



Australian Government

JULY | 2013

Australian Government
Guidelines on the **Recognition of
Sex and Gender**

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Introduction

1. The Australian Government recognises that individuals may identify and be recognised within the community as a gender other than the sex they were assigned at birth or during infancy or as an indeterminate sex and/or gender, and this should be recognised and reflected in their personal records held by Australian Government departments and agencies.
2. The goal of the Guidelines is to:
 - a. develop a consistent sex and gender classification system for Australian Government records
 - b. develop a consistent standard of evidence for people to change or establish sex/and or gender on personal records, and
 - c. maintain consistent collection of sex and/or gender information across Australian Government departments and agencies.
3. The Guidelines provide guidance to Australian Government departments and agencies on the collection, use and amendment of sex and/or gender information in individual personal records.
4. Increased consistency in the way the Australian Government collects and records sex and gender will strengthen Australia's identity security system, the integrity of agency records and the accuracy of individual personal records, in line with the Australian Government's approach to identity security.¹
5. These Guidelines support the Australian Government's introduction of legal protections against discrimination on the grounds of gender identity and intersex status in Commonwealth anti-discrimination law² and the Australian Government passport policy for applicants who are sex and gender diverse.³
6. The collection, use, storage and disclosure of all personal information, including sex and gender information by departments and agencies are regulated by the Information Privacy Principles in the Privacy Act 1988.
7. Consistent with the Australian Public Service Values, all Australian Government departments and agencies will treat all people with dignity and respect, regardless of their sex and/or gender identity.
8. These Guidelines apply to all Australian Government departments and agencies.

1 Australia's identity security framework is underpinned by the National Identity Security Strategy and associated documents. For more information please see the Attorney-General's Department website www.ag.gov.au/identitysecurity

2 The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 is currently before Parliament. If passed, the *Sex Discrimination Act* (SDA) will provide protection from discrimination on the grounds of gender identity and intersex status.

3 Under the passport policy for applicants who are sex and gender diverse, sex reassignment surgery is not a prerequisite to issue a passport in a new gender. Birth or citizenship certificates do not need to be amended for sex and gender diverse applicants to be issued a passport in their preferred gender. A letter from a medical practitioner certifying that the person has had, or is receiving, appropriate clinical treatment for gender transition to a new gender, is intersex and does not identify with the sex assigned to them at birth, is acceptable evidence of gender identity. A passport in a new sex may also be issued to applicants who have undergone sex reassignment surgery and have registered their change of sex with Registrars of Births, Deaths and Marriages or the Department of Immigration and Citizenship. A passport may be issued to intersex, transgender and/or gender diverse applicants in M (male), F (female) or X (indeterminate/unspecified/intersex). For more information please see the Australian Passports Office website www.passports.gov.au/web/sexgenderapplicants.aspx.



Background

9. In 2009, the Australian Human Rights Commission released *Sex Files: the legal recognition of sex in documents and government records*. The Commission recommended the Australian Government consider development of national guidelines concerning the collection of sex and gender information from individuals.
10. These Guidelines have been prepared following a review of how and why Australian Government departments and agencies collect sex and gender information from members of the public.

Sex and Gender

11. For the purposes of these Guidelines, *sex* refers to the chromosomal, gonadal and anatomical characteristics associated with biological sex.
12. Being intersex is a biological condition. People who are intersex may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or the other sex. Intersex is always congenital and can originate from genetic, chromosomal or hormonal variations.
13. *Gender* is part of a person's personal and social identity. It refers to the way a person feels, presents and is recognised within the community. A person's gender refers to outward social markers, including their name, outward appearance, mannerisms and dress.
14. A person's sex and gender may not necessarily be the same. Some people may identify as a different gender to their birth sex and some people may identify as neither male nor female. People who are intersex may identify as male or female or as neither.
15. The preferred Australian Government approach is to collect and use *gender* information. Information regarding sex would ordinarily not be required.
16. Information about people's sex should only be collected where there is a legitimate need for that information, e.g. if a service or benefit to be provided to the individual is directly related to biological sex. However, the necessity of a medical service or associated benefit should be determined by the physical need, regardless of a person's recorded sex and/or gender.
17. Departments and agencies should ensure when they collect sex and/or gender information they use the correct terminology for the information they are seeking. Please see the Key Terms section of these Guidelines for additional information.



