

Gender Reassignment Amendment Bill 2015

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Western Australia

LEGISLATIVE COUNCIL

Gender Reassignment Amendment Bill 2015

A Bill for

An Act —

- **to amend the *Gender Reassignment Act 2000* to abolish the Gender Reassignment Board of Western Australia and confer on the State Administrative Tribunal jurisdiction to make recognition orders; and**
- **to amend the *Constitution Acts Amendment Act 1899* and the *Equal Opportunity Act 1984* as a consequence of this Act.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Gender Reassignment Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Gender Reassignment Act 2000* amended**

2 **3. Act amended**

3 This Part amends the *Gender Reassignment Act 2000*.

4 **4. Long title replaced**

5 Delete the long title and insert:

6
7 **An Act to allow the reassignment of gender and confer on**
8 **the State Administrative Tribunal jurisdiction to make**
9 **recognition orders.**

10
11 **5. Section 3 amended**

12 (1) In section 3 delete the definitions of:

13 ***Board***
14 ***equivalent certificate***
15 ***president***
16 ***recognition certificate***

17 (2) In section 3 insert in alphabetical order:

18
19 ***certified copy of a recognition order*** means a copy of a
20 recognition order that the executive officer of the
21 Tribunal has certified to be a true copy;

22 ***equivalent certificate*** means —

- 23 (a) a recognition certificate; or
24 (b) a certificate issued under a corresponding law
25 that corresponds to a recognition order;

26 ***recognition certificate*** means a recognition certificate
27 issued under this Act before the commencement day
28 (as defined in section 27) that identifies a person who
29 has undergone a reassignment procedure as being of
30 the sex to which the person has been reassigned;

s. 6

1 *recognition order* means an order made under this Act
2 that identifies a person who has undergone a
3 reassignment procedure as being of the sex to which
4 the person has been reassigned;

5 *Tribunal* means the State Administrative Tribunal.
6

7 (3) In section 3 in the definition of *Registrar* delete “1998.” and
8 insert:

9
10 *1998;*
11

12 **6. Part 2 deleted**

13 Delete Part 2.

14 **7. Part 3 heading replaced**

15 Delete the heading to Part 3 and insert:
16

17 **Part 3 — Recognition orders**
18

19 **8. Section 14 replaced**

20 Delete section 14 and insert:
21

22 **14. Applications for recognition orders**

23 (1) Where a person has undergone a reassignment
24 procedure (before or after the commencement of this
25 Act and within the State or elsewhere), application may
26 be made to the Tribunal for a recognition order.

- 1 (2) An application may be made under this section —
2 (a) by the person to whom the application relates;
3 or
4 (b) if that person is a child, by that child’s
5 guardian.
- 6 (3) A copy of the application must be served on —
7 (a) the Minister; and
8 (b) any other person who should, in the Tribunal’s
9 opinion, be served with notice of the
10 application.
- 11 (4) A decision of the Tribunal not to make a recognition
12 order in a proceeding does not preclude a further
13 application to the Tribunal by the applicant based on
14 additional or changed circumstances.

15 **15A. Hearing of application**

- 16 (1) A person referred to in section 14(3) who is served
17 with a copy of an application under that provision is
18 entitled to appear at the hearing of the application and
19 to make submissions to the Tribunal.
- 20 (2) Despite the *State Administrative Tribunal Act 2004*
21 section 61, the hearing of an application under
22 section 14 must be held in private.
23

24 **9. Section 15 amended**

- 25 (1) In section 15(1) delete “Board may issue a recognition
26 certificate” and insert:

27
28 Tribunal may make a recognition order
29

s. 9

- 1 (2) In section 15(1)(b) delete “Board” and insert:
2
3 Tribunal
4
- 5 (3) In section 15(2) delete “Board may issue a recognition
6 certificate” and insert:
7
8 Tribunal may make a recognition order
9
- 10 (4) Delete section 15(2)(b) and insert:
11
12 (b) the Tribunal is satisfied that it is in the best
13 interests of the child that the recognition order
14 be made.
15
- 16 (5) Delete section 15(3) and insert:
17
18 (3) A recognition order cannot be made in respect of a
19 person who is married.
- 20 (4) As soon as practicable after making a recognition
21 order, the Tribunal is to give the applicant a certified
22 copy of the recognition order.
23
- 24 Note: The heading to amended section 15 is to read:
25 **Making recognition orders**

1 **10. Section 16 replaced**

2 Delete section 16 and insert:

3

4 **16. Effect of recognition order or equivalent certificate**

5 An equivalent certificate or a certified copy of a
6 recognition order is conclusive evidence that the person
7 to whom it refers —

- 8 (a) has undergone a reassignment procedure; and
9 (b) is of the sex stated in the equivalent certificate or
10 the recognition order.

11

12 **11. Section 17 amended**

- 13 (1) In section 17(1) delete “a recognition certificate, or an
14 equivalent certificate issued under a corresponding law,” and
15 insert:

16

17 an equivalent certificate or a certified copy of a recognition
18 order

19

- 20 (2) Delete section 17(2).

