



# **Review of Western Australian Legislation in relation to the recognition of a person's sex, change of sex, or intersex status**

Submission by the Youth Pride Network to the Law  
Reform Commission of Western Australia

May 2018

## About the Youth Pride Network

The Youth Pride Network (YPN) is a newly-established peer-based advocacy group aiming to improve the lives and wellbeing of LGBTQIA+ young people in Western Australia. Membership of the YPN is exclusive to those aged between 12 and 25 who identify as LGBTQIA+, and is currently over 100 members strong. YPN is auspiced by the Youth Affairs Council of Western Australia (YACWA), the peak body for young people and the youth sector that supports them.

Established in February 2018, the YPN is self-directed and draws upon the views and expertise of its membership to address discrimination and isolation faced by LGBTQIA+ young people. YPN's work is governed by the principles of inclusivity, diversity, respect and equity.

## Terms of Reference

The Law Reform Commission of Western Australia is to review and report on the inconsistencies between Western Australian and Commonwealth legislation in relation to the recognition of a person's sex, change of sex or intersex status.

In carrying out its review, the Commission should examine and make recommendations as to any legislative reform necessary to the Gender Reassignment Act 2000 (WA) and the Births, Deaths and Marriages Registration Act 1998 (WA) to improve the process by which a person's change of sex or a person's intersex status is recognised by law in Western Australia and any consequential amendments including:

- a) whether another category for classification of sex should be introduced and how any new category should be designated;
- b) whether the role of the Gender Reassignment Board should be retained, or whether the Registrar of Births, Deaths and Marriages, or another person or body, should have responsibility for registering change of sex or intersex status;

- c) what criteria should be used to determine whether a change of sex or intersex status should be registered and what evidence is necessary to establish that criteria;
- d) any approval requirements which should apply in relation to applications by children to register change of sex or intersex status, including issues of parental consent, disputes between parents, and whether the child should be required to give informed consent; and
- e) any other related matter.

## Submission Process

This submission responds directly to the Terms of Reference of the Law Reform Commission's review. Reflecting the YPN's intent to represent the views and expertise of its membership to key decision-makers, this submission has been developed on the basis of extensive consultation with over 50 young people who identify as LGBTQIA+.

Consultation was conducted via an online survey based on the Review's Terms of Reference promoted through YPN's social media and mailing list in April and May 2018. Open-ended responses were encouraged so as to capture a diversity of opinion among respondents, which are occasionally represented in the text of this document.

As a submission representing the views and feedback of young people in Western Australia, this submission has been **endorsed by the Youth Affairs Council of Western Australia**.

## Background

In Australia, trans and gender diverse young people face significantly higher levels of discrimination compared to the general population. The 2017 *Trans Pathways Report* – surveying 859 trans young people across Australia – found that:

- 89% had experienced rejection from their peers
- 74% had experienced bullying
- 66% had experienced a lack of family support; and
- 60% had felt isolated from support services<sup>1</sup>.

Research has linked this experience of social, cultural and legal barriers, and discrimination to poorer mental health outcomes and higher rates of suicide<sup>2</sup>. Further, this link is acknowledged in many contemporary policy documents in Western Australia, including the state-wide suicide prevention strategy, *Suicide Prevention 2020: Together we can save lives*, which states the higher rates of mental illness and psychosocial distress among trans and gender diverse young people occur not to be due to their identity, but because of discrimination and the social, cultural and legal barriers they experience surrounding their gender<sup>3</sup>.

Among trans and gender diverse young people, rates of mental illness are significantly higher than the general population. One study suggests that 75% of trans and gender diverse young people have ever been diagnosed with depression while 72% had ever been diagnosed with anxiety<sup>4</sup>.

Undertaking legislative reform to reduce discrimination towards transgender and intersex individuals is therefore likely to reduce these overwhelming statistics.

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<sup>1</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Summary of results. Telethon Kids Institute, Perth, Australia.

<sup>2</sup> ACON. (2016). *The Impacts of Marriage Equality and Marriage Denial on the Health of Lesbian, Gay and Bisexual People*. Sydney: Centre for Social Research in Health.