Sex and Gender Classification in Australian Government Records

18. Where sex and/or gender information is collected and recorded in a personal record, individuals should be given the option to select M (male), F (female) or X (Indeterminate/ Intersex/Unspecified).
19. This classification system is consistent with the Australian Government passports policy for applicants who are sex and gender diverse and Australian Standard AS4590 – Interchange of client information.⁴

Proof of Sex and Gender/ Amending Sex and Gender in Government Records

20. Consistent with Information Privacy Principle 7,⁵ departments and agencies must take all reasonable steps to ensure the personal information in their records is accurate. This includes a person's sex and/or gender information.

21. Where a person requests the sex and/or gender information on their personal record be amended, or where it is necessary to verify a person's sex and/or gender to confirm identity or determine eligibility for a service or entitlement, the Australian Government will recognise any one of the following as sufficient evidence of their sex and/or gender:
 - a) a statement from a Registered Medical Practitioner or a Registered Psychologist⁶
 - b) valid Australian Government travel document, such as a Valid Passport, which specifies their preferred gender, or
 - c) an amended State or Territory birth certificate, which specifies their preferred gender. A State or Territory Gender Recognition Certificate or recognised details certificate showing a State or Territory Registrar of Birth Deaths and Marriages has accepted a change in sex will also be seen as sufficient evidence.
22. Sex reassignment surgery and/or hormone therapy are not pre-requisites for the recognition of a change of gender in Australian Government records.

⁴ Standards Australia, AS4590-2006: Australian Standard- Interchange of client information, 2008, p 22. Available at www.standards.org.au/

⁵ Information Privacy Principle 7 - Amendment of documents containing personal information

1. An agency having control of a document containing personal information must take all reasonable steps, including by the making of an appropriate amendment, to ensure the personal information—

a) is accurate; and

b) having regard to the purpose for which it was collected or is to be used and to any purpose directly related to fulfilling the purpose, is relevant, complete, up to date and not misleading.

2. Subsection (1) applies subject to any limitation in a law of the State providing for the amendment of personal information held by the agency.

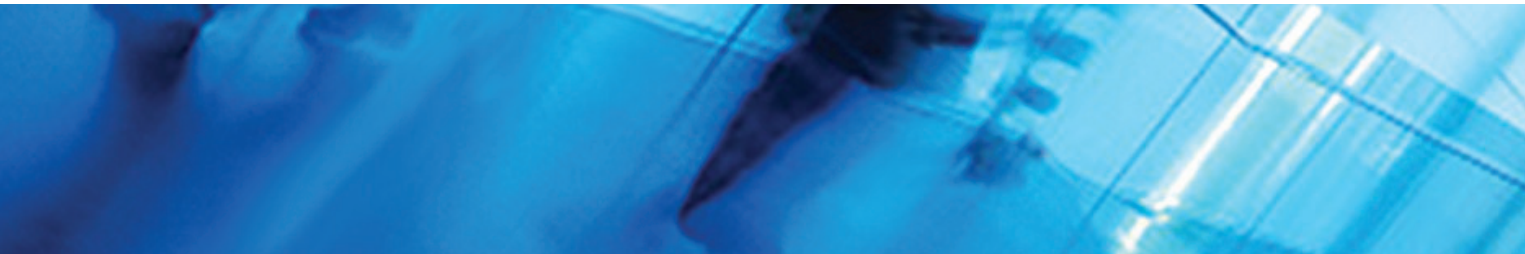
3. Subsection (4) applies if—

a) an agency considers it is not required to amend personal information included in a document under the agency's control in a way asked for by the individual the subject of the personal information; and

b) no decision or recommendation to the effect that the document should be amended wholly or partly in the way asked for has been made under a law mentioned in subsection (2).

4. The agency must, if the individual asks, take all reasonable steps to attach to the document any statement provided by the individual of the amendment asked for.

