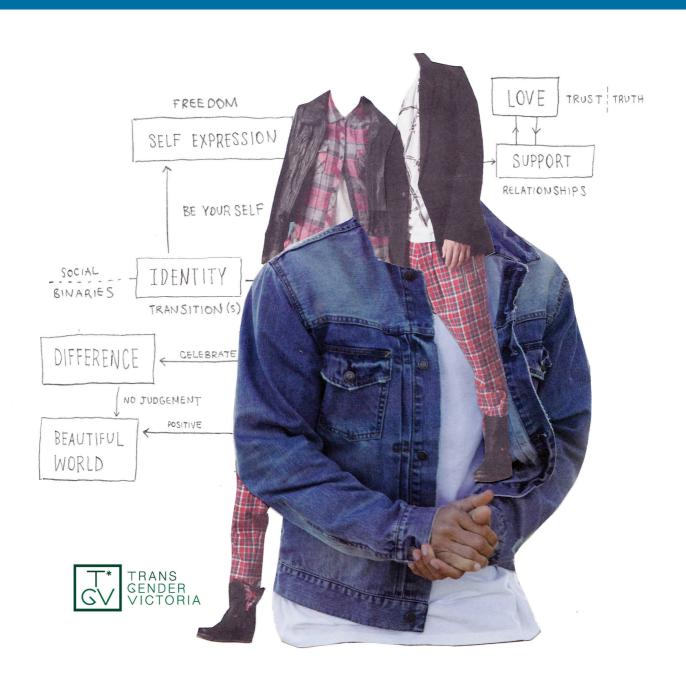


TRANS AND GENDER DIVERSE PEOPLE AND IDENTITY DOCUMENTS



Disclaimer: The information contained in this fact sheet is only intended as a guide to the law and should not be used as a substitute for legal advice. We strongly recommend that you seek legal advice from a qualified legal practitioner.

Note: This information applies to the law as it applies in the State of Victoria, Australia.

The information contained in this fact sheet is current as at 2013

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Monash Gender Dysphoria Clinic for resourcing assistance.

TRANS AND GENDER DIVERSE PEOPLE AND IDENTITY DOCUMENTS

Identity documents are governed by both State and federal law, and a lot of the time, the process depends on whether you have had surgery (i.e. sex affirmation surgery).

For trans and gender diverse people (including transsexual and transgender people), there can be a range of identity documents that you may want to change so that they properly reflect your gender and name. This guide is not intended to cover issues for people experiencing intersex. Here are some of the most common areas where people may want to amend their documents.

At present a number of agencies will only change records relating to your sex/gender marker if you have had surgery. However, the introduction of new guidelines that apply to Australian Government departments and agencies (see below), means that surgery as a pre-requisite to changing records will become less common. It is also currently possible to change most of your identity documents even if you haven't had surgery. In a number of cases, changing your name and gender details will involve separate processes or applications.

This fact sheet applies to adults who want to change their identity documents in the State of Victoria. This means people aged 18 years or over. If a child wants to change any of their identity documents, they should seek legal advice.

CHANGING YOUR NAME

You can apply to the Victorian Registry of Births, Deaths and Marriages to change your name if you were born in Victoria or you live in Victoria.

http://www.bdm.vic.gov.au/home/change+of+name/change+your+name/

The supporting documents required to be submitted as part of your application differ slightly depending on whether or not you were born in Victoria. If you were not born in Victoria you need to provide proof that you have been a resident in Victoria for the last twelve months.

If you were born in Victoria, you will receive a new standard Birth Certificate. If you were born outside Victoria, you will receive a Change of Name Certificate.

You should know that the Registrar may refuse to change your name to something that:

- is considered to be obscene or offensive; or
- includes numbers or symbols without phonetic significance (such as 1 or @ or !);
- · resembles an official title or rank recognised in Australia; or
- is otherwise contrary to the public interest.

You should also know that the Registrar will generally not accept more than one name change in a 12 month period.

The cost of an Application to Register a Name Change is \$95.70 (as at September 2013), which includes a standard birth certificate. There is also a priority service (5 working days) that currently costs an additional \$95.00. These rates are subject to change.

Once your name has been changed you should update all identity documents and records to show your new name. This includes your driver's licence, medicare, citizenship, Centrelink, credit cards, passport, bank account, electoral enrolment details, utility accounts (water, electricity, gas etc) and records with your superannuation and insurance providers.

