



Association For Reformed Political Action (ARPA)
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Law Reform Commission of Western Australia
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Submission: Law Reform Commission of Western Australia Project 108: Review of Western Australian Legislation in relation to the recognition of a person's sex, change of sex or intersex status.

Dear Members of the Law Reform Commission of Western Australia,

The Association for Reformed Political Action thanks you for the opportunity to comment on Project 108: Review of Western Australian Legislation in relation to the recognition of a person's sex, change of sex or intersex status. We note that the Law Reform Commission has been tasked to make recommendations for legislative reform to both the *Gender Reassignment Act 2000* and the *Births Deaths and Marriages Registration Act 1998*, "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," including inconsistencies with Commonwealth legislation.

We acknowledge that there are important legal, medical and social considerations that the Commission must consider with regards to this matter. The associated legislation is complex, and we do not purport to be experts on it. We agree that the desire to protect and promote the interests of anybody suffering unjust discrimination in our community is a noble one. In fact, as Christians we can identify somewhat with what it is like to be on the receiving end of insults, misunderstanding and mockery based on identity, whether it be in the workplace, media or educational institutions. Although there may and should be rigorous debate between competing ideas and beliefs in a pluralistic and democratic civil society, these debates should never degenerate into mockery, insults and denigration.

We do feel, however, that it is important to share the perspectives of those who have objections to many of the proposed reforms laid out in your Discussion Paper. We note that on page 15 of your report you mention that you did not have the benefit of receiving any feedback from stakeholders who did not support reforms of the *Gender Reassignment Act*. There are several well-known organisations representing

family interests in Western Australia which we would commend to the Commission, and we are happy to furnish you with their details should you so desire.

Part 1: Introducing ARPA

The Association for Reformed Political Action (hereafter ARPA) is a non-partisan Christian organisation affiliated with the Free Reformed Churches of Australia, a denomination with over 4000 members in 14 congregations across Western Australia.

ARPA's interest in this issue, and the motivating factor behind our submission, is that we are observing a trend developing, both in Australia and overseas, in which community differences over matters about sexual morality and sexual identity cannot be debated as freely and as openly as other issues. For example, while competing and sometimes mutually exclusive ideas about matters such as the existence of deities, observance of holy days, permissibility of certain foods or even the creation of the universe can peacefully coexist, there is increasing hostility towards those who wish to believe and teach that sexual relationships are only appropriate within a marriage bond between one man and one woman, and that there are only two sexes.

Part 2: Biblical perspective: two sexes, one core identity.

We believe that the starting point on the topic of identity and sexuality is God's creation of humankind, as recounted in Genesis 1:27: "So God created man (i.e. humankind) in His own image; in the image of God He created him; male and female he created them." We believe this passage teaches two things:

1. Firstly, it teaches that people's identity is not found primarily in their sexuality but in their creation in the image of God. The fact that one's ultimate sense of identity and worth is found in being made in God's image, and not in one's sex, is further evident from New Testament passages such as Galatians 3:28. In the context of a Roman society which was highly divided because of slavery, racial segregation and sexual segregation, the Apostle Paul wrote: "There is neither Jew nor Greek, neither slave nor free, there is neither male nor female, for you are all one in Christ Jesus." Rather than emphasising identity based on difference, this passage emphasises identity based on commonality: one Saviour, Jesus Christ.
2. Secondly, this passage teaches that humankind from the beginning was created as either of two sexual groups: male or female. This is known as sexual dimorphism, and this reality is not changed by the fact that a small percentage of individuals may be born with intersex differences. We are

pleased that this biological reality about sex is partially acknowledged in Section 2.1 of your report, which defines sex as “... a biological concept that describes, in part, a person’s physical features including genitalia, other sexual reproductive anatomy, chromosomes, hormones and secondary physical characteristics emerging from puberty.”

While there is certainly discussion in the Bible about what roles and responsibilities men and women undertake in certain contexts, similar in some ways to your definition of gender in Section 2.1 in the sense of “...the way in which a person identifies or expresses their (sic) masculine or feminine traits...”, there is no Biblical precedent for this identity being anything other than exclusively male or female, or for it not corresponding with biological sex.

Consequently, we reject as misleading the phrase ‘sex assigned at birth’, which implies that one’s sexuality involves an element of choice. It is for good reason that we do not speak about other physical realities in this manner either; speaking about ‘race assigned at birth’ or ‘eye-colour assigned at birth’ would justifiably be regarded as unnecessary or even offensive.