- 21 (3) In section 17(3) delete “A certificate” and insert:

22

23 An equivalent certificate or a certified copy of a recognition
24 order

25

- 26 (4) After section 17(3) insert:

27

- 28 (4) A person must not make a statement knowing it to be
29 false or misleading in a material respect for the

s. 12

1 purposes of, or in connection with, an application
2 referred to in subsection (3).

3 Penalty for an offence under this subsection: a fine of
4 \$5 000.
5

6 Note: The heading to amended section 17 is to read:

7 **Registration of reassignment of gender**

8 **12. Section 19 amended**

9 (1) In section 19(1) delete “recognition certificate if it appears that”
10 and insert:

11
12 recognition order or a recognition certificate if it appears that
13 the order or
14

15 (2) In section 19(2) after “cancelling” insert:

16
17 a recognition order or
18

19 Note: The heading to amended section 19 is to read:

20 **Cancellation of orders or certificates obtained by fraud**

21 **13. Section 20 amended**

22 In section 20(5) delete the definition of *gender reassigned*
23 *person* and insert:

24
25 *gender reassigned person* means —

26 (a) a person in respect of whom a recognition order
27 has been made; or

28 (b) a person who has been issued with an
29 equivalent certificate;
30

1 **14. Sections 21 to 23 replaced**

2 Delete sections 21 to 23 and insert:

3

4 **21. Confidentiality of personal information**

5 (1) In this section —

6 *personal information* means information or an
7 opinion, whether true or not, about an individual whose
8 identity is apparent, or can reasonably be ascertained,
9 from the information or opinion;

10 *relevant person* means —

- 11 (a) a person who is, or has been, engaged in the
12 performance of functions under this Act; or
13 (b) an issuing authority under section 20; or
14 (c) a person who is acting, or has acted, on behalf
15 of an issuing authority under section 20.

16 (2) A relevant person must not disclose to any other
17 person, whether directly or indirectly, any personal
18 information obtained by reason of being a relevant
19 person.

20 Penalty: a fine of \$5 000.

21 (3) Subsection (2) does not apply to the disclosure of
22 information —

- 23 (a) for the purpose of, or in connection with,
24 performing functions under this Act or another
25 written law; or
26 (b) as required or allowed by this Act or another
27 written law; or
28 (c) with the written consent of the person to whom
29 the personal information relates; or
30 (d) in prescribed circumstances.

s. 15

1 (4) Subsection (2) is in addition to, and does not derogate
2 from, the provisions of the *State Administrative*
3 *Tribunal Act 2004* relating to the disclosure of
4 information and documents.
5

6 **15. Section 25 amended**

7 In section 25 delete “Board” (each occurrence) and insert:

8

9 Tribunal
10

11 **16. Sections 26 to 29 replaced**

12 Delete sections 26 to 29 and insert:

13

14 **26. Regulations**

15 The Governor may make regulations prescribing all
16 matters that are required or permitted by this Act to be
17 prescribed, or are necessary or convenient to be
18 prescribed for giving effect to this Act.
19

20 **17. Part 5 inserted**

21 At the end of Part 4 insert:

22

23 **Part 5 — Transitional matters**

24 **27. Terms used**

25 In this Part —

26 *commencement day* means the day on which the
27 *Gender Reassignment Amendment Act 2015* section 6
28 comes into operation;

1 *final period* means the period beginning on 1 July
2 immediately before the commencement day and ending
3 immediately before the commencement day;

4 *former Board* means the Gender Reassignment Board
5 of Western Australia established by section 5 of this
6 Act as in force immediately before the commencement
7 day.

8 **28. Former Board abolished**

9 On the commencement day, the former Board is
10 abolished and its members go out of office.

11 **29. Final report**

12 (1) The Minister is to appoint a reporting officer to make
13 and submit to him or her, as soon as is reasonably
14 practicable, but in any event not later than 4 months,
15 after the commencement day a report (the *final report*)
16 on the performance of the former Board's functions
17 during the final period.

18 (2) The Minister must cause copies of the final report to be
19 laid before each House of Parliament within 14 sitting
20 days after the Minister receives it.

21
22 **18. Schedules 1 and 2 deleted**

23 Delete Schedules 1 and 2.

1 **Part 3 — Consequential amendments to other Acts**

2 **19. *Constitution Acts Amendment Act 1899* amended**

3 (1) This section amends the *Constitution Acts Amendment Act 1899*.

4 (2) In Schedule V Part 3 delete the item for The Gender
5 Reassignment Board of Western Australia.

6 **20. *Equal Opportunity Act 1984* amended**

7 (1) This section amends the *Equal Opportunity Act 1984*.

8 (2) In section 4(1) delete the definition of ***gender reassigned***
9 ***person*** and insert:

10

11 ***gender reassigned person*** means —

12 (a) a person in respect of whom a recognition order
13 has been made under the *Gender Reassignment*
14 *Act 2000*; or

15 (b) a person who has been issued with an
16 equivalent certificate as defined in that Act;

17

18