Change of name by repute or usage

You can also change your name without taking any formal steps because Victorian law does not prevent a change of name by "repute or usage" (e.g. how you are known in the community). However, you should be aware that it is not possible to change your other identity documents if you don't have any documents to prove that you have formally changed your name.

AMENDING YOUR BIRTH CERTIFICATE/OBTAINING A RECOGNISED DETAILS CERTIFICATE

If you were born in Victoria and have had sex affirmation surgery, you can apply to the Victorian Registry of Births, Deaths and Marriages to have your sex/gender reflected on your Birth Certificate.

If you were not born in Victoria, but you currently live in Victoria (and have done so for the past 12 months) and have had sex affirmation surgery, you can apply to the Victorian Registry of Births, Deaths and Marriages for a Recognised Details Certificate that recognises your change in sex. This certificate will state your name and sex after sex affirmation surgery. If you wish to have your sex changed on the birth register and receive a new birth certificate, you will need to apply in the State/Country in which you were born.

In either case, you need to complete an 'Application for Alteration of Sex in Birth Register or a Recognised Details Certificate'. Please note that if you also want to change your name, you should do that first (see information above).

http://www.bdm.vic.gov.au/home/births/sex+affirmation/alteration+of+sex+application+form

Your new Birth Certificate will not show that you have changed your sex/gender or your former name (if any). A Recognised Details Certificate will also not show these details. However, you can ask the Registrar to include other details about your birth if you want to.

To apply, you must:

- not be married (either never married, widowed or divorced); and
- have undergone sex affirmation surgery.

"Sex affirmation surgery" is defined in the Births, Deaths and Marriages Registration Act 1996 to mean "a surgical procedure involving the alteration of a person's reproductive organs carried out for the purpose of assisting the person to be considered to be a member of the opposite sex."

You will need to provide specific types of evidence of your surgery. These requirements are set out in the application form.

The cost of an Application for Alteration of Sex in the Birth Register is currently \$66.50 and \$29.20 for each certificate issued (as at September 2013). The cost of an application for a Recognised Details Certificate is \$95.70 (as at September 2013), which includes a certificate.

Your new Birth Certificate can be used anywhere in Australia. In countries where a change of sex/gender is not legally recognised, you may not be able to use your new Birth Certificate and you might need to tell them that your gender has been changed or use the old Birth Certificate. You should seek legal advice about what you need to do if you are travelling to a country where a change of sex/gender is not recognised.

Can you register a change of sex on the Register to something other than male or female?

In the recent decision of Norrie v NSW Registrar of Births, Deaths and Marriages1, the New South Wales Court of Appeal considered whether the Registrar of Births, Deaths and Marriages in New South Wales could register a person's sex as anything other than 'male' or 'female'. The Court of Appeal considered the meaning of the word 'sex' in the context of the Births, Deaths and Marriages Registration Act 1995 (NSW) and found that, in line with developing medical and social ideas about gender, the word 'sex' in that Act was not a binary term meaning either male or female. The Court accordingly found that it was open to the Registrar to register a person's change of sex from male (or female) to a category that was neither male nor female. It was therefore open to the Registrar, depending on the evidence put before it, to register the applicant's sex as non-specific.

The Registrar is seeking to appeal this decision so this may not be the final outcome of this matter.

Although the application of this decision is limited to the New South Wales legislation, this case might inform future interpretation of this issue in respect of the equivalent Victorian legislation.

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¹ [2013] NSWCA 145.

OBTAINING OR AMENDING A PASSPORT

Government guidelines that apply to the Australian Passport Office (part of the Department of Foreign Affairs and Trade (DFAT)) in respect of issuing passports in a gender different to a person's birth gender allow you to obtain a passport identifying your affirmed gender even if you:

- have had sex reassignment surgery but have chosen not to obtain a new Birth Certificate or Recognised Details Certificate; or
- have had sex reassignment surgery but are unable to obtain a new Birth Certificate or Recognised Details Certificate because you are married; or
- have not had sex reassignment surgery.

As well as satisfying the below requirements, you must also meet the usual passport application requirements, including providing proof of your identity, Australian citizenship status and pay the applicable fee/s.

