

# BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (SEX OR GENDER CHANGES) BILL 2024

## EXPLANATORY MEMORANDUM

### Overview of the Bill

The Births, Deaths and Marriages Registration Amendment (Sex or Gender Changes) Bill 2024 (Bill) implements a Cook Labor Government election commitment to abolish the Gender Reassignment Board and ensure that all trans and gender diverse people have access to official documents that match their identity.

The Bill:

- repeals the *Gender Reassignment Act 2000 (WA)* and the *Gender Reassignment Regulations 2001 (WA)* and abolishes the Gender Reassignment Board;
- introduces a new process for a person born in Western Australia to apply to the Registrar of Births, Deaths and Marriages to change the person's sex or gender in the registration of the person's birth;
- provides separate processes and safeguards for applications to change the registration of sex or gender of a child;
- ensures certain classes of offenders must obtain written approval of the relevant supervisory authority before making an application; and
- introduces a new process for Western Australian residents born outside of Australia to apply for a document acknowledging the person's sex or gender.

### Gender Reassignment Board

Western Australia (WA) is the only jurisdiction where a Board determines a person's application to change sex.

The Bill repeals the *Gender Reassignment Act 2000 (WA)* and the *Gender Reassignment Regulations 2001 (WA)* and abolishes the Gender Reassignment Board. The abolition of the Gender Reassignment Board was recommended by the Law Reform Commission of Western Australia (LRCWA) in its Final Report on Project 108, *Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics*, which was tabled in Parliament on 6 December 2018.

With the abolition of the Board, the Bill establishes an administrative process to change sex or gender through the Registry of Births, Deaths and Marriages.

### New process for sex or gender recognition

The Bill amends the *Births, Deaths and Marriages Registration Act 1998 (WA)* to implement a new administrative process for a person born in WA to change the sex or gender in the registration of the person's birth. The Bill does not change the existing processes that relate to the registration of sex on a birth certificate when a child is born.

Clause 12 inserts a new Part 5A which establishes a new process for a change of registration of sex or gender and the issue of an acknowledgement document (for persons born outside of Australia, but resident in WA).

The new process is outlined in more detail in the clause notes which follow. Briefly, the process will enable an application to change the registration of sex or gender for an adult, or a child aged 12 and over, to be made directly to the Registrar of Births, Deaths and Marriages.

Applications for a change in sex or gender must be supported by a statement by a doctor or psychologist, certifying that the person has received appropriate clinical treatment in relation to the person's sex or gender.

The term "appropriate clinical treatment" is not defined in the Bill. This approach recognises that appropriate clinical treatment will differ significantly across individuals. For some people, treatment will be counselling (the term and frequency of which will vary); others will undergo hormonal therapy, and some people will seek surgical procedures. What comprises appropriate clinical treatment will be determined in confidence between the person and their doctor or psychologist.

#### Applications for children

The Bill provides for a separate application process for children which varies depending on a number of factors including: the age of the child; and the level of support for the application from the child's parents or guardians.

All applications for children aged under 12 must be considered by the Family Court.

For children aged 12 and over, applications may only be made to the Registrar where each parent or guardian believes the child's sex or gender to be the sex or gender as specified in the application. The statement by a doctor or psychologist to support the application must certify that the child:

- has received appropriate clinical treatment in relation to the child's sex or gender; and
- understands the meaning and implications of the application.

In situations where both parents or guardians do not support the application, or there is no support from any parents or guardians, the Bill provides an avenue for applications for children aged 12 and over to be considered by the Family Court.

#### Applications by restricted persons

As recommended by the LRCWA, the Bill contains restrictions to prevent certain classes of offenders from applying to change their registration of sex or gender, or applying for an acknowledgment document, without first obtaining the approval of the appropriate supervisory authority.

Approval is required for:

- High risk serious offenders;
- Prisoners and detainees;
- Persons subject to an early release order; and
- Supervised offenders and supervised young offenders.

Reportable offenders under the *Community Protection (Offender Reporting) Act 2004* (WA) will be required to report to the Commissioner of Police within seven days of approval of an

application to change their registration of sex or gender, or issue of an acknowledgment document.

### Acknowledgement documents

Currently, adults and children who have been a resident of WA for at least 12 months may apply to the Gender Reassignment Board for a Recognition Certificate. To ensure people born overseas can continue to access a document that recognises their sex or gender, the Bill provides for the Registrar of Births, Deaths and Marriages to issue a document acknowledging a person's sex or gender.

To apply for an acknowledgement document, a person must have been born outside of Australia and have lived in WA for at least 12 consecutive months immediately before the application is made. The application process for adults and children for an acknowledgment document is the same as the process for a person born in WA applying to change the registration of their sex or gender.

Acknowledgement documents are limited to people born overseas. People born in other Australian states and territories have access to change of sex or gender processes in their birth state or territory.

