

Western Australia

## **Gender Reassignment Act 2000**

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## Gender Reassignment Act 2000

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Western Australia

## **Gender Reassignment Act 2000**

**An Act to allow the reassignment of gender and establish a Gender Reassignment Board with power to issue recognition certificates; to make consequential amendments to the *Constitution Acts Amendment Act 1899* and the *Births, Deaths and Marriages Registration Act 1998*; to amend the *Equal Opportunity Act 1984*<sup>2</sup> to promote equality of opportunity, and provide remedies in respect of discrimination, on gender history grounds in certain cases; and for connected purposes.**

*[Long title amended by No. 74 of 2003 s. 61(2).]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Gender Reassignment Act 2000*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

***adult*** means a person of or above the age of 18 years;

***Board*** means the Gender Reassignment Board of Western Australia established by section 5;

***child*** means a person under the age of 18 years;

***corresponding law*** means —

(a) a law of another State or of a Territory; or

(b) a law of another country,

declared by the regulations to be a corresponding law;

***equivalent certificate*** means a certificate issued under a corresponding law that corresponds to a recognition certificate issued under this Act;

***gender characteristics*** means the physical characteristics by virtue of which a person is identified as male or female;

***medical practitioner*** has the meaning given to that term in the *Medical Practitioners Act 2008* section 4;

***president*** means the president of the Board;

***reassignment procedure*** means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other gender characteristics of a person, identified by a birth certificate as male or female, so that the person will be identified as a person of the opposite sex and includes, in

relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's gender characteristics;

**recognition certificate** means a certificate issued 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;

**Registrar** means the Registrar of Births, Deaths and Marriages, referred to in section 5 of the *Births, Deaths and Marriages Registration Act 1998*.

*[Section 3 amended by No. 74 of 2003 s. 61(3); No. 22 of 2008 s. 162.]*

**4. Crown bound**

This Act binds the Crown.

## **Part 2 — Gender Reassignment Board**

### **5. Establishment and function of Board**

- (1) A board called the Gender Reassignment Board of Western Australia is established.
- (2) The functions of the Board are —
  - (a) to receive and determine applications for recognition certificates; and
  - (b) to issue recognition certificates in suitable cases.
- (3) The Board is to have a seal.
- (4) Schedule 1 has effect with respect to the constitution and proceedings of the Board.

### **6. President of Board**

- (1) The Governor is to appoint a person as president of the Board.
- (2) A person may be appointed as president only if he or she —
  - (a) is or has been a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia, or is or has been an Australian legal practitioner (within the meaning of that term in the *Legal Profession Act 2008* section 3) admitted for not less than 8 years; and
  - (b) in the case of a person who is a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia, has been recommended for appointment by the Chief Justice of Western Australia.
- (3) The Minister may appoint a person qualified to be appointed as president, to be the acting president of the Board during the illness, unavailability, or absence of the president, and while so appointed that person is to perform the functions of the president.

- (4) A person who is a Judge of the Supreme Court, the District Court, or the Family Court of Western Australia may be appointed to be the acting president of the Board only if he or she has been recommended for appointment by the Chief Justice of Western Australia.

*[Section 6 amended by No. 65 of 2003 s. 39(2); No. 21 of 2008 s. 666.]*

**7. Other Board members**

The Governor may appoint not more than 5 persons in addition to the president as members of the Board, and such persons are to include —

- (a) a medical practitioner;
- (b) a person who has undergone a reassignment procedure; and
- (c) a person with experience in equal opportunity matters.

**8. Arrangement of business**

- (1) The president —
- (a) is responsible for arranging the business of the Board; and
  - (b) subject to subsection (2), is to specify the members who are to perform the functions of the Board for the purpose of any particular matter.
- (2) The Board must be constituted by not less than 3 members.
- (3) The president may amend or revoke a specification made under subsection (1)(b).

**9. Remuneration and allowances of members**

- (1) Subject to subsection (2), a member may be paid such remuneration and travelling and other allowances as the Minister from time to time determines, on the recommendation of the Minister for Public Sector Management.

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- (2) A president who holds office as a Judge or any other member who holds a full-time position that is remunerated out of moneys appropriated by Parliament or by virtue of a written law, is not entitled to remuneration under subsection (1) but may be paid travelling and other allowances with the approval of the Minister.

**10. Practice directions**

- (1) The president may give practice directions for or in relation to the practice and procedure of the Board.
- (2) Practice directions —
- (a) may apply either generally or in a particular matter; and
  - (b) must not be inconsistent with this Act.

**11. Executive officer and other officers**

- (1) The chief executive officer is to arrange for the Board to have the services of an executive officer and such other officers as are necessary for the proper functioning of the Board.
- (2) The executive officer and other officers may perform functions for the Board in conjunction with the functions of any other office in the Public Service.

**12. Judicial notice of seal and signatures**

All courts, judges and persons acting judicially shall take judicial notice of —

- (a) the seal of the Board;
- (b) the signature of any person who is or has been the president or another member of the Board or the executive officer; and
- (c) the fact that that person is or was the president, member, or executive officer, as the case may be.

