



10 April 2024

Ms Tatijana Vukic  
Project Director  
Department of Justice  
Level 23, David Malcolm Justice Centre  
Perth WA 6000

By email to: Tatijana.Vukic@justice.wa.gov.au

Dear Ms Vukic

**Re: 'Appropriate clinical treatment' under the *Births, Deaths and Marriages (Sex or Gender Changes) Registration Amendment Act 2024 (WA)***

The Royal Australian College of Psychiatrists (RANZCP) WA Branch thanks you for your invitation to contribute to guidance material for doctors and psychologists about the recent reforms to processes for gender recognition in birth registration.

We welcome the reforms including the abolishment of the Gender Reassignment Board. The RANZCP's [position statement on the role of psychiatrists in providing care to trans and gender-diverse people](#), highlights the importance of using patient-preferred terminology when discussing issues of gender identity, sex, and sexuality with individuals who identify as trans and gender diverse or non-binary. In responding to this consultation, we sought feedback from our members, including psychiatrists with experience in assisting people to change their gender status in accordance with the previous Act.

The fact sheet and example statements are mostly successful in providing information about the new process. We provide several recommended changes to the wording of the fact sheet and additional clarifying paragraphs, in Appendix 1.

The Act is written in terms of 'sex or gender', and this is reflected in the documentation. Current wording within the fact sheets may lead to confusion by doctors or psychologists on whether they are being asked to support a patient to change their sex but not their gender – or their gender but not their sex – or neither. The clarifying statements we suggest will provide further guidance to doctors and psychologists on supporting applications for change of sex or gender registration.

Additional resources would help support doctors and psychologists in understanding why a person requires a legal change in their gender status, and that they can assist them, especially if they are assisting for the first time. We provide a recommended draft of the additional document, as 'frequently asked questions', attached to this letter for your consideration and inclusion in the information pack, in Appendix 2.

The list of proposed frequently asked questions in Appendix 2 is not exhaustive and would be improved through consultations with medicolegal specialists, people with lived experience, and other key stakeholders. In particular, the information pack should provide legal guidance to doctors and psychologists on two common questions likely to arise in the

medical professions:

- What steps can they take if the person requesting the legal change of sex or gender has committed criminal offences, and the doctor has concerns about the person's capacity to reoffend pending the sex or gender registration change?
- If a doctor or psychologist provides a "Statement in support of change of sex or gender", could the doctor or psychologist be held liable for any negative consequences?

The RANZCP would welcome any joint consultations or workshops with the Department and relevant groups to refine the information pack and any additional questions.

People seeking legal change in their gender status recorded at birth have the full right to evidence informed, person-centred and non-judgmental mental healthcare. As an organisation representing experts in complex mental health, the RANZCP welcomes further consultation with the Department on this matter.

If you have any questions regarding this submission, please contact Dr Jasmina Brankovich, WA Branch Policy and Advocacy Advisor, on [jasmina.brankovich@ranzcp.org](mailto:jasmina.brankovich@ranzcp.org).

I wish you all the best with the process reform and look forward to hearing more about the outcomes.

Yours sincerely



Dr Murugesh Nidyananda  
Chair, RANZCP Western Australia Branch Committee

## Appendix 1: Recommended changes to the draft fact sheet

- A clear statement in the opening paragraph of the fact sheet, such as: *“The Act is written using the term “sex or gender”. This is a single term, with a single meaning, which encompasses a range of understandings of the terms “sex” and “gender” in their legal and social senses. The doctor or psychologist is not being asked to choose one or distinguish between the two. Doctors and psychologists should use the term “sex or gender” consistently when they are preparing a “Statement in Support of Change of Sex or Gender.”*
- The fact sheet should also state that:
  - An adult over age 18 can apply to the Registrar to change their legal sex or gender
  - For a child over age 12, both/all legal guardians can apply to change the legal sex or gender of the child, if both/all legal guardians agree with the child that this is the right thing to do;
  - **or** for a child over age 12, one parent/legal guardian can apply to the Family Court to change the legal sex or gender of the child, if there is disagreement between parents/guardians;
  - **or** for a child over age 12, the child can apply to the Family Court to change their own legal sex or gender.
  - For a child under age 12, a parent/guardian can apply to the Family Court to change the legal sex or gender of the child.
- Pending the outcome of the review of the [Guardianship and Administration Act 1990](#), a correct statement about what is the course of action for legal recognition for an adult who has limited capacity under the Act, would be beneficial.