<sup>3</sup> Bariola, E., Lyons, A., Leonard, W., Pitts, M., Badcock, P., & Couch, M. (2015). Demographic and Psychosocial Factors Associated with Psychological Distress and Resilience Among Transgender Individuals. *American Journal of Public Health*, 105(10), 2108-2116.

<sup>4</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Summary of results. Telethon Kids Institute, Perth, Australia.

Legislative reform may then impact upon social and organisational discrimination faced by transgender individuals and further contribute to a reduction in minority stress.

Previous studies have indicated that having a gender marker that is incongruent with an individual's affirmed gender identity often leads to discrimination from employers<sup>5</sup>. Not only this, but including this identifying information potentially puts the individual at risk of abuse, given high rates of transphobia among the general population.

It is also clear that when there are complicated legislative processes around identity, it gives license to other sectors to discriminate. These processes leave individuals in a vulnerable position, where their presentation and legal gender may not align with common societal understanding; thus, anybody who is privy to an individual's legal gender is capable of subjecting the individual to transphobic discrimination. Many young trans people in Western Australia have reported being unable to access the medical treatment they require because of the bureaucracy of the medical system – one enshrined in the current legislative process.

Currently, the state of gender and sex recognition in Western Australian legislation is archaic and detrimental to the wellbeing of transgender and intersex individuals. The Gender Reassignment Board – as presented in the *Gender Reassignment Act 2000* (WA) – is an institution that is seen by many trans young people as actively damaging their mental health. Abolishing it as soon as possible and replacing it with a simplified process may prove life-saving for trans young people for whom this process is onerous and dehumanising<sup>6,7</sup>.

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<sup>5</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Summary of results. Telethon Kids Institute, Perth, Australia.

<sup>6</sup> WPATH. (2017). *Submission on the matter of procedures for gender recognition for transgender people in Australia*. East Dundee: WPATH.

<sup>7</sup> Senate Standing Community Affairs References Committee. (2013). *Second Report: Involuntary or coerced sterilisation of intersex people in Australia*. Canberra: Commonwealth of Australia.

## Recommendations

**Recommendation 1:** That an 'X' marker be added to the current gender options of M and F on all systems to denote a gender identity that is outside of the gender binary.

**Recommendation 2:** The removal of the current medical and psychological requirements for people to update their gender marker – including the abolition of the Gender Reassignment Board.

**Recommendation 3:** That gender markers are removed from documentation wherever possible – including but not limited to birth certificates.

**Recommendation 4:** Self-identification as the sole criteria when registering a change to an individual's legal gender.

**Recommendation 5:** That a process for trans people under the age of 18 be created to allow them to change their legal gender, and that this process be developed in consultation with young trans people, and with a focus on their right to self-determination and identification.

**Recommendation 6:** Eliminate the requirement for individuals to be divorced in order to change their legal gender

## Response to Terms of Reference

- a) whether another category for classification of sex should be introduced and how any new category should be designated; Whether another category for classification of sex should be introduced and how any new category should be designated**

YPN supports the implementation of an X marker for people who identify outside of the gender binary of male and female. Recognising another gender has become increasingly common, with Australian citizens having the options for an X marker on their passport<sup>8</sup>. Around the world, countries including Malta, Ireland, Scotland, Canada, India, Nepal, New Zealand and Denmark have also added this option<sup>9</sup>. There is wide-spread legal recognition that a significant part of society identifies outside of the gender binary and that they deserve legal recognition.

Despite this legal recognition, there is a high level of misinformation and misunderstanding of people with these identities. Legally recognising these identities in WA would be an important step towards increasing awareness amongst institutions and the general population of gender identities outside of the gender binary.

100% of respondents to the YPN survey agreed that it was important for there to be a third gender marker option. Many expressed that they did not feel that they fit within the binary of male and female and the importance of the recognition of their identity. Many respondents also stressed that they would like to see the removal of gender markers entirely.

However, it is important that the creation of a third gender marker does not unintentionally harm intersex people. YPN would like to note the importance here of

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<sup>8</sup> Senate Standing Community Affairs References Committee. (2013). *Second Report: Involuntary or coerced sterilisation of intersex people in Australia*. Canberra: Commonwealth of Australia.