⁶ See statement template at Appendix A. For definition of Registered Medical Practitioner or a Registered Psychologist please see section on Key Terms.



23. Conflicts in official documents may arise for people who are intersex or transitioning from one gender to another. When departments and agencies are presented with conflicting information about a person's sex or gender, they may seek further information and supporting evidence to corroborate a person's identity or social footprint, in accordance with the Australian Government's approach to identity security.
24. Where there is conflicting gender information about a person's sex or gender on the Australian Government and State or Territory documents held by a person, the Australian Government travel document or the latest dated document will take precedence in establishing a person's gender for Australian Government purposes.
25. While individuals are encouraged to progressively ensure their documents reflect their preferred gender, there are legitimate reasons people may hold conflicting documents. For example, people who identify primarily as X may want to hold a passport in a particular gender to ensure their safety while travelling overseas.

Collecting Sex and Gender Information for the Purposes of Data

26. Consistent with Information Privacy Principle 1,⁷ all departments and agencies that collect sex and/or gender information should closely examine whether such information is necessary to perform their specific function or for broader government statistical or administrative purposes. Where such information is not necessary, this category of information should be removed from forms or documents.
27. Collecting and maintaining sex and gender-disaggregated data is crucial to the ongoing monitoring of equality between men and women. These Guidelines are not designed to restrict departments or agencies from collecting sex and gender information where this data is necessary for the performance of their specific function, is used to inform the development of policy or delivery of services or contributes to sex and gender-disaggregated data.
28. Consistent with Information Privacy Principle 2,⁸ where Australian Government departments and agencies are collecting sex and/or gender information, they will ensure individuals are generally aware of the purpose for which the information is being collected.

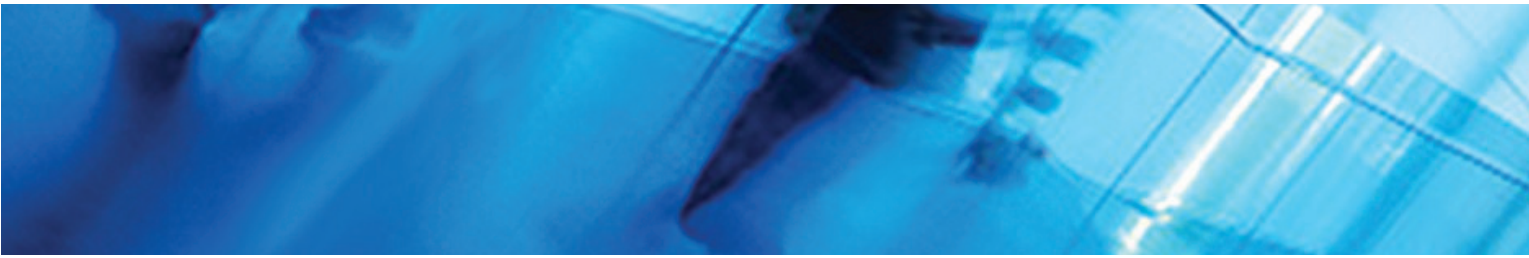
7 Information Privacy Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

8 Information Privacy Principle 2 - Solicitation of personal information from individual concerned

Where:

- a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- b) the information is solicited by the collector from the individual concerned; the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:
 - c) the purpose for which the information is being collected;
 - d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
 - e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first mentioned person, body or agency to pass on that information.



29. Where departments and agencies are collecting sex and/or gender information for a statistical or other purpose not linked with individual personal records (i.e. information is collected but not recorded in an individual record), individuals should also be given the option to select Male, Female or X (Intersex/Indeterminate/Unspecified), in line with the sex and gender classification system set out in paragraph 18.
30. Where it is necessary to verify sex or gender to confirm identity or determine eligibility for a service or entitlement, the evidence set out in paragraph 21 is sufficient proof of a person's sex or gender.
31. Departments and agencies should refrain from making assumptions about a person's sex and/or gender identity based on indicators such as their name, voice or appearance.

