whether you have complied with Act 49.

WHAT HAPPENS IF YOUR APPLICATION IS REJECTED?

- If your application is denied, the Director-General of Home Affairs must provide you with **written reasons** for the decision.
- Once you have received your rejection letter, you may lodge an **appeal** to the Minister of Home Affairs within **14 days**.
- The appeal must include (1) all materials from the original application, AND (2) the reason for the Director-General's refusal. This is yet another reason to keep a copy of your application.
- If your appeal is denied, you may then **apply directly to the Magistrate's Court in your district** for a decision with (1) all the materials from the original application, AND (2) the reason for the Minister's refusal. You have a right to legal representation when applying to the Magistrate's Court.

HOW LONG DOES THE APPLICATION TAKE?

Act 49 does not give a specific amount of time in which an application must be finalised. However, if your application takes longer than 3 months, you should follow up with the DHA to see why it is taking long.

You can follow up by going back to the office where you submitted your application, or calling the **Contact Centre of Home Affairs at 0800 601 190**, or emailing the Contact Centre at **hacc@dha.gov.za** and ask for the status of your application.

Keep a record of all your visits, calls and/or emails when following up on your application. If your application takes longer than 6 months, then we advise that you contact a transgender organisation or intersex organisation to assist you with your application and possibly link you with a lawyer to assist further.

WHAT HAPPENS AFTER YOUR GENDER MARKER/SEX DESCRIPTOR ALTERATION?

- If your application is successful, you will be notified by the DHA. You will be issued with a new ID number because there is a gender indicator on your ID number, as explained above. Your new ID number will reflect your correct gender.
- Unlike alterations of forenames, changes in gender marker/sex descriptor are not published in the Government *Gazette* due to the intimate nature of such alterations.
- You can therefore directly apply for your new ID, birth certificate and passport (if applicable) reflecting your correct personal details, as well as the confirmation letter confirming the alteration.
- The confirmation letter is important because you will need the confirmation letter to change your personal details at the bank, on your driver's license, student record, school and university qualifications, medical aid, insurance policies, bond registration, and at all other institutions that have captured your gender marker when offering services to you.

CAN YOU APPLY IF YOU ARE MARRIED IN TERMS OF THE MARRIAGE ACT?

Unfortunately, South African law provides for different types of marriages with different laws applicable to them. These marriages are also recorded in different registers. A marriage entered into in terms of the Marriage Act 25 of 1961, can only be between a man and a woman. If one spouse in such a marriage applies for alteration of their gender marker/sex description, such a marriage will end up being between two people of the same sex/gender. You may therefore have some problems with this at the DHA when applying for a gender marker/sex description alteration in terms of Act 49.

Luckily, our courts have said that marital status is not a relevant consideration when a person applies to alter their gender marker/sex description. If you are married in terms of the Marriage Act and would like to alter your gender marker/sex description, the DHA should therefore accept your application once you meet all the requirements as set out above. If you are told that you must divorce in order to apply in terms of Act 49, seek legal assistance immediately as this is unlawful.

HOW MUCH DOES IT COST TO APPLY FOR A FORENAME CHANGE AND A GENDER MARKER/SEX DESCRIPTION ALTERATION?

- ✓ You will need money to pay for 2 ID photos.
- ✓ R70 for a gender marker/sex description alteration application in terms of Act 49.
- ✓ R140 for forename change.
- ✓ R140 for your ID to be re-issued.
- ✓ R70 for confirmation letter of change of details forenames.
- ✓ R70 for confirmation letter of gender marker.
- ✓ Passport costs if applicable - R400 for first time application, R400 to apply for a passport with the amended details if you have your old passport, R800 if you don't.
- ✓ You may also spend money travelling to the DHA offices.

VISIT this page to see all the applicable costs <http://www.dha.gov.za/index.php/fees>



This booklet was developed as an information guide and training resource. It was developed by **Mandivavarira Mudarikwa, Amy-Leigh Payne and Petra Marais** on behalf of the Legal Resources Centre.

We are grateful to **Zoey Black** (Gender DynamiX) and **Estian Smith** (Triangle Project) for their assistance and input in finalising the booklet.

**ATTACHMENT 1: EXAMPLE OF REPORT BY
MEDICAL PRACTITIONER FOR A TRANSGENDER WOMAN
WHO RECEIVED FEMINISING HORMONE THERAPY**

[Name of medical practitioner and contact details]

TO: THE DEPARTMENT OF HOME AFFAIRS

**CLINICAL REPORT ON JANE DOE (CURRENT NAME ON ID IS
JOHN DOE) ID NUMBER 880808 8888 088**

This report confirms that Jane Doe has been a patient of mine since 2017. I have assessed Jane Doe, and confirm that she is a transgender woman. She commenced feminising hormone therapy in 2018 and will continue with feminising hormone therapy lifelong. As a result of the feminising hormone therapy, Jane Doe's body now appears physically female.

This letter further confirms for the purpose of the Sex Description and Sex Status Act 49 of 2003 that Jane Doe qualifies for alteration of her sex descriptor as provided for in the Act.

Please do not hesitate to contact me at email@email.com if you have any further questions relating to this report.

Yours faithfully,

[Medical practitioner's signature]

****NOTE: This letter can be adapted to suit different applications
in the two categories of those who can apply we mentioned above****

ATTACHMENT 2: EXAMPLE OF REPORT BY MEDICAL PRACTITIONER FOR AN INTERSEX WOMAN

[Name of medical practitioner and contact details]

TO: THE DEPARTMENT OF HOME AFFAIRS

CLINICAL REPORT ON JANUARY FEBRUARY ID NUMBER 880808 8888 088

This report confirms that January February has been a patient of mine since 2017. I have physically examined January February, and confirm that she is an intersex woman.

This letter further confirms, for the purpose of the Sex Description and Sex Status Act 49 of 2003, that January February qualifies for alteration of her sex descriptor.

Please do not hesitate to contact me at email@email.com if you have any further questions relating to this report.

Yours faithfully,

[Medical practitioner's signature]

****NOTE: This letter can be adapted to suit different applications in the two categories of those who can apply we mentioned above****

**ATTACHMENT 3: EXAMPLE OF REPORT
BY MEDICAL PRACTITIONER FOR AN INTERSEX WOMAN**

[Name of Social Worker/Psychologists and contact details]

TO: THE DEPARTMENT OF HOME AFFAIRS

**CLINICAL REPORT ON JANUARY FEBRUARY
ID NUMBER 880808 8888 088**

This report confirms that January February has been a patient of mine since 2017. I confirm that January February identifies as a woman and has lived as a woman continuously for the past two years.

This letter further confirms, for the purpose of the Alteration of Sex Description and Sex Status Act 49 of 2003, that January February qualifies for alteration of her sex descriptor.

Please do not hesitate to contact me at email@email.com if you have any further questions relating to this report.

Yours faithfully,

[Social Worker/Psychologist's signature]

****NOTE: This letter can be adapted to suit different applications in the two categories of those who can apply we mentioned above****