<sup>9</sup> Busby, M. (31 August, 2017). LGBT groups welcome change as positive step for rights of non-binary, intersex and transgender people. *The Guardian*. Available from <https://www.theguardian.com/world/2017/aug/31/canada-introduces-gender-neutral-x-option-on-passports>

the distinction between non-binary identities and intersex identities, as many people who are intersex do identify as male or female<sup>10</sup>.

The creation of a third category for intersex people may potentially have the effect of reducing the broad spectrum of intersex experiences to a single category, to assign intersex children to this category without their consent and to allocate medical professionals as the gate-keepers of that category<sup>11</sup>.

In accordance with the *Darlington Statement* and other intersex advocacy groups, YPN calls for intersex identities to not receive their own marker<sup>12</sup>. Intersex Human Rights Australia recommends assigning infants to either male or female at birth, but to supplement this with ensuring a simple administrative process for adults and consenting minors to change their gender marker is available<sup>13</sup>. This acknowledges that intersex traits are a naturally occurring biological phenomenon rather than a gender identity, and that intersex people will identify as one of many genders<sup>14</sup>.

These recommendations come from a desire to protect infants from discrimination based on their intersex status, as many institutions do not have a way to accommodate intersex infants and people with intersex characteristics are often not protected under anti-discrimination law<sup>15</sup>. Additionally, infants with intersex characteristics are not protected from non-consensual and deferrable medical interventions and research is beginning to arise that indicates that having a third category increases the likelihood that a parent will opt for these surgeries for their child<sup>16</sup>.

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<sup>10</sup> Intersex Human Rights Australia. (2012). *Why intersex is not a gender identity, and the implications for legislation*. Available from <https://ihra.org.au/17680/intersex-sex-not-gender-identity/>

<sup>11</sup> Intersex Human Rights Australia. (9 July, 2012). *Our response to the ACT law reform report "Beyond the Binary"*. Available from <https://ihra.org.au/20798/beyond-the-binary-in-act/>

<sup>12</sup> Intersex Human Rights Australia. (March, 2017). *Darlington Statement* (p. 2). Available from <https://ihra.org.au/wp-content/uploads/key/Darlington-Statement.pdf>

<sup>13</sup> Intersex Human Rights Australia. (2013). *Intersex People and Identification Documents*. Available from <https://ihra.org.au/wp-content/uploads/2014/01/OII-Aus-identification-docs.pdf>

<sup>14</sup> Intersex Human Rights Australia. (2012). *Why intersex is not a gender identity, and the implications for legislation*.

<sup>15</sup> Intersex Human Rights Australia. (2013). *Open birth sex assignments do not reduce surgical interventions*. Available from <https://ihra.org.au/24097/flexible-or-open-birth-sex-assignments-have-no-impact-on-surgical-interventions/>

<sup>16</sup> Intersex Human Rights Australia. (2013). *Open birth sex assignments do not reduce surgical interventions*. Available from <https://ihra.org.au/24097/flexible-or-open-birth-sex-assignments-have-no-impact-on-surgical-interventions/>



**Recommendation 1:** That an 'X' marker be added to the current gender options of M and F on all systems to denote a gender identity that is outside of the gender binary.

*“Yes. At least one option outside those two should exist on legal forms, as these categories do not adequately describe the varieties of human social identity.” - 22, Perth*

*“Yes. I feel that my gender identity of non-binary is not represented currently.” - 25, Leeming*

- b) whether the role of the Gender Reassignment Board should be retained, or whether the Registrar of Births, Deaths and Marriages, or another person or body, should have responsibility for registering change of sex or intersex status;**

The YPN recommends the abolition of the Gender Reassignment Board (the Board) established in the *Gender Reassignment Act 2000* (WA), and the implementation of a self-identification model for gender recognition.

Among our members and survey respondents, the Board was unanimously considered to be an unnecessary establishment that involves:

- Humiliation of the applicant, who is expected to qualify their gender through a standardised yet vague, reductionist system and to await the convention of the Board in response to their application to determine whether their gender is recognised (which can be infeasible for regional applicants).
- Exorbitant costs for applicants, including the application itself, transport, recommended letters and surgery or Hormone Replacement Therapy, which require further quantitative medical support to access these services.
- the revisiting of the Registry of Births, Deaths and Marriages (Registry) to update one's legal sex following a successful application, resulting in an archaic, ineffective and unreliable system.
- An ignorance of intersex individuals, threatening to impinge on their human rights.