Privacy and Retaining Records of Previous Sex and/or Gender

32. The strict controls contained in Information Privacy Principles 10⁹ and 11¹⁰ relating to the use and disclosure of personal information possessed or controlled by a department or agency, apply to information relating to a person's sex and/or gender as they do to all other forms of personal information.
33. To protect identity security in line with the Australian Government's approach to identity security, departments and agencies should ensure the continuity of the record of an individual's identity. Only one record should be made or maintained for an individual, regardless of a change in gender or other change in personal identity.

9 Information Privacy Principle 10 - Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
 - a) the individual concerned has consented to use of the information for that other purpose;
 - b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - c) use of the information for that other purpose is required or authorised by or under law;
 - d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
 - e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

10 Information Privacy Principle 11 - Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - b) the individual concerned has consented to the disclosure;
 - c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - d) the disclosure is required or authorised by or under law; or
 - e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

34. Consistent with Information Privacy Principle 4,¹¹ to protect the privacy of an individual who has changed their sex and/or gender on Australian Government records, departments and agencies should ensure an individual's history of changes of sex, gender or name is subject to appropriate security controls and is recorded and accessed only when the person's history is relevant to a decision being made.

Queries and Complaints

35. Where information about a person's sex and/or gender is unclear, the department or agency should communicate directly with the individual to resolve the issue.

36. Departments and agencies should record and monitor complaints or queries made relating to the recording of sex and/or gender information in order to assess the success of policy changes and inform future policy in this area.

37. Departments and agencies should use the information from the monitoring of complaints to address concerns and amend relevant policies.

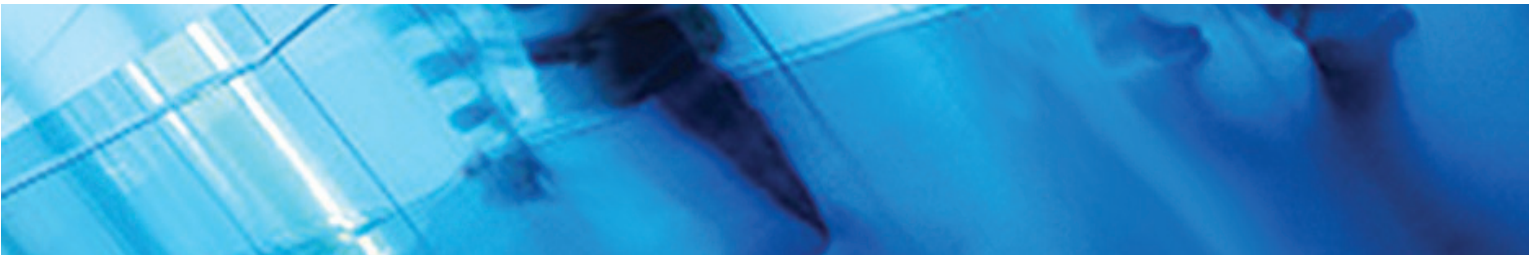
38. The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 will allow the Australian Human Rights Commission to investigate and resolve complaints of discrimination, harassment and bullying based on a person's gender identity and intersex status. This Bill is currently before Parliament. Should it pass, individuals concerned about discrimination may be referred to the Complaints Information Service on 1300 656 419, 02 9284 9888, 1800 620 241 (TTY toll free) or the Commission's website www.humanrights.gov.au/complaints-information for information on how to make a discrimination complaint.

39. Individuals concerned about breaches of privacy may be referred to the Office of the Australian Information Commissioner (OAIC) on 1300 363 992 or directed to the Office's website - www.oaic.gov.au - which has useful information on how to make a privacy complaint.