Furthermore, the theory that gender is a social construct which can be separated from biological sex has only gained popularity in the last four decades. The notion that gender, because it is independent of sex, can consequently be fluid or changed, even multiple times, is not universally accepted. We find it unfortunate that your report does not rigorously examine these theories but accepts them as fact.

Recommendation: The Law Reform Commission recognises that many West Australians recognise two biological sexes, male and female, and do not subscribe to the theory that gender is a purely social construct which can be changed independent of biological sex.

Part 3: Response to Discussion Paper’s Key Considerations for Reform

In this section we would like to interact with the key considerations considered in section 2.2 on pages 12-13 of your report. Our comments and recommendations are given in italics.

a) Are sex and/or gender classifications necessary?

i. Sex classifications are necessary for numerous situations where the biological difference between males and females is relevant, as outlined in section c below.

- ii. *Formal 'gender classifications', when interpreted in the sense of how a person identifies or expresses masculine or feminine traits, are largely unnecessary. How a person chooses to interpret, identify and express his or her identity based on biological realities, whether it be sex or other physical realities such as age, height, hair colour or ethnicity is largely a personal matter having little relevance to others. It may have statistical and research relevance and could be assessed via surveys or other research methods in the same manner as other subjective identity-associated information, such as religious beliefs or political affiliations, are assessed.*

b) What sex and/or gender classifications are appropriate?

- i. *The sex classifications 'male' or 'female' are appropriate. The classification of 'intersex' may be appropriate for the statistically-small number of cases where babies are born with an abnormality, e.g. of the genitals or chromosomes. A person should not be able to self-identify as intersex or be classified as the opposite sex if his or her physical features including genitalia, other sexual reproductive anatomy, chromosomes, hormones and secondary physical characteristics are clearly indicative of one sex*

c) When are classifications of sex and/or gender relevant?

Classification of sex is relevant in settings where the biological difference between male and female has implications for the health, wellbeing and safety of the individual and others. Examples include:

- i. *Establishing the identification of a person by authorities.*
- ii. *Preparation of identification documents, including passports – both Australian and overseas.*
- iii. *The provision of medical services, including the right of medical staff to know if they are providing medical treatment to a biological male or female.*
- iv. *Segregation in some sports, mindful of physiological differences, particularly in upper body strength, to prevent what would otherwise be domination of that sport by male participants at the expense of female participants.*

- v. *Segregation in accommodation settings, including prisons and domestic violence refuges, mindful that domestic violence is overwhelmingly perpetrated by males against females and that males who do manage to overpower females have the possibility of sexually assaulting and impregnating them.*
- vi. *Segregation in situations where people may need to be in a state of undress, such as group accommodation, changing rooms, toilet facilities, health-care practices and police/custody environments where searches are required. Such sex-based segregation is necessary in order to prevent voyeurism or abuse in an environment where measures which give privacy also make it more difficult for victims of assault to seek assistance.*
- vii. *Religious and cultural practises where doctrine, teaching or tradition may assign different roles based on a person's sex.*
- viii. *Education institutions which may choose to conduct single-sex classes.*

d) What should be the role of the Gender Reassignment Board?

- i. *The Gender Reassignment Board should be abolished. If gender is a subjective matter of personal self-expression which is fluid and changeable there is no need for a board to assess or acknowledge it. With regards to sex refer to section e) below.*

e) What should be the process for changing sex and/or gender classification?

- i. *As outlined on page 18 of your report, many jurisdictions now allow sex or gender changes to be registered without the need for any surgical, medical or hormonal treatment. Western Australia should avoid going down this path, lest biological sex be rendered altogether meaningless. Furthermore, while surgical procedures which 'alter the sex characteristics of a person' may alter hormones, appearance or a person's self-perception, they do not fundamentally alter the person's biological sex from a chromosomal or reproductive point of view any more than surgical procedures which alter the ethnicity or the age appearance of a person fundamentally alter in any way the person's biological ethnicity or chronological age. While individuals may choose to undergo such procedures if they wish, there is no need for the person's sex to be changed on the Register of Births, Deaths and Marriages. Refusing to alter a person's biological sex prevents the need for further debate and community division over*

increasingly-vague definitions of what constitutes a change of sex and/or gender and how many times a person can legally change sex or gender.

f) What process should apply in relation to minors?

