

GENDER REASSIGNMENT AMENDMENT BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [6.51 pm]: I move —

That the bill be now read a second time.

The Gender Reassignment Amendment Bill 2018 seeks to amend the Gender Reassignment Act 2000 to allow a person to be issued with a recognition certificate, regardless of their marital status. The Gender Reassignment Act 2000 governs the process by which a person can obtain official recognition of a change of gender. A person may apply to the Gender Reassignment Board to be granted a recognition certificate that identifies the person as belonging to the sex to which they have been reassigned and which authorises the Registrar of Births, Deaths and Marriages to amend the sex recorded on the person's birth certificate to reflect their assumed gender.

In December 2017, the commonwealth Parliament enacted the Marriage Amendment (Definition and Religious Freedoms) Act 2017, which amended the Marriage Act 1961 to permit marriage between two people of the same sex. The amendment act also made consequential amendments to the Sex Discrimination Act 1984 to remove the statutory exemption in section 40(5) of the act, which expressly permitted states and territories to refuse to issue or alter a person's birth record of sex on the basis that they are married. The effective date for the removal of this exemption is 9 December 2018, from which date the operation of section 15(3) of the Gender Reassignment Act will be inconsistent with the marriage amendment act.

Currently, section 15(3) of the Gender Reassignment Act provides that a recognition certificate cannot be issued to a person who is married. The provision was originally intended to prevent an inconsistency from arising whereby two people of the same sex marry, which was not permitted under the Marriage Act prior to the commencement of the marriage amendment act. The bill removes the requirement for a person to be unmarried in order to obtain a recognition certificate, which authorises the registrar, upon application, to alter the record of their sex on their birth certificate. This current requirement forces a married person to choose between a birth certificate that reflects their reassigned gender and the maintenance of the legal relationship with their spouse, even when that relationship is ongoing. Such a choice can have both financial and emotional consequences for both people involved. The purpose of this bill is to fix an obvious anomaly in the Gender Reassignment Act that is technical in nature and will ensure consistency with the national same-sex marriage laws.

This bill, however, is only one aspect of the government's broader lesbian, gay, bisexual, transgender, intersex, queer equality agenda, especially with regard to facilitating and empowering people to reassign their correct gender as easily and with as much dignity as possible. The Gender Reassignment Act has been under increasing scrutiny and criticism in recent times on the basis that the criteria and process for obtaining recognition of gender reassignment in WA may have fallen behind legislative and policy developments at a federal and international level and become out of step with changing attitudes within society. Together with the Gender Reassignment Act, the Births, Death and Marriages Registration Act 1998 will also need to be scrutinised in light of how Western Australian law recognises a person's change of sex or a person's intersex status.

The McGowan government aims to ensure that the gender reassignment process is as streamlined, efficient and expedient as possible, with a minimum of bureaucracy, expense and unnecessary complication. To this end, the Attorney General has requested the Law Reform Commission of Western Australia to review and report on the inconsistencies between Western Australian and commonwealth legislation in relation to the recognition of a person's change of sex or intersex status. The review will also consider people who are transgender—identifying as male or female—as well as people who wish to have no gender recorded on their official documents. The terms of reference include consideration of whether additional classifications of sex should be introduced; the role of the Gender Reassignment Board and the Registrar of Births, Deaths and Marriages; criteria for determining a change of gender or intersex status and the evidence required to establish the criteria; change of gender requirements relating to children; and any other related matter. The Law Reform Commission of Western Australia is well suited for this task as wider consultation with community and advocacy groups concerning the overarching legal, social and policy issues underpinning the Gender Reassignment Act is required in this complex area of law. I eagerly anticipate the outcome of the commission's report, which will likely contain recommendations for significant legislative, structural and procedural change, and I look forward to considering the commission's recommendations. This bill is another example of the McGowan government's commitment to addressing the issues affecting access and equity for LGBTIQ Western Australians.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table an explanatory memorandum.

[See paper 2216.]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.56 pm