As mentioned above, the application process that the Gender Reassignment Board requires was for many respondents a humiliating experience for applicants. Per the *Gender Reassignment Act 2000*, applications for a legal change of gender incorporate hearings by the Board on the matter<sup>17</sup>. In order to apply, the individual must have undergone a reassignment procedure, crudely defined as “a medical or surgical procedure... to alter the genitals and other gender characteristics of a person”, which

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<sup>17</sup> *Gender Reassignment Act 2000* (WA) s. 14(5). Available from [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_25526.pdf/\\$FILE/Gender%20Reassignment%20Act%202000%20-%20%5B02-a0-05%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_25526.pdf/$FILE/Gender%20Reassignment%20Act%202000%20-%20%5B02-a0-05%5D.pdf?OpenElement)

establishes a physical basis by which a transgender, gender diverse or intersex person's gender identity is held<sup>18</sup>. This is concerning as cisgender individuals are not subject to this system of judgement and do not have to conform to a particular set of physical standards to be recognised as their gender.

The application itself is not subject to a formal procedure; instead, it relies on members of the Board to find time in their own schedules to convene and assess the submission. Indeed, one respondent was informed upon applying that the Board members would not be contacted to determine their availability until an application was submitted. Moreover, the *Gender Reassignment Act 2000* specifies that during these hearings, "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" when adjudicating on an application<sup>19</sup>.

This explicitly allows the Board to establish their own discretionary standards of gender that an applicant has to fulfil, completely stripping them of their right to self-identify, and is at odds with the gender affirmative approach recommended as best practice for many service providers. Additionally, since the Board processes all applications in the state, this creates additional barriers to regional individuals who may be unable to attend the meeting, and are thus unable to provide additional evidence in cases where their applications do not meet the standards of the Board.

In our survey regarding the role of the Board, respondents overwhelmingly supported its removal. Most prominent amongst the responses were those expressing concern about the amount of stress the application to the Board caused, citing its judgemental nature as "gate-keeping", "archaic", "inappropriate", "restrictive", "invasive", "demeaning" and "humiliating", amongst others. One respondent stated they have actively stalled the legal element of their transition to avoid potential rejection by the Board.

In the case of successful applications, the *Gender Reassignment Act 2000* stipulates that applicants cannot immediately update their sex with the Registry, but instead must

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<sup>18</sup> *Gender Reassignment Act 2000* (WA) s. 14(1).

<sup>19</sup> *Gender Reassignment Act 2000* (WA) s. 14(6).

wait one month<sup>20</sup>. No definitive reason for this is provided, though it is implied this is to allow the Attorney-General to appeal. This serves as an additional hurdle and yet another potential barrier to applicants, whose recognition of their gender is once more subjected to the scrutiny of another.

The private financial expenditure by individuals in order for consideration by the Board establishes itself as an unfair barrier to affirming their gender. Though the application fee itself is \$40, the associated costs to fulfil the “medical or surgical procedure” requirement of the initial application are prohibitive for all applicants<sup>21</sup>. These costs include general practitioner, psychiatrist and endocrinologist appointments to obtain letters of support and access medication, as well as application costs for name changes and the resultant changes to other documents. Transport costs also factor into this requirement, particularly in the case of regional individuals.

The existence of this requirement itself discriminates against those who do not wish to pursue or cannot afford nor access surgical procedures to affirm their gender. Effectively, the legislative process as it stands requires applicants to pay for their identity through costly procedures before it is granted to them. Such action contradicts the *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which condemns this requirement as an “irreversible intrusion into a person’s physical integrity”<sup>22</sup>. By retaining the requirement to undergo some form of procedure to be recognised as a particular gender, the Board is propagating this unacceptable standard.

According to Gender Reassignment Board Annual Reports, no applications have been refused since the 2012-2013 financial year<sup>23</sup>. This suggests the Board continues to exist only by virtue of the legislation remaining in place. In fact, the lax nature by which the Board convenes may present inefficiencies; over the last five years, the

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<sup>20</sup> *Gender Reassignment Act 2000 (WA)* s. 17(2a).

<sup>21</sup> *Gender Reassignment Act 2000 (WA)* s. 14(1).