- i. *A person under the age of 18 years should receive appropriate professional care and treatment if he or she is experiencing gender dysphoria. Professional guidance which encourages a child to come to terms with his or her biological sex and avoids promoting the illusion that a person can somehow be 'born in the wrong body' should not be criminalised, nor should parents be criminalised for encouraging children to identify with their biological sex. This is not to say that so-called 'conversion therapies' which inflict physical harm or psychological abuse should be tolerated; existing criminal penalties on assault should be applied in these cases. Parents should be informed if their child experiences gender dysphoria, in the same way that they should be informed about other medical issues involving their children.*

A person under the age of 18 should not be permitted to commence any 'sex reassignment' or other procedure which is either irreversible or commits the child to medical dependency and/or possible sterility for life until he or she has reached the full maturity of his or her biological sex and the state of adulthood. Enforcing this restriction would eliminate the need for complex interventions by the Family Court should there be differences of opinion between parents and children or amongst parents themselves. It would also prevent the possibility of children accusing parents of undue intervention into their decision-making process should a 'sex change' commenced as a minor be regretted when the child becomes an adult. This would bring legislation on 'sex reassignment' into line with laws governing other body-altering procedures, including laws which invoke heavy penalties for irreversible alteration of the bodies of underage persons. We note, for instance, that the Children and Community Services Act 2004 justifiably prohibits any form of tattooing on the body of a person under the age of 16 and imposes a \$12,000 fine and one-year imprisonment as a penalty, and that any piercing of the intimate areas of a person under the age of 18 carries a penalty of \$18,000 and 18 months imprisonment.

Part 4 – Response to Questions in Chapter 7: Proposed Model for Reform

1. Will the Commission's proposed model cause any difficulties if implemented?

- a. *The commissions' model, especially as it applies to birth certificates, will cause difficulties because it seeks to alleviate conflicts between self-selected gender and biological birth sex by playing down and hiding birth sex and giving greater weight to an individual's self-chosen gender identity. In doing so it will contribute to a society where the biological differences between males and females are increasingly ignored and where a person's self-chosen identity can over-rule biological realities. The implication of allowing identity to override biology is that, by extension, people should also be able to choose their own race and age. Furthermore, if a male can self-identify as a female, irrespective of surgical intervention, he will be able to access female changing facilities, sports or accommodation, or apply for jobs, scholarships and other positions created for women. The Law Reform Commission's model will thus contribute to a society where measures to promote equality for groups including women, young people and people from ethnic minorities will eventually be open to any individual who chooses to self-identify as a member of one of these groups.*

2. Is the 'indeterminate' category sufficient or should additional categories be added to the forms that are used for the First Report and the Second Report, which will then be used to record the sex of the child.
 - a. *'Indeterminate' may be appropriate for the small number of cases where children are born with an abnormality which makes it impossible to determine, on initial inspection, if the child is a male or a female. However, this 'indeterminate' category should not be used as a justification for denying the reality of sexual dimorphism.*

3. Should sex classification be mandatory on birth certificates?
 - a. *Yes. A birth certificate is a foundational identifying document for an individual and a child's sex is a biological reality for that child. Removing it from the document, while acknowledging that it is relevant for the registrar for the purposes of statistical and medical records, as mentioned in your discussion paper, illustrates that the removal is for ideological reasons. Removal of sex classification for ideological reasons should not occur without a much wider community consultation than has currently occurred. Even if sex were to be fluid (which we do not accept), birth certificates contain other information which can be legally changed later, such as a child's name.*

4. Should alternative markers be available such as 'other/indeterminate' or 'not specified', if sex classification is required on birth certificates?
 - a. *If it is genuinely impossible to determine a child's biological sex, 'other/indeterminate' may be appropriate.*

5. Are there circumstances in which it will be necessary or desirable to prove sex through a birth certificate, where proof of gender by a Gender Identity Certificate or proof of sex by medical documentation is not appropriate or sufficient?
 - a. *Requiring all West Australians to apply for a supplementary certificate to prove sex, when the information could simply be retained on a birth certificate, adds an unnecessary layer of bureaucracy for thousands of individuals, whereas the number of individuals who appear before the Gender Reassignment Board is currently about 30 per year. We note that both passports and birth certificates are required when applying for certain foreign and Australian visas, and the implications of this should be discussed with the government departments concerned.*

6. If yes for the above, would certification by the Registrar alleviate this issue?
 - a. *As mentioned above, separate certification by the Registrar may not be accepted in the case of foreign or Australian visa applications, particularly where visa applications only allow specific documents to be provided. The commission's recommendation, if implemented, runs the risk of inconveniencing far more individuals than those who may currently be inconvenienced by having their biological sex on their birth certificate.*

Conclusion

We thank the Law Reform Commission for inviting public comment on this matter and commend our suggestions and recommendations to you. Furthermore, we encourage the commission to continue consulting widely on this matter, so that any legislative changes recommended to Government reflect the wishes of the entire West Australian community.