

GENDER REASSIGNMENT AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

Overview of the Bill

Since its commencement in 2000 the *Gender Reassignment Act 2000* has promoted equal opportunity in WA by enabling the Board to provide a legal recognition to persons who have undergone a gender reassignment procedure. The Act does so by providing the Board with the authority to:

1. receive and determine applications for gender reassignment; and
2. issue recognition certificates in suitable cases.

A recognition certificate is evidence that a person has undergone a reassignment procedure and is of the sex stated on the certificate. A successful applicant may register the certificate with the Registrar of Births, Deaths and Marriages to have their birth certificate amended and re-issued to reflect their reassigned gender.

The Board is currently comprised of a President, four members and an Executive Officer (who is also the Executive Officer of the State Administrative Tribunal (SAT)). The Board does not have its own offices or hearing rooms and presently utilises the SAT facilities to administer and hear applications. Over the last four financial years, the Board has sat sporadically, hearing between five to seventeen applications per year.

In 2013 a proposal was put forward to abolish the Gender Reassignment Board and transfer its functions to the State Administrative Tribunal. The rationale behind the proposal is summarised as follows:

- One of the principal aims in establishing the State Administrative Tribunal was to reduce the number of administrative decision making bodies in WA. It would therefore make sense if decisions associated with gender reassignment were also determined by this Tribunal;
- The determination of gender reassignment applications would sit comfortably within the human rights work undertaken by the State Administrative Tribunal;
- The number of jurisdictions dealing with gender reassignment matters through reviews and appeals would reduce thereby simplifying the process and reducing the cost to the community;
- As the Board utilises the facilities and resources of the State Administrative Tribunal this move would have a negligible impact upon applicants and current operations; and
- The Board has a very low caseload making it difficult to justify its existence as a standalone entity.

The merits of the proposal were accepted and the Gender Reassignment Amendment Bill 2015 drafted. When it comes into operation the Bill will ensure that there is greater consistency in the practice and procedure of administrative decision making in Western Australia.

Clause Notes

Part 1 – Preliminary

Clause 1 Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Gender Reassignment Act 2015*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

Part 1 comes into operation on the day which the Act receives Royal Assent.

The rest of the Act will come into effect on a day fixed by proclamation with the ability to nominate different dates for the provisions contained within the Act.

Part 2 – *Gender Reassignment Act 2000* amended

Clause 3 Act amended

This Part amends the *Gender Reassignment Act 2000*.

Clause 4 Long title replaced

This clause will replace the current title with a shorter version summarising the purpose of the Act and that jurisdiction to make recognition orders will rest with the State Administrative Tribunal.

Clause 5 Section 3 amended

Subclause (1) deletes the following terms from section 3 that will no longer be relevant when this Act comes into operation:

- *'Board'* - with the abolishment of the Gender Reassignment Board, this Term is no longer required.
- *'Equivalent certificate'* - the existing definition has been deleted and replaced with a new definition shown in subclause (2).
- *'President'* - refers to the President of the Gender Reassignment Board. This Office will cease with the abolishment of the Gender Reassignment Board.
- *'Recognition certificate'* the existing definition has been deleted and replaced with a new definition shown in subclause (2).

Subclause (2) provides the definitions of the terms that will have relevance once this Act comes into operation.

- *'Certified copy of a recognition order'* has been defined as a copy of a recognition order that the Executive Officer of the State Administrative Tribunal has certified to be a true copy.
- *'Equivalent certificate'* means a recognition certificate or a certificate issued under a corresponding law that corresponds to a recognition order.

- *'Recognition certificate'* means a recognition certificate issued under this Act before the commencement day (as defined in section 27), identifying a person who has undergone a reassignment procedure as being of the sex to which the person has been reassigned.
- *'Recognition order'* has been defined as an order made under this Act that identifies a person who has undergone a reassignment procedure as being of the sex to which the person has been reassigned.
- *'Tribunal'* has been defined as the State Administrative Tribunal.

Subclause 3 simply deletes *'1998.'* and inserts *'1998;'* to the definition of 'Registrar' to make allowance for the addition of the definition of Tribunal in subclause 2. .

Clause 6 Part 2 deleted

This clause deletes Part 2 of the Act as this Part relates to the establishment, function and operation of the Gender Reassignment Board which will be abolished once this Act is proclaimed.

Clause 7 Part 3 heading replaced

This clause provides that the heading of *'Recognition certificates'* be replaced with *'Recognition orders'*. The term 'certificates' has been replaced with 'orders' to provide consistency with section 85 of the *State Administrative Tribunal Act 2004*.

Clause 8 Section 14 replaced

The existing section 14 deals with how applications for recognition certificates are made to the Board and processed accordingly. This is being replaced by a new section 14 which determines how applications for recognition orders are to be made to the State Administrative Tribunal and processed accordingly.

Subsection (1) provides that a person who has undergone a reassignment procedure may make application for a recognition order to the State Administrative Tribunal.

Subsection (2)(a) and (b) provides who may make application for a recognition order.