<sup>22</sup> United Nations General Assembly. (1 February, 2013). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/22/53* (para. 78). Available from [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

<sup>23</sup> Gender Reassignment Board of Western Australia. *Annual Report 2013; Annual Report 2014; Annual Report 2015; Annual Report 2016; Annual Report 2017*. Available from [http://www.department.dotag.wa.gov.au/O/other\\_annual\\_reports.aspx](http://www.department.dotag.wa.gov.au/O/other_annual_reports.aspx)

percentage of applications pending by the end of the reporting period averaged out to fifteen percent, despite processing less than forty applications each year<sup>24</sup>.

Since the Board is unique to Western Australia, this concern is not visible elsewhere in the nation. In other Australian states, changes to both an individual's legal sex and gender are processed through their respective Registry<sup>25,26,27,28,29,30,31</sup>. In Western Australia, should an individual seek to update their legal gender, they must approach the Board, while applications to update their legal sex are handled by the Registry<sup>32</sup>. Thus, in the event of a successful application to the Board, the applicant still visits the Registry to update their legal sex, whether before or after the application.

In the case of intersex individuals, specifically, little about this system changes. Should their affirmed gender contradict their assigned gender, intersex people must apply to the Board for recognition under the same conditions as any other transgender or gender diverse individual has to. The Darlington Statement rejects this requirement on the grounds of intersex individuals' "bodily integrity, physical autonomy and self-determination"<sup>33</sup>. *Involuntary or Coerced Sterilisation of Intersex People in Australia* by the Senate Standing Community Affairs References Committee concurs that intersex individuals must not be expected to surrender their physical integrity in regards to medical treatment<sup>34</sup>. Thus, the expectation that intersex individuals must undergo medical or surgical procedures to have their gender recognised when it differs to that assigned at birth is ill-founded and a removal of the individual's autonomy.

These concerns are best resolved by removing the Board and allowing a self-identification model of updating an individual's gender or sex, thereby avoiding discrimination and harm of transgender, gender diverse and intersex individuals.

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<sup>24</sup> Gender Reassignment Board of Western Australia. *Annual Report 2013; Annual Report 2014; Annual Report 2015; Annual Report 2016; Annual Report 2017*.

<sup>25</sup> *Births, Deaths and Marriages Registration Act 1997* (ACT) s. 24.

<sup>26</sup> *Births, Deaths and Marriages Registration Act 1995* No. 62 (NSW) s. 32B.

<sup>27</sup> *Births, Deaths and Marriages Registration Act 2015* (NT) s. 28A.

<sup>28</sup> *Births, Deaths and Marriages Registration Act 2003* (QLD) s. 22.

<sup>29</sup> *Births, Deaths and Marriages Registration Act 1996* (SA) s. 29I.

<sup>30</sup> *Births, Deaths and Marriages Registration Act 1999* (TAS) s. 28A.

<sup>31</sup> *Births Deaths and Marriages Registration Act 1996* No. 114 (VIC) s. 30A.

<sup>32</sup> *Gender Reassignment Act 2000* (WA) s. 17(2a).

<sup>33</sup> Intersex Human Rights Australia. (March, 2017). *Darlington Statement* (p. 2).

<sup>34</sup> Senate Standing Community Affairs References Committee. (2013). *Second Report: Involuntary or coerced sterilisation of intersex people in Australia*. Canberra: Commonwealth of Australia.

**Recommendation 2:** The removal of the current medical and psychological requirements for people to update their gender marker – including the abolition of the Gender Reassignment Board.

*“Yes. It would mean that people like me would not need to go through the humiliating process of getting doctors and friends to confirm the basic existence of their gender.” – 20, Perth*

*“Yes. It would mean I wouldn't have to go before the Board and explain the physical changes I've experienced as a result of HRT to "prove" that I am actually a woman, despite living full-time as one for close on two years.” – 23, Perth*

*“YES please. Reducing paperwork, stress and trauma for LGBTQIA+ young people from a State perspective is one tangible thing we can do to lower the suicide rate of trans teens.” – 25, Remote WA*

*“Yes, it would make transitioning easier, more streamlined, and less distressing on trans youth like myself.” – 21, Perth*

**c) What criteria should be used to determine whether a change of sex or intersex status should be registered and what evidence is necessary to establish that criteria**

The YPN supports the removal of gender markers from as much documentation as possible. The requirement to record gender markers of individuals' identification can cause significant burden to individuals. Furthermore, there is also significant support for the abolition of gender markers on a range of identifications altogether.

