

**Commentary on the Alteration of Sex Description and Sex Status Act No:
49 of 2003**

In accordance with the celebration of ten years of democracy and freedom, transgender, transsexual and intersex people are finally recognised within the South African legal system.

Some Definitions

- a) Gender Characteristics – means the ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of prostheses or other means;
- b) Gender Reassignment – means the process undertaken for the purposes of reassigning a person’s sex, by changing physiological or other sexual characteristics and includes any part of this process.
- c) Intersexed means any person whose congenital sexual differentiation is atypical, to whatever degree.
- d) Primary sexual characteristics – means the form of the genitalia at birth;
- e) Secondary sexual characteristics – means those which develop throughout life and which are dependant upon the hormonal base of the individual person;
- f) Sexual characteristics – means primary or secondary sexual characteristics or gender characteristics

This Alteration of Sex Description and Sex Status Act, hereinafter referred to as the Act, provides for the alteration of the sex description of certain individuals in certain circumstances and to amend the Births and Deaths Registration Act, 1992.

The Act makes provision for the alteration of sex description in the birth register of any person whose sexual characteristics have been altered by surgical or medical treatment or by evolution through natural development resulting in gender reassignment, or any person who is intersexed. These persons may apply to the Director – General of the National Department of Home Affairs for said alteration.

This application must be accompanied by the following:

- The Birth Certificate of the applicant;
- In the case of a person who has successfully completed the gender reassignment surgery, by reports stating the nature of any procedures carried out any treatment applied prepared by the medical practitioners who carried out the procedures and applied the treatment or by a medical practitioner with experience in the carrying out of such procedures and the application of such treatment;
- In every case in which sexual characteristics have been altered resulting in gender reassignment, be accompanied by a report, prepared by a medical practitioner who has medically examined the applicant in order to establish his or her sexual characteristics; and
- In the case of intersexed persons, the application must be accompanied by: a) a report prepared by a medical practitioner corroborating that the applicant is intersexed; and b) a report prepared by a qualified psychologist or social worker corroborating that the applicant is living and has lived stably satisfactorily for an unbroken

period of at least two years, in the gender role for an corresponding to the sex description under which he or she seeks to be registered.

In the event that the Director General refuses the application, he or she must furnish the applicant with written reasons for the decision. The applicant may, if the application is refused, appeal to the Minister of Home Affairs against the decision taken by the Director-General. The appeal must be lodged within 14 days after the decision by the Director-General was made known and must be accompanied by the above-mentioned documents and the Director-General's reasons for the refusal. If the appeal is refused, the applicant may apply to the magistrate of the district in which he or she resides for an order directing the change of his or her sex description. The appeal must be accompanied by the abovementioned documents as well as the reasons for the Minister's refusal.

The appeal before a magistrate is conducted in chambers. The magistrate may request the applicant to furnish all documents and such additional proof as the magistrate may require. If the application is granted, the magistrate must issue an order directing the Director General to alter the sex description in the birth register of the person named in the order, i.e. the applicant.

The Order for Alteration of Sex Description

If the Director-General grants the application, he or she must proceed in terms of Section 27A of the Act. A person whose sex description has been altered, is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such alteration. Rights and obligations that have been acquired by or accrued to such a person before the alteration of his or her sex description are not adversely affected by the alteration.