If you have had sex reassignment surgery

If you have had surgery you may choose to obtain a new Birth Certificate or Recognised Details Certificate and this may form the basis of your application for a new Australian passport in your affirmed gender. However, it is not necessary to obtain an amended/new Birth Certificate or Recognised Details Certificate to support your application.

If you have had surgery, but have not obtained an amended/new Birth Certificate or Recognised Details Certificate, or you cannot obtain one because you are married, you can still apply for a passport in your affirmed gender. You will need to provide a letter/statement from your registered medical practitioner certifying that you have had or are receiving medical treatment for transition to a new gender in support of your application for an Australian passport in your affirmed gender (see below for required content of this letter).

If you have not had sex reassignment surgery

If you have not had surgery and are receiving appropriate clinical treatment for gender transition to a new gender, you can apply for a new Australian passport in your affirmed gender on the basis of a letter/statement from your registered medical practitioner certifying that you have had or are receiving medical treatment for transition to a new gender (see below for required content of this letter).

If you are travelling overseas for the purpose of having surgery (i.e. sex affirmation surgery) you can apply for a passport in your affirmed gender on the basis of a letter/statement from your registered medical practitioner certifying that you have had or are receiving medical treatment for transition to a new gender (see below for required content of this letter).

Please note that even if you fall outside these guidelines, you can call the Australian Passport Information Service on 131 232 and ask them to refer your case to the

Australian Passport Office for review. Applications that fall outside the policy guidelines will be considered on a case-by-case basis.

Requirements for a letter/statement from a registered medical practitioner

If you will be providing a letter/statement from your registered medical practitioner in support of your application for a new Australian passport, you need to make sure that the letter addresses the following requirements:

- 1. The letter states that you have had, or are receiving, appropriate clinical treatment for gender transition to a new gender, or you are intersex and do not identify with the sex assigned to you at birth.
 - The phrase 'appropriate clinical treatment' does not have a specific meaning and will be determined by your registered medical practitioner.
- 2. You must obtain the letter from a 'registered medical practitioner'. This means a doctor registered with the Medical Board of Australia (or an equivalent overseas authority). Examples include your general practitioner or the surgeon who performed your sex reassignment surgery (if you have had surgery or are planning to have surgery), as well as urologists, gynaecologists, endocrinologists and psychiatrists.
 - The Australian Passport Office will not accept a letter from a person who is not registered with the Medical Board of Australia (e.g. a psychologist, nurse practitioner, health practitioner or natural practitioner) or an equivalent overseas authority.
- 3. The letter must be a signed original and printed on letterhead paper for your registered medical practitioner.

You need to make sure that the letter includes the following information:

- your medical practitioner's full name and contact details;
- your medical practitioner's registration number, specifically AHPRA number ("MED000 ...")
- a declaration (e.g. a specific statement) that your medical practitioner has a doctor / patient relationship with you, and has treated you or has reviewed and evaluated your medical history; and
- a declaration that either: (a) you have had, or are receiving appropriate clinical treatment for gender transition to your affirmed gender and specifying the new gender of male or female; or (b) you are intersex and live in the gender (male/female) or are of indeterminate sex.

Please refer to the DFAT website for a sample letter/statement from a registered medical practitioner: https://www.passports.gov.au/web/sexgenderapplicants.aspx or contact the Australian Passport Information Service on 131 232.

DOCUMENTS OF IDENTITY – WHETHER OR NOT YOU HAVE HAD SURGERY

Whether or not you have had surgery you can apply for a Document of Identity, with the sex field left blank. A Document of Identity is valid for up to three years.

If you decide to apply for a Document of Identity, DFAT will write to you and tell you that:

- some countries will not accept a Document of Identity as a valid travel document;
- some countries might view a Document of Identity as suspicious, and might delay or harass you; and
- a body search might be embarrassing.

DFAT will want you to write back to them, and say that you have received the letter from them, and that you agree to obtain a Document of Identity.

For more information about passports and Documents of Identity please refer to: https://www.passports.gov.au/Web/SexGenderApplicants.aspx and/or contact the Australian Passport Information Service on 131 232.

Changing your driver's licence

To change your name on your driver's licence, you need to visit a VicRoads Customer Service Centre in person and present original documents that show evidence of the name change (such as a Change of Name Certificate from the Victorian Registry of Births, Deaths and Marriages). You should be aware that VicRoads will keep a record of your old name on their system as an alias.