A significant amount of gender discrimination surrounds identification. Historically, Australia has required people to disclose their sex assigned at birth or gender identity in identification documents. However, there is growing acknowledgement that this is both an invasive and unnecessary process. The requirement to have gender markers on various identification documents is an invasion of privacy and often does not add any useful or relevant information.

Secondly, it opens trans and gender diverse persons to discrimination and may require them to constantly explain their gender at every situation that requires proof of identification (for example, purchasing alcohol or applying for licences)<sup>35</sup>.

This can be exhausting and potentially dangerous as it requires individuals to constantly explain why their gender markers do not match their expression. It then opens up the possibility for others to discriminate against trans and gender diverse.

Thirdly, a gender marker system does not accurately capture the diverse and complex nature of gender or sex. Whilst the option of changing gender markers provides intersex, trans and gender diverse people with the opportunity to the correct gender marker it is an unnecessary and costly process. The available options of male, female and X may be appropriate for some people but do not capture the variation that exists amongst people.

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<sup>35</sup> The Establishment. (2017). Let's delete sex identity from birth certificates. Available from <https://theestablishment.co/lets-delete-sex-identity-from-birth-certificates-18b52ab25884>

This has a number of implications. It assumes that people can be classified into one of three categories. However, as gender and sex are complex and do not fit this system, gender markers can provide incorrect information (for example, a person who does not know their intersex status). As such, gender markers become redundant. The relevant information on identification (i.e. photo) is not impacted by the presence of a gender marker.

If gender markers do not provide useful and relevant information in identifying an individual, are they necessary? Other data collection activities such as the Census already record relevant gender identity information and there is no requirement for this information to be gathered at other times (e.g. entry to a bar).

Requiring sex markers on forms of identification is an invasive and unhelpful practice. Rather than providing relevant and important identification information, it simply opens up trans and gender diverse people to discrimination and forces them to constantly justify their gender<sup>36</sup>. Removal of sex markers is an important way to show support for trans, intersex and gender diverse persons<sup>37</sup>. It is also a way to protect the privacy of all Western Australians.

If gender markers are to be kept on documentation however, YPN would promote a model of self-identification that recognises the autonomy of trans and gender diverse individuals to understand their own gender identity. Countries across the world, including Portugal, Malta, Norway, Denmark, Ireland and Belgium, all employ this model to great success<sup>38</sup>.

The process of identifying your gender is a complex and intimate process that should be respected and should not be up for the scrutiny of any other individual. If a person feels that their gender assigned at birth doesn't match the gender they know they are, they should be free to legally identify as said gender.

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<sup>36</sup> The Establishment. (2017). Let's delete sex identity from birth certificates.

<sup>37</sup> Bauer, G. R., Scheim, A. I., Pyne, J., Travers, R., & Hammond, R. (2015). Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada. *BMC Public Health*, 15(1), 525. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4450977/>

<sup>38</sup> Busby, M. (31 August, 2017). LGBT groups welcome change as positive step for rights of non-binary, intersex and transgender people. *The Guardian*.



The majority of respondents to the YPN survey supported a self-identification process. Many noted that they thought the process should be the same as having a legal name change. It was clear from the survey that respondents thought it important that this process was as simple as possible, and that the current lengthy and bureaucratic process had a detrimental effect on their mental health.

**Recommendation 3:** That gender markers are removed from documentation wherever possible – including but not limited to birth certificates.

**Recommendation 4:** Self-identification as the sole criteria when registering a change to an individual's legal gender.