11 Information Privacy Principle 4 - Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.



Commencement and Implementation

40. These Guidelines will come into force on 1 July 2013. All Australian Government departments and agencies will progressively align their existing and future business practices with these Guidelines by 1 July 2016.
41. Implementing these Guidelines requires departments and agencies to undertake a review of legislative, regulatory or policy requirements relating to the collection of sex and/or gender information and amend these as required to ensure compliance. This includes information collected and records kept by departments and agencies as employers. Where there is no legislative or regulatory authority or policy or business need for the information, the requirement should be removed within three years.
42. Implementation will also require the redesign of paper and electronic forms. Departments and agencies should pay particular attention to the use of titles in forms and personal records. It may be necessary to retrain staff to use updated forms and systems.
43. Departments and agencies that engage with members of the public on a regular basis should implement policies to uphold the Guidelines, including developing training for front-line staff relating to terminology, definitions and sensitivities associated with the intersex, transgender and/or gender diverse community. The Guidelines should also be incorporated into diversity training.
44. Departments and agencies that engage with members of the public on a regular basis should also provide clear and accessible information on how sex and/or gender information can be changed on personal records in line with the Guidelines on their website or other media as appropriate.
45. Departments and agencies that do not currently have any policies in place to assist staff in managing relationships between the organisation and members of the intersex, transgender and/or gender diverse community should develop such policies, including appropriate references to the Guidelines.
46. Where departments and agencies are jointly responsible with the States and Territories for the maintenance and record of individuals' information, including sex and/or gender, those agencies will work with the States and Territories to seek their agreement to implement these Guidelines.
47. Where Departments are responsible for setting policy for other departments or agencies they should work with these departments or agencies to ensure the Guidelines are reflected in policy and practice.

Where to go for More Information

48. Further assistance in implementing these guidelines or understanding the issues addressed can be obtained at the Attorney-General's Department website www.ag.gov.au/genderrecognition.
49. The Attorney-General's Department welcomes feedback on these Guidelines. You can provide feedback via email on SexandGender@ag.gov.au.

Key Terms

Please note there may be multiple or different definitions of the following terms. The following definitions have been provided for the purposes of these Guidelines.

Gender/preferred gender

Gender is part of a person's social and personal identity. It refers to each person's deeply felt internal and individual identity and the way a person presents and is recognised within the community. A person's gender refers to outward social markers, including their name, outward appearance, mannerisms and dress. A person's sex and gender may not necessarily be the same. An individual's preferred gender may or may not correspond with the sex or gender assigned at birth and some people may identify as neither male nor female.

Gender diverse

The term 'gender diverse' is used to recognise people who do not fall within the traditional binary notions of sex and gender (male and female). This may include people who identify as a gender different to their birth sex or as neither male or female. Other terms commonly associated with gender diverse people include trans, transgender, transsexual, gender queer, pan-gendered, androgynous and inter-gender. Some cultures may have their own terms for gender identities outside male and female.

Indeterminate

A person of indeterminate sex or gender is someone whose biological sex cannot be unambiguously determined or someone who identifies as neither male nor female.

Information Privacy Principles

Section 14 of the *Privacy Act 1988* (Cth) contains the Information Privacy Principles which apply to Australian government departments and agencies.

Intersex

An intersex person may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or the other sex. Intersex is always congenital and can originate from genetic, chromosomal or hormonal variations. Environmental influences such as endocrine disruptors can also play a role in some intersex differences.



Registered Medical Practitioner or Registered Psychologist

For the purposes of these Guidelines:

- **Registered Medical Practitioner** means a medical practitioner registered with the Medical Board of Australia (or equivalent overseas authority). Registered medical practitioners may specialise in various medical fields including, but not limited to, surgery, urology, gynaecology, endocrinology, psychiatry and general practice.
- **Registered Psychologist** means a Psychologist who holds General registration status with the Psychology Board of Australia (or equivalent overseas authority).

Statements from persons not registered with the Medical Board of Australia or the Psychology Board of Australia (or equivalent overseas authorities) such as, but not limited to nurse practitioners, health practitioners and natural practitioners are not acceptable evidence of sex and/or gender.

Sex

For the purposes of these Guidelines, sex refers to the chromosomal, gonadal and anatomical characteristics associated with biological sex.

Social footprint

A social footprint is evidence of a person's identity operating in the community. A social footprint can be established using credentials or other information (changes of name, details of education/qualifications, electoral register entries, employment history, and interactions with organisations such as Australia Post, banks, financial institutions and State and Territory public authorities) which establish a person's use of an identity in Australia over time.