For more information, please refer to:

http://www.vicroads.vic.gov.au/Home/Licences/RenewReplaceOrUpdate/UpdateYourDetails/ChangeOfName.htm

Although your gender does not appear on your driver licence, VicRoads is required to record your gender and title. To notify VicRoads of a change of gender, you do not need to have completed sex affirmation surgery. You will, however, need to supply documentation such as an Alteration of Sex in Birth or Recognised Details Certificate or a letter from a registered medical practitioner certifying that you are or have been receiving appropriate clinical treatment for gender transition.

For more information and the full list of documents that may be supplied, please refer to: http://www.vicroads.vic.gov.au/Home/Licences/RenewReplaceOrUpdate/UpdateYourDetails/ChangeOfGender.htm

Once approved, Vic Roads will change the sex indicator on your licence record, your title to your preference and, if you have changed your appearance, take a new photo and issue a new licence to you.

Centrelink

If you have changed your name you need to update your records with Centrelink. You will need to provide specific types of original documents, depending on the nature of benefits that you are receiving, or are applying to receive.

You may also be required to notify Centrelink that you have changed your sex/gender in some circumstances.

Please refer to Centrelink's website for more information and relevant contact details. http://www.centrelink.gov.au

Medicare

To change your name and/or gender with Medicare you need to visit your local Medicare office.

To change your name you will need to take your current Medicare card and formal documents to show that you are now known by a different name. For example, you could take your driver's licence, new Birth Certificate or other legal document.

To change your gender details you will need to take your Medicare card and appropriate supporting documentation, which include:

- an amended state or territory birth certificate that specifies your sex or 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;
- a statement from your registered medical practitioner or psychologist confirming you have undergone surgery;
- a valid Australian Government travel document specifying your sex or preferred gender (this can be an Australian passport or a passport from a foreign country).

For more information, please refer to:

http://www.humanservices.gov.au/customer/enablers/medicare/medicare-card/updating-your-personal-details-on-a-medicare-card

You should be aware that Medicare may divide treatments according to sex/gender. However, the risk of this occurring has been reduced following the removal of all references to sex/gender from the description of Medicare services. Transgender support groups may be able to advise of people within Medicare who may be able to assist with specific inquiries about treatments and entitlements.

Australian Tax Office (ATO)

You can change your name with the ATO by phoning 13 28 61 or by completing a "change of name and address advice for individuals" form:

http://www.ato.gov.au/Individuals/Ind/Change-of-details-for-individuals/

For more information please refer to:

http://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Your-tax-file-number/Updating-your-details-with-

us/?default=&page=2#Name,_address,_contact_details_and_nominating_a_representative

If you have had surgery you can also change your gender details with the ATO.

If you have not had surgery the ATO can:

- update your title to one that is not gender-specific, or
- remove the title from the record.

The ATO will not change gender details over the phone. You need to write to:

Australian Taxation Office PO Box 9942 MOONEE PONDS VIC 3039

Your letter needs to include:

- the name and address that the ATO would have been using for you;
- your new name (and title if required);
- a request that the ATO recognise your reassigned gender;
- your signature; and
- supporting documentation.

The ATO will accept the following supporting documentation:

- your new birth certificate or Recognised Details Certificate confirming your correct gender; or
- a recognition certificate issued by a foreign government authority.

If you are in Australia, you need to provide the original document. Otherwise, you can provide a certified copy.

If you are unable to provide this documentation the ATO may accept a statutory declaration from two Australian doctors verifying that you have undergone surgery. Other details, including information about the doctors, needs to be included in the statutory declarations.

You may also visit an ATO shopfront to update your gender details. You must establish your identity and bring a supporting document from the list for mail requests, but it must be the original document (not a certified copy).

For more information please refer to:

http://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Your-tax-file-number/Updating-your-details-with-us/?default=&page=4#Phone

AMENDING YOUR RECORDS HELD WITH OTHER GOVERNMENT DEPARTMENTS

Victoria

You can apply to amend your records held by Victorian public sector organisations, including Victoria Police, the Department of Human Services and the Department of Justice.

If you establish that the personal information that a Victorian public sector organisation holds about you is incomplete, incorrect, or out of date, that organisation is usually required by Victorian privacy law to take reasonable steps to correct that information so that it is accurate, complete and up to date.