*“It should be easier definitely, again because the lengthy process of trying to change your legal gender can be extremely detrimental to your mental health. You should be able to go to the Department of Births, Deaths and Marriages and file a form and that be the end of it.” – Anonymous*

*“Submitting an application, no requirement for medical treatment or surgical intervention and no fee. This would make the whole process so much less traumatic and more attainable for all trans/GNC people in WA including myself.” – 23, Bridgetown*

*“The process should not require medical or psychological proof. A person should have the right to self-identify without begging doctors to validate their existence. This would mean that our basic right to self-determination would be respected.” – 20, Southern Suburbs Perth*

*“Recognition and a step forward for a more open society. Hopefully one day having no one see me and others like me as mentally ill.”  
– 22, Perth*

*“I think it should be similar to changing your name. No trans person changes their gender irresponsibly. I have bad mental health so having it made easier would save me from a mental breakdown. Also as an adult I feel I should be responsible for my decisions, not a group of strangers who haven't lived my life.” – 24, Osborne Park*

*“The process should be just as easy and straightforward as a name change. You fill out some paperwork, send it in and then a couple weeks later your legal gender is changed. This change would mean that I don't feel weird about showing ID and don't have to fear discrimination whenever I do have to.” – Anonymous*

*“It should be as simple as changing your name - and even that's a bit bollocks, but point remains. It should be an admin issue not a "convince me" issue. If I could fill out the forms and get my BC in the right gender by the end of the month with no hassle, Christ mate I can't explain how good that would feel. Going around town people address me as him etc. and then I get a letter from wherever calling me "Miss" it's completely out of place. Most times I don't even read those letters” – 18, Rockingham*

- d) Any approval requirements which should apply in relation to applications by children to register change of sex or intersex status, including issues of parental consent, disputes between parents, and whether the child should be required to give informed consent;**

The issue of how to best allow young people under the age of 18 to change their legal gender is one that has been vastly under-investigated and researched. However, given that 92% of parents were aware of their child's trans identity before they turned 18 and 50% knew before their child was 13 it is clear there is a need for this option to be accessible by minors<sup>39</sup>. As with LGB young people, many trans and gender diverse minors are cognisant of their own identities before they are 18 and deserve to have these identities validated.

Research also makes it clear that when trans and gender diverse minors are unable to have their identities validated this causes them an immense amount of distress. The Trans Pathways Report documented that two thirds of participants had ever restricted their eating because of their gender, with many participants talking about trying to suppress the impacts of puberty on the body<sup>40</sup>. Not only does this point to the importance of having readily available support for young people to medically transition but it points to the importance of recognising a young person's gender identity before they are 18.

It is also clear that not having access to legal transition options exposes trans and gender diverse minors to discrimination by gendered institutions such as schools. 79% of young trans people have had experienced issues with schools, universities or TAFEs and which makes them far more likely to experience worse mental health outcomes than their peers who have not had issues with those institutions<sup>41</sup>. Giving trans and gender diverse minors the ability to navigate institutions as their self-

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<sup>39</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.

<sup>40</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.

<sup>41</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.

identified gender means that they will experience less discrimination from those institutions and are less likely to have poorer mental health outcomes

While it is difficult to determine the best pathway for trans and gender diverse minors to take, it is very clear that this pathway should be as simple as possible. It is imperative that trans and gender diverse minors do not have to “prove” their identity, only their capacity to consent to the change.

Many respondents to YPN’s survey also noted that they did not think that parental consent should be necessary for a child to legally change their gender. This is in line with previous data from WA that suggests that 66% of trans young people experienced a lack of support from their family and a staggering 58% had experienced abuse from their families<sup>42</sup>. Given the rights of the child to self-identify and the high chance that they will not have a supportive family, it is imperative that any process acknowledges this and give children an option to transition without the consent of their parents.

While it is difficult to outline what this process would be it is clear that children need to have a process as similar to self-identification as possible with only potential steps being put in place to test their legal capacity to consent to the change.

**Recommendation 5:** That a process for trans people under the age of 18 be created to allow them to change their legal gender, and that this process be developed in consultation with young trans people, and with a focus on their right to self-determination and identification.

*“Working in Community Services I witness first hand the lengthy toll that gender changes have on both the individual and the family. Having the legal process simplified or less of a legal proceeding will make a massive difference in terms of mental health wellbeing.” – 19, Bicton*

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<sup>42</sup> Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.