**13. Annual report**

- (1) As soon as practicable in each year and not later than 30 September, the Board must prepare and deliver to the Minister a report on the performance of its functions during the year which ended on the preceding 30 June.
- (2) The Minister must cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after the Minister receives it.
- (3) The Board may at any time report to the Minister on any matter relating to the operation of this Act.

### **Part 3 — Recognition certificates**

#### **14. Applications for recognition certificates**

- (1) Where a person has undergone a reassignment procedure (before or after the commencement of this Act and within the State or elsewhere), application may be made to the Board in accordance with this section for the issue of a recognition certificate.
- (2) An application may be made under this section —
  - (a) by the person to whom the application relates; or
  - (b) if that person is a child, by that child's guardian.
- (3) An application must be made in the prescribed form and accompanied by the prescribed fee.
- (4) A copy of the application must be served on —
  - (a) the Minister; and
  - (b) any other person who should, in the Board's opinion, be served with notice of the application.
- (5) A person referred to in subsection (4) is entitled to appear at the hearing of the application and to make submissions to the Board.
- (6) In proceedings on an application, the Board is not bound by the rules of evidence, but may inform itself on any matter in such manner as the Board thinks appropriate.
- (7) Proceedings under this section must be conducted in private.
- (8) The Board must determine every application by giving a written decision containing the reasons for that decision.
- (9) A decision of the Board not to issue a recognition certificate in a proceeding does not preclude a further application to the Board by the applicant based on additional or changed circumstances.

**15. Issue of recognition certificates**

- (1) Where an application under section 14 relates to an adult, the Board may issue a recognition certificate if —
- (a) one or more of the following applies —
    - (i) the reassignment procedure was carried out in the State;
    - (ii) the birth of the person to whom the application relates is registered in the State;
    - (iii) the person to whom the application relates is a resident of the State and has been so resident for not less than 12 months;

and

  - (b) the Board is satisfied that the person —
    - (i) believes that his or her true gender is the gender to which the person has been reassigned;
    - (ii) has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned; and
    - (iii) has received proper counselling in relation to his or her gender identity.
- (2) Where an application under section 14 relates to a child, the Board may issue a recognition certificate if —
- (a) one or more of the following applies —
    - (i) the reassignment procedure was carried out in the State;
    - (ii) the birth of the child is registered in the State;
    - (iii) the child is a resident of the State and has been so resident for not less than 12 months;

and

  - (b) the Board is satisfied that it is in the best interests of the child that the certificate be issued.

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- (3) A recognition certificate cannot be issued to a person who is married.

**16. Effect of recognition certificate**

- (1) A recognition certificate is conclusive evidence that the person to whom it refers —
- (a) has undergone a reassignment procedure; and
  - (b) is of the sex stated in the certificate.
- (2) An equivalent certificate issued under a corresponding law has the same effect as a recognition certificate under this Act.

**17. Registration of certificates**

- (1) Subject to this section, if a recognition certificate, or an equivalent certificate issued under a corresponding law, relating to a person whose birth is registered in the State is produced to the Registrar, the Registrar must —
- (a) register the reassignment of gender; and
  - (b) make such other entries and alterations on any register or index kept by the Registrar as may be necessary in view of the reassignment.
- (2) A person must not produce a recognition certificate to the Registrar —
- (a) within one month after the day on which the certificate is issued; or
  - (b) if an application is made for a review of the decision to issue the certificate, before the application is determined.

Penalty: \$2 000.

- (3) A certificate produced to the Registrar under this section must be accompanied by an application in a form approved by the Registrar and by the prescribed fee.

*[Section 17 amended by No. 74 of 2003 s. 61(4); No. 55 of 2004 s. 414.]*

**18. Issuing of new birth certificate**

- (1) After the reassignment of gender is registered by the Registrar and the register altered accordingly, a birth certificate issued by the Registrar for the person must, unless otherwise requested by the person or permitted by the regulations, show the person's sex in accordance with the register as altered.
- (2) Any such birth certificate must not include a statement that the person has changed sex.

*[Section 18 amended by No. 74 of 2003 s. 61(4).]*

**19. Cancellation of fraudulent recognition certificates**

- (1) The Supreme Court may cancel a recognition certificate if it appears that the certificate was obtained by fraud or other improper means.
- (2) The Supreme Court may, on cancelling a recognition certificate, make any consequential orders that may be necessary or desirable in the circumstances of the case.

## Part 4 — Miscellaneous

### 20. Issue of replacement qualification certificates

(1) If —

(a) a certificate of qualification refers to a gender reassigned person by a name that by common usage is not attributed to a person of the gender to which the person has been reassigned; and

(b) the person has adopted another name,

the issuing authority, on being satisfied of those matters, may issue to the person a replacement certificate showing the name referred to in paragraph (b).

(2) Except for the name of the person, a replacement certificate may be identical to the original certificate in every respect including the date of issue.

(3) A replacement certificate need not show that it is issued in place of the original but may do so if the issuing authority considers that it would not otherwise be practicable to issue the certificate.