If you want to amend your records you should contact the relevant organisation. Your request should:

- be in writing:
- say that it is an application under the Information Privacy Act 2000 (Vic) and in particular, Information Privacy Principle 6 Access and Correction;
- include enough information so that the organisation can identify the document(s) that need to be changed;
- state the reasons why you believe the personal information about you in the document(s) is incomplete, inaccurate or out of date;
- provide evidence to support the complete, accurate and updated information (e.g. a copy of your new Birth Certificate); and
- include an address where they can send letters to you and/or any other way that you can be contacted (e.g. phone number or email).

The organisation is required to correct your information as soon as practicable, but no later than 45 days after receiving your request.

If your records have been amended, you should still be aware that Victoria Police might list your old name as an alias. This means that this name will come up if a criminal record search is conducted. This is the same for everyone that has had or been known by more than one name.

For more information please refer to the Office of the Victorian Privacy Commissioner's website: http://www.privacy.vic.gov.au/

You can also contact the Office of the Victorian Privacy Commissioner on 1300 666 444.

Commonwealth

You can apply to amend details on records about you that are in the possession or control of a Commonwealth Government agency, including the Federal Police, FaHCSIA, Centrelink, etc.

Commonwealth Government agencies are required by Commonwealth privacy law to make appropriate corrections, deletions and additions that are reasonable in the circumstances to ensure that the personal information about you in their records is accurate, relevant, up to date, complete and not misleading.

If you want to amend your records you should contact the relevant agency. Your application should:

- be in writing;
- say that it is an application under the Privacy Act 1988 (Cth) and in particular the Information Privacy Principles;
- include enough information so that the agency can identify the document(s) that need to be changed;
- state the reasons why you believe the personal information about you in the document(s) is incomplete, inaccurate, out of date or misleading;
- provide evidence to support the complete, accurate and updated information (e.g. a copy of your new Birth Certificate); and
- include an address where they can send letters to you and/or any other way that you can be contacted (e.g. phone number or email).

For more information please refer to the Office of the Australian Information Commissioner's website (Australian Government)

http://www.oaic.gov.au/privacy/privacy-news

You can also contact the Office of the Australian Information Commissioner on 1300 363 992.

Land ownership - Certificate of Title

To change your name on the Certificate of Title to any land you own in Victoria, you need to complete an Application for New Folio of the Register in accordance with the Transfer of Land Act 1958 (Vic). This application must be accompanied by a statutory declaration that confirms your change of name details.

http://www.dse.vic.gov.au/__data/assets/pdf_file/0008/158975/ApplicationforNewFoliooftheRegisternewCertificateofTitle-V-Feb-2013.pdf

These forms will change the recorded name on the Certificate of Title. You will also need to inform the local council and the water supply authority that the name on the title has changed.

For more information please contact Land Victoria on (03) 8636 2010 and/or refer to "Your Guide to Applying for a Certificate of Title":

http://www.dse.vic.gov.au/__data/assets/pdf_file/0006/103893/2010_Your_guide_to_applying_for_a_new_certificate_of_title.pdf

Leases

If you are renting a property and have an existing lease, then the lease will continue if you change your name. If you want to change your name on your lease, here are some options for doing this:

- Send your landlord or real estate agent some proof of your change of name and ask them to consent to change your name as it appears on the residential tenancy agreement.
- Send your landlord or real estate agent proof of your change of name, and ask
 them to annex it to your residential tenancy agreement. You can also request
 that any future correspondence be sent to you in your correct name.

It would probably be best to discuss either of these approaches with the landlord or real estate agent before you send the letter.

Citizenship

If you were born outside Australia, you may want to update the details on your Certificate of Citizenship.

You will need to complete: a Request for Amendment or Annotation to Personal Records (form 424C) http://www.immi.gov.au/allforms/pdf/424c.pdf

You will then need to complete an Application for Evidence of Australian Citizenship (form 119) http://www.citizenship.gov.au/applying/fees_forms_appeals/paper_apps/. The fee for this application is \$60.

You will need to provide supporting documents, such as a Change of Name Certificate or evidence of surgery.

For more information please refer to: http://www.citizenship.gov.au or contact 131 880 or 131 881.

Foreign documentation

Any documentation from an overseas country will be subject to the laws of that country. If you wish to change these, you should contact the relevant Embassy and/or get legal advice.