## Appendix 2: Proposed content for ‘frequently asked questions’ document

- What are the reasons why a person would want to change their legal sex or gender?

Some people are transgender (trans) or gender-diverse, that is, their gender identity does not comfortably align with their sex as registered at birth. For trans and gender-diverse people, having legal documentation which aligns with their identity is often essential to their wellbeing.

Some people are intersex (have biological differences of sexual development, which may be chromosomal, anatomical and hormonal differences of many kinds). Intersex people may be assigned a sex at birth, and they may decide to change this legal sex or gender when they are older, if they find that it does not align with their identity.

- When is the right time for a person to change their legal sex or gender?

This is a personal decision. A person who is trans or gender-diverse may decide to change their legal sex or gender at any time in their personal process of gender affirmation. Previously, laws often required that a person had to have hormone treatment and/or surgical gender-affirming treatment before changing their legal sex or gender. This is no longer the case. The Act does not require that a person should have hormonal or surgical treatments before changing legal sex or gender. Decisions about legal change of sex or gender are separate from decisions about medical or surgical gender-affirming treatment.

Some people do not feel that they want or need any kind of medical or surgical gender-affirming treatment, and these people can still change their legal sex or gender if this is necessary to their personal process of gender affirmation. Some people want to have hormonal and/or surgical treatment but decide to register their legal sex or gender change first; this is also allowable under the Act.

Furthermore, whether or not a person has registered a legal sex or gender change does not make a difference to clinical decisions about treatment they may request. Treatment decisions must occur in accordance with professional standards, and in a way which is person-centred, evidence-informed, and responsive to and supportive of a person’s individual needs.

- Which doctor or psychologist should provide the “Statement in support of change of sex or gender”?

The Act does not state what kind or duration of treating relationship is required. The doctor or psychologist must be able to state that they have provided clinical treatment for the applicant, and they must be able to confirm the applicant’s identity. Ideally a person may request this Statement from their usual treating doctor or psychologist who knows them well. However, there may be circumstances which make this impossible (for example, if a usual treating clinician has moved away or retired), and a doctor or psychologist can use their own good judgement as to whether they are able to provide a Statement for a particular patient based on their knowledge of that patient.

- What should the doctor or psychologist base their decision on?

The Act does not state how the doctor or psychologist should make their decision about whether it is appropriate to provide a “Statement in support of change of sex and gender.

In all cases, trans and gender-diverse people should be provided with person-centred, evidence-informed care in a supportive, ethical, non-judgmental, and culturally safe manner should they seek and require it.

We suggest that it is important to talk with the person about their decision for legal change of their sex or gender, ask them general questions about their life situation, and ask them respectful and open questions, for example:

- How do you describe your gender identity?
  - What are some of the reasons why you have decided to change your legal sex or gender at this time?
  - What are some of the reasons why this is important to you?
  - What are the benefits or positive effects that you expect from it?
  - Are there any risks or possible negative effects which could happen as a result of changing your legal sex or gender? Are there ways to reduce or prevent those?
  - What would be the risks or negative effects for you, if you were unable to complete legal change of sex or gender at this time?
  - Are there any big-picture issues about your family, your culture, your religion or spirituality, your work, occupation or study, which you have been thinking about while you have been making your decision about changing your legal sex or gender?
- What are the reasons why a doctor or psychologist might refuse to provide a “Statement in support of change of sex or gender?”

The Act does not set out examples of reasons. One reason could be if the doctor or psychologist anticipates that some serious harm could result. If the doctor or psychologist is concerned that the person may be requesting to change sex or gender because they are being coerced by some other person, rather than expressing their own genuine wish, this would be a reason to decline or take time to assess further. If the doctor or psychologist believes that the person is intoxicated, or otherwise is concerned they may have impaired capacity (for example, florid psychotic symptoms) at the time the person is making the request, the doctor or psychologist might initially decline to provide a statement on that date and arrange appropriate review and treatment if needed. For children and adolescents, the doctor or psychologist should satisfy themselves that it is the young person’s own genuine autonomous wish and request to change legal sex or gender.

- What if the doctor or psychologist has a conscientious objection to providing a “Statement in support of change of sex or gender” because of their own religious, spiritual or moral convictions?

The doctor or psychologist has the right to politely decline on these grounds. The doctor or psychologist has a duty to facilitate the patient to be able to see another professional who does not have these objections.