(4) An issuing authority is not to be taken to have issued a false document by issuing a replacement certificate in accordance with this section.

(5) In this section —

*certificate of qualification* means a document that shows that a person has an authorisation or qualification or experience that is needed for or facilitates —

(a) the practice of a profession;

(b) the carrying on of a trade or business; or

(c) the engaging in of an occupation;

*gender reassigned person* means a person who has been issued with a recognition certificate or an equivalent certificate;

*issuing authority*, in relation to a certificate of qualification, means the authority that issued the certificate or a successor to that authority.

**21. Review**

- (1) An aggrieved person may apply to the State Administrative Tribunal for a review of a decision of the Board on an application for the issue of a recognition certificate.

*[(2)-(4) deleted]*

*[Section 21 amended by No. 55 of 2004 s. 415.]*

**22. Confidentiality**

- (1) A person who holds or formerly held a position involving duties related to the administration of this Act must not divulge confidential information obtained by virtue of that position except as may be required for the purposes of official duties, or as may be permitted in writing by the person to whom the information relates.
- (2) An issuing authority under section 20, or any person acting on its behalf, must not divulge confidential information obtained for the purposes of that section except as may be required for those purposes, or as may be permitted in writing by the person to whom the information relates.

Penalty: \$2 000.

*[Section 22 amended by No. 50 of 2003 s. 67(2).]*

**23. False or misleading statements**

A person must not make a statement knowing it to be false or misleading in a material respect for the purposes of, or in connection with, an application under this Act.

Penalty: \$2 000.

*[Section 23 amended by No. 50 of 2003 s. 67(2).]*

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**24.        Offences**

- (1) A prosecution for an offence against this Act cannot be commenced without the consent of the Attorney General.
- (2) In proceedings for an offence against this Act a document apparently signed by the Attorney General stating that the Attorney General consents to a particular prosecution is sufficient evidence, in the absence of proof to the contrary, to prove that consent.

**25.        Age**

If the age of a person is material to an application before the Board under this Act and there is no certain evidence of age, the Board may act on its own estimate of the age of that person.

**26.        Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for achieving the objects and giving effect to the purposes of this Act including —
  - (a) the practices and procedures to be followed on applications to the Board under this Act;
  - (b) the regulation of access to documents in the executive officer's possession or entries in registers or indexes kept by the executive officer relating to applications to the Board under this Act; and
  - (c) penalties not exceeding \$2 000 for a breach of, or non-compliance with, a regulation.
- (2) A regulation under subsection (1)(a) may be made only on the recommendation of or after consultation with the Board.

*[27.        Omitted under the Reprints Act 1984 s. 7(4)(g).]*

*[28, 29. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Schedule 1 — Constitution and proceedings of the Board**

[Section 5]

### **1. Term of office**

- (1) Subject to clause 2, a member holds office for such term as is specified in the member's instrument of appointment, and in the case of the president that term is not to exceed 5 years and in the case of any other member is not to exceed 3 years.
- (2) A member may from time to time be reappointed.
- (3) Despite subclause (1) and clause 2, where the term of office of a member has expired or the member has resigned, the member may, with the approval of the Minister, continue in office for the purpose of completing any function.

### **2. Resignation and removal**

- (1) A member may resign at any time by notice in writing delivered to the Governor.
- (2) The Governor may remove a member from office —
  - (a) if the member is an insolvent under administration as that expression is defined in the Corporations Law; or
  - (b) on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of the member's functions, proved to the satisfaction of the Governor.

### **3. Leave of absence**

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

### **4. Acts of acting president**

No act or omission of a person acting as president under this Act shall be questioned on the ground that the occasion for that acting had not arisen or had ceased.

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**5. President to preside**

- (1) The president shall preside at every meeting or proceeding of the Board.
- (2) The president is to determine any question relating to the admissibility of evidence or any other question of law or procedure at any meeting or proceedings of the Board.

**6. Use of seal**

- (1) The seal of the Board is to be —
  - (a) in a form determined by the Board;
  - (b) kept in such custody as the Board directs; and
  - (c) used only as authorised by the Board.
- (2) The seal of the Board is to be affixed to a document in the presence of the president and one other member of the Board and each of them must sign the document to attest that the seal was so affixed.

**7. Register of applications**

The executive officer is to keep a register in a form approved by the Board containing particulars of all applications for recognition certificates and the determination of those applications.

*[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]*

**Notes**

- <sup>1</sup> This is a compilation of the *Gender Reassignment Act 2000* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Gender Reassignment Act 2000</i>	2 of 2000	12 Apr 2000	19 Dec 2001 (see s. 2 and <i>Gazette</i> 18 Dec 2001 p. 6489)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 67</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 39</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 61</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 55<sup>3</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<b>Reprint 1: The Gender Reassignment Act 2000 as at 10 Feb 2006</b> (includes amendments listed above)			
<i>Legal Profession Act 2008 s. 666</i>	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008 s. 162</i>	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)

- <sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

- <sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5*, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.