Wills, Enduring Guardianships or Enduring Powers of Attorney

If you have a will, an enduring power of attorney or an enduring guardianship document, you should make changes to these if you change your name.

Australian Electoral Commission

The Australian Electoral Commission (AEC) can change your name and sex/gender on your registered details. You do not need to have had surgery to change your records but

you need to provide your Australian driver's licence or other (specified) proof of identity documents.

You can change your records by completing an online application, completing a PDF form and returning it to the AEC or picking up a form at an AEC office, an Australian Post, Medicare or Centrelink service centre and returning it to the AEC.

For more information, please refer to: http://www.aec.gov.au/enrol/change-name.htm

Other identity documents

There are a number of other documents that you might want to or need to change when you change the official record of your name and sex/gender. These can include:

- University, TAFE and School qualifications
- Membership of Professional Bodies
- Insurance companies
- Licences/permits
- Banks and Credit Card providers
- Electricity, Gas and Phone Companies

Many of these organisations will have different policies around changing your records with them. If you have any records or identity documents from them, it is best to call the organisation and ask them about the process for changing your records held with them.

AUSTRALIAN GOVERNMENT GUIDELINES

In July 2013 the Australian Government Guidelines on the Recognition of Sex and Gender ('Guidelines') came into effect. The Guidelines apply to all Australian Government departments and agencies and these departments/agencies will have until 1 July 2016 to align their existing and future practices with them. The Guidelines have not yet been adopted by State and Territories including the State of Victoria.

The Guidelines provide direction to all Australian Government departments and agencies on the collection, use and amendment of sex and/or gender information recorded in personal records held by those departments/agencies.

The Guidelines aim to make it easier to establish or change your sex or gender in personal records by standardising the evidence required to establish a change of sex or gender by providing that any one of the following should be recognised as sufficient evidence of sex and/or gender:

- a statement from a Registered Medical Practitioner or a Registered Psychologist;
- a valid Australian Government travel document, such as a valid passport, which specifies your preferred gender; or
- a state or territory birth certificate or recognised details of a certificate showing a change of gender; and

The Guidelines also provide that where sex and/or gender information is collected and recorded in a personal record, you should be given the option to select M (male), F (female) or X (Indeterminate/Intersex/Unspecified).

Further, the guidelines indicate that sex reassignment surgery or hormone therapy should not be a pre-requisite for the recognition of a change of gender in Australian Government records.

For more information, refer to the Attorney-General's Department website: http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx

DISCRIMINATION UNDER FEDERAL LEGISLATION

Recent amendments to the *Sex Discrimination Act 1984* (Cth) that came into effect on 1 August 2013 have introduced legal protections against discrimination on the grounds of:

- sexual orientation;
- gender identity;
- intersex status; and
- relationship status.

The amendments mean that discrimination on these new grounds is unlawful in the same areas of life as for other grounds already covered by the Act, including employment, education and the provision of goods and services.

The definition of 'sexual harassment' in the *Sex Discrimination Act 1984* (Cth) was also extended by the amendments. A person's sexual orientation, gender identity, intersex status and relationship status are now circumstances that can be considered in determining whether sexual harassment has occurred.

The Australian Human Rights Commission can investigate and attempt to resolve complaints made under the *Sex Discrimination Act 1984* (Cth) through conciliation.

For information on how to make a discrimination complaint see: http://www.humanrights.gov.au/complaints/lodge-complaint

Please note that if you believe you have been discriminated against, you may also have entitlements under existing Victorian legislation.

CONTACTS

Victorian Registry of Births, Deaths and Marriages 1300 369 367 http://www.bdm.vic.gov.au/

Australian Passport Information Service 131 232 https://www.passports.gov.au/Web/index.aspx

VicRoads 131 171 www.vicroads.vic.gov.au

Centrelink

http://www.humanservices.gov.au/customer/information/centrelink-website?utm_id=7

Australian Tax Office
13 28 61
http://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Your-tax-file-number/Updating-your-details-with-us/

Land Victoria (03) 8636 2010

Medicare

http://www.humanservices.gov.au/customer/information/welcome-medicare-customers-website

Department of Immigration and Citizenship 131 880 or 131 881 http://www.immi.gov.au/

Department of Housing http://www.dhs.vic.gov.au/for-individuals/housing-and-accommodation

Australian Electoral Commission 132 326 http://www.aec.gov.au