*“Have to realise that coming to terms with the fact that your brain doesn't match your body is a soul shattering process. You have to re-evaluate who you are and what defines you, and it's completely terrifying. Then you have to muster the courage to tell people so that you can stop living in pain and start living with hope - yeah they're kids, I was a kid, but going through that process aged me... terrified children grasping for hope should not be placed in the position where they have to convince a professional of their own diagnosis. Kids should be able to change their gender marker immediately. Trust the children in their decision - it's f\*cking terrifying putting a name to and acknowledging that you're different from your peers.” – 18, Rockingham*

*“Children know themselves better than anyone else. Parents are their legal guardians but the child is still an independent person who has the right to express their gender identity in anyway they need to. Allowing children to make informed decisions about their gender change is the only way forward.”*

*– Anonymous*

*“I think if the parents of the child are unwilling to give permission to change the child's gender, there should be an alternate route set up for these children where they can seek gender reassignment without their parents input. Sometimes our parents can be our biggest adversaries.” – 24,*

*Nedlands*

### **e) Any other issues**

It is imperative that the *Gender Reassignment Act 2000* is amended to disallow married individuals from changing their legal gender. This requirement is both destructive and unjust. Since the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*, States and Territories have been given a 12 month period in which to change their laws to allow married individuals to change their gender.

As it stands in Western Australia, for the person wishing to change their marker this means separation from their spouse for a year, obtaining a divorce and only then applying for a legal gender change, with the cost of remarriage a potential afterwards.

The harmful nature of this process cannot be understated, as it dismantles marriages and may potentially be detrimental to a person's support networks (which can be vital during transition). As with the Gender Reassignment Board, this decision belongs beyond the jurisdiction of lawmakers and instead in the hands of those living this experience and their families. No justified reason exists why a transgender person, especially following the overhaul of federal legislation, must divorce their spouse to have their gender recognised. It is imperative this amendment is made as soon as possible.

**Recommendation 6:** Eliminate the requirement for individuals to be divorced in order to change their legal gender

## Conclusion

Young trans, gender diverse and intersex persons in Western Australia currently face a myriad of barriers to changing their legal gender. These barriers contribute significantly to the high levels of discrimination LGBTIQ+ young people face and significantly poorer health outcomes compared to the general population.

YPN believes implementation of the above six recommendations would serve to reduce these barriers and enable trans, gender diverse and intersex persons to lead more dignified lives, without humiliating, invasive and unnecessary requirements to have their identities recognised.

These changes acknowledge the current health disparities between LGBTIQ+ young people and the general population and provide an opportunity to demonstrate a commitment to improving the lives of LGBTIQ+ young people. Finally, these recommendations are supported both by evidence and testimony from young people currently living in Western Australia.

We trust these comments are useful to the LRC and would welcome any further engagement with this submission. If the Law Reform Commission requires further information regarding this submission, please don't hesitate to contact the YPN at [ypn@yacwa.org.au](mailto:ypn@yacwa.org.au).

# Glossary

**Affirmed gender:** the gender an individual identifies themselves.

**Assigned gender:** the gender an individual is designated at birth, usually judged by their genitalia.

**Cisgender:** an individual who identifies with the gender they were assigned at birth.

**Gender Diverse:** an umbrella term used to describe those whose gender identity is at odds with their biological sex<sup>43</sup>.

**Gender marker:** the letter or word on documentation that catalogues an individual's gender.

**Gender Reassignment:** an umbrella term for any medical, social or legal process through which an individual has their affirmed gender recognised.

**Hormone Replacement Therapy (HRT):** (gender) medical treatment to more closely align an individual's body with their desired physical and hormonal features.

**Intersex:** People who are born with physical sex characteristics that don't fit medical and social norms for female or male bodies<sup>44</sup>.

**Non-binary:** an individual who identifies outside of the binary genders of female and male.

**Outed:** when an individual has their identity expressed to a third party without the individual's consent.

**Reassignment procedure:** In WA, hormone replacement therapy, facial feminisation surgery, double mastectomy, orchiectomy, vaginoplasty or phalloplasty are recognised procedures.

**Sex:** one of or a combination of genitalia, gonads, chromosomes and sex hormones. This submission recognises sex as distinct from gender.

**Transgender/Trans:** an umbrella term for an individual who does not identify with the gender they were assigned at birth.

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<sup>43</sup> Transgender Victoria. (n.d.). *Definitions*. Available from <http://www.transgendervictoria.com/about/definitions>

<sup>44</sup> Intersex Human Rights Australia. (2013). *What is intersex?*. Available from <https://ihra.org.au/18106/what-is-intersex/>