Statement from a Registered Medical Practitioner or Registered Psychologist

A statement signed by a Registered Medical Practitioner or Registered Psychologist (General Registration) in the prescribed form at Appendix A. See also definition of Registered Medical Practitioner or Registered Psychologist for more information.

Transgender/trans

A person who is trans or transgender is someone who identifies as a gender that is different to the sex assigned to them at birth. People who are transgender are born exclusively male or female, but emotionally or psychologically identify as a different sex. This includes people who identify as a sex other than their birth sex regardless of whether they have undergone hormone therapy, sex reassignment surgery or other physical procedures.

Valid Passport

A valid passport is a current Australian Passport or other travel document that was valid for at least two years on issue.

Appendix A – Statement from Registered Medical Practitioner or Registered Psychologist template

This sample text is for a statement from a Registered Medical Practitioner or Registered Psychologist (General registration) certifying the sex and/or gender of a person who is intersex, transgender or gender diverse.

1. For people who are transitioning genders:

This statement should be used for applicants who have had, or are receiving, appropriate clinical treatment (including but not limited to hormone therapy or sex reassignment surgery) for gender transition and are seeking to update their personal record with their preferred gender of MALE or FEMALE.

Registered Medical Practitioner/Psychologist letterhead (including full name and contact details)

I, <medical practitioner/psychologist's full name> have a clinician/patient relationship with, and have treated, <name of patient> (OR have a clinician/patient relationship with <name of patient> and have reviewed and evaluated their history).

<Name of patient> has had, or is receiving, appropriate clinical treatment for gender transition to the new gender of (specify new gender male or female).

Signature of Medical Practitioner
Signature block of
Medical Practitioner/ Psychologist

Registration number from the Medical Board of Australia or Psychology Board of Australia (or equivalent overseas authority)

2. For people who are intersex/ indeterminate/unspecified

This statement should be used for applicants who are intersex or gender diverse.

Registered Medical Practitioner/Psychologist letterhead (including full name and contact details)

I, <medical practitioner/psychologist's full name> have a clinician/patient relationship with, and have treated, <name of patient> (OR have a clinician/patient relationship with <name of patient> and have reviewed and evaluated their history).

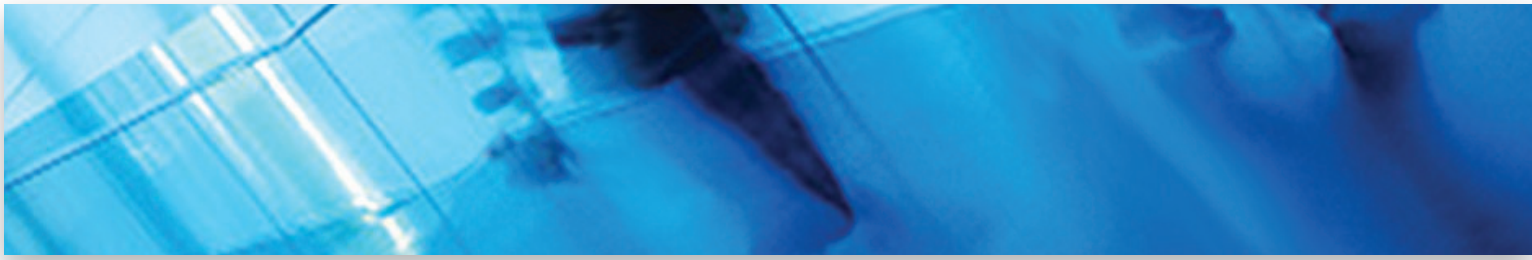
<Name of patient> is of <indeterminate/intersex/unspecified> sex and lives in the gender of (specify gender male or female).

OR

<Name of patient> is of <indeterminate/intersex/unspecified> sex and lives in an <indeterminate/intersex/unspecified> gender.

Signature of Medical Practitioner
Signature block of
Medical Practitioner/ Psychologist

Registration number from the Medical Board of Australia or Psychology Board of Australia (or equivalent overseas authority)







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