Subsection (3) (a) and (b) specifies who must be served with a copy of the application. This will give the State Administrative Tribunal the authority to specify any other person to be served as deemed appropriate.

Subsection (4) provides that where a recognition order is not issued by the State Administrative Tribunal a further application may be made if an applicant's circumstances change or new information arises.

Section 15A relating to the hearing of applications is inserted. Subsection (1) makes provision for persons who are served with a copy of an application for a recognition order under clause 14(3) to appear at the hearing and make submissions to the State Administrative Tribunal.

Even though section 61 of the *State Administrative Tribunal Act 2004 (WA)* specifies that hearings of the Tribunal are to be public subsection (2) provides that the hearing of an application for a recognition order must be held in private. This is due to the sensitive nature of applications and to respect the privacy of applicants.

Clause 9 Section 15 amended (Making recognition orders)

Subclauses (1), (2) and (3) delete references to the Board in sections 15(1),15(1)(b) and 15(2) and replaces it with Tribunal. Reference to recognition certificate is also deleted in subclause (3) and replaced with recognition order.

Section 15(2) of the Act deals with applications made by a child. Subclause (4) deletes Section 15(2)(b) and reference to a recognition certificate and specifies that recognition orders be made if the Tribunal is satisfied that it is in the best interests of the child.

Subclause (5) deletes Section 15(3) and reference to a recognition certificate and specifies that recognition orders cannot be made for married persons. A new section 15(4) is inserted to stipulate that applicants must be given a certified copy of an order which will be required to legally change the gender registered on birth certificates.

Clause 10 Section 16 replaced

This clause is a rewrite of the existing Section 16 and includes reference to a certified copy of a recognition order rather than a recognition certificate.

Clause 11 Section 17 amended (Registration of reassignment of gender)

Subclause (1) provides in Section 17(1) to replace '*a recognition certificate, or an equivalent certificate issued under a corresponding law*' with '*an equivalent certificate or a certified copy of a recognition order*'.

Subclause (2) provides to delete Section 17(2) as this section no longer has relevance.

Subclause (3) provides in Section 17(3) to replace '*A certificate*' with '*an equivalent certificate or a certified copy of a recognition order*'.

Subclause (4) will insert Section 17(4) to provide a penalty of '\$5000' for *knowingly making a false or misleading statement associated with making an application referred to in subsection (3)*.

Clause 12 Section 19 amended (Cancellation of order or certificates obtained by fraud)

Subclauses (1) and (2) will amend Section 19 to delete a reference to a *recognition certificate* where relevant and insert '*recognition order*'.

Clause 13 Section 20 amended

This clause amends the definition of '*gender reassigned person*' in Section 20(5) to take into account that recognition order will replace the term recognition certificate

Clause 14 Sections 21 to 23 replaced

This clause deletes Section 21 as this makes reference to a review by SAT which will no longer be relevant. Sections 22 and 23 deal with confidentiality and making false and misleading statements and provide \$2000 penalties. These provisions will be deleted and updated to stipulate that personal information must not be disclosed by relevant persons (as defined). The penalty for doing so is \$5000.

Section 21(3) provides the circumstances where section 21(2) will not apply and section 21(4) makes allowance for the disclosure of information and documents under the *State Administrative Tribunal Act 2004 (WA)*.

Clause 15 Section 25 amended

This clause deletes 'Board' (each occurrence) in Section 25 and inserts 'Tribunal'.

Clause 16 Sections 26 to 29 replaced

This clause deletes section 26 which provides for the Governor to make regulations and inserts an updated section 26. Sections 27, 28 and 29 were previously omitted under the *Reprints Act 1984* and are to be deleted from the Act.

Clause 17 Part 5 inserted

This clause inserts Part 5 which specifies the transitional matters that must be addressed once section 6 of the *Gender Reassignment Amendment Act 2014* comes into operation.

Section 27 contains definitions of the terms used in this Part.

Section 28 specifies that on the day section 6 of the *Gender Reassignment Amendment Act 2014* comes into operation, the Gender Reassignment Board is abolished and its members go out of office.

Under section 13 of the Act (which will be deleted by clause 6) the Board must prepare an Annual Report and deliver it to the minister to present to Parliament. Section 29(1) provides that the Minister is to appoint an officer to prepare a final annual report on the performance of the former Board's performance during the final period.

Section 29(2) provides that the Minister must cause copies of the final annual report of the former Board to be laid before each House of Parliament within 14 days of receipt.

Clause 18 Schedules 1 and 2 deleted

This clause deletes Schedule 1 pertaining to the constitution of the Gender Reassignment Board and Schedule 2 which was previously omitted under the *Reprints Act 1984* (WA) s7(4)(e).

Part 3 – Consequential amendments to other Acts

Clause 19 Constitution Acts Amendment Act 1899 amended

Provides that the *Constitution Acts Amendment Act 1899* be amended at Schedule V Part 3 to delete the item for the Gender Reassignment Board of Western Australia.

Clause 20 Equal Opportunity Act 1984 amended

Provides that the *Equal Opportunity Act 1984* be amended at section 4 (1) to delete the definition of a gender reassigned person and replace it with the definition provided in this Act.