### **Terms used**

In this Explanatory Memorandum:

- the *Births, Deaths and Marriages Registration Act 1998* is referred to as the BDMR Act;
- the *Births, Deaths and Marriages Registration Regulations 1999* are referred to as the BDMR Regulations;
- the *Children and Community Services Act 2004* is referred to as the CCS Act;
- the *Community Protection (Offender Reporting) Act 2004* is referred to as the CPOR Act;
- the *Gender Reassignment Act 2000* is referred to as the Gender Reassignment Act;
- the *Gender Reassignment Regulations 2001* are referred to as the Gender Reassignment Regulations;
- the *High Risk Serious Offenders Act 2020* is referred to as the HRSO Act;
- the Law Reform Commission of Western Australia is referred to as the LRCWA;
- the Registrar of Births, Deaths and Marriages is referred to as the Registrar;
- the *Sentence Administration Act 2003* is referred to as the Sentence Administration Act;
- the *Sentencing Act 1995* is referred to as the Sentencing Act;
- the *Young Offenders Act 1994* is referred to as the Young Offenders Act.

## **Part 1 – Preliminary**

### **Clause 1 – Short title**

Clause 1 provides that the Act, once enacted, will be known as the *Births, Deaths and Marriages Registration Amendment (Sex or Gender Changes) Act 2024*.

### **Clause 2 – Commencement**

Clause 2 provides for the commencement of the Act.

Clause 2(a) provides that Part 1 comes into effect on the day the Act receives the Royal Assent.

Clause 2(b) provides that the rest of the Act will come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

Clause 2(b) provides for commencement on proclamation. This will allow time for: the drafting of amendments to the BDMR Regulations; expansion of the functions of the Registry of Births, Deaths and Marriages; the design and development of new and updated administrative arrangements, such as policies, procedures, forms and certificates; establishment of information sharing and notification processes across multiple agencies; development of new Family Court Rules and court forms; updates to information and communications technology across the Registry of Births, Deaths and Marriages, the Family Court and Corrective Services; and training of staff across several agencies.

It is expected that the new Act and all necessary subsidiary legislation and administrative arrangements will be in place and able to commence on the same date, approximately six months after Royal Assent.

## **Part 2 – Births, Deaths and Marriages Registration Act 1998 amended**

Part 2 amends the BDMR Act.

### **Clause 3 – Act amended**

Clause 3 provides that Part 2 amends the BDMR Act.

### **Clause 4 – Long title amended**

Clause 4 amends the long title of the BDMR Act to provide that the BDMR Act will also provide for changes of registration of sex and gender.

### **Clause 5 – Section 3 amended**

Clause 5 amends section 3 (Objects of the Act) of the BDMR Act to reflect that the amended BDMR Act will also provide for changes of registration of sex and gender in WA and for the issue of documents that acknowledge the sex or gender of persons who are resident in WA and were born outside of Australia.

### **Clause 6 – Section 4 amended**

Clause 6 amends the definition of **registrable information** in section 4 (Terms used) of the BDMR Act.

“Registrable information” is currently defined to mean the particulars and the further information referred to in section 49(2) that must or may be included in the Register. Section 49(2) provides that the Register: (a) must contain the particulars of each registrable event required under this Act, or any other written law, to be included in the Register; and (b) may contain further information if its inclusion is considered appropriate by the Registrar.

Clause 13 of this Act will amend section 49 (The Register) of the BDMR Act to insert a new subsection 49(2A) that provides that the Registrar may maintain on the Register records of information, in addition to registrable information relating to registrable events, if its inclusion is considered appropriate by the Registrar. This new subsection is intended to ensure that the Registrar may record on the Register matters relating to acknowledgement documents.

Clause 6 amends section 4 to ensure that **registrable information** includes the records of information, in addition to registrable information relating to registrable events, that the Registrar may maintain on the Register if its inclusion is considered appropriate by the Registrar, as provided in proposed new section 49(2A).

### **Clause 7 – Section 18 amended**

Clause 7 amends section 18 (Registration of parentage details) of the BDMR Act. Clause 7 amends subsections 18(1)(b)(i) and (ii) to replace gender-specific language with gender-neutral language.

### Clause 8 – Section 31 amended

Clause 8 amends section 31 (Application to register change of child's name) of the BDMR Act. Clause 8 amends:

- subsection 31(3) of the BDMR Act to provide that an application to the Registrar for registration of a change of a child's name under section 31 may be made by a child's guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child (subclause 8(1)); and
- subsection 31(4) of the BDMR Act to provide that an application to the Registrar for registration of a change of a child's name under subsection 31(1) or (2) may be made by 1 parent if, and only if, the applicant is the sole parent named in the registration of the child's birth under the BDMR Act or any other law, or the child's other parent has died (subclause 8(2)).

The amendments in Clause 8 are minor in nature and are intended to remove any doubt as to the circumstances in which applications may be made by a guardian or one parent.

### Clause 9 – Section 36C amended

Clause 9 amends section 36C (Restricted person not to apply to change name) of the BDMR Act.

Clause 9 restructures section 36C to create two subsections. The existing content of section 36C is now subsection 36C(1) and continues to provide that a restricted person must not apply to the Registrar or a registering authority for registration of a change of their name without the written approval of the relevant supervisory authority.

A **restricted person** is defined in section 36A (Terms used) of the BDMR Act to mean a person, other than a reportable offender, who is any of the following: (a) a high risk serious offender; (b) a detainee; (c) a person subject to an early release order; (d) a prisoner; (e) a supervised offender; (f) a supervised young offender.

A **supervisory authority** is defined in section 36A (Terms used) of the BDMR Act to mean:

- (a) for a high risk serious offender, the chief executive officer of the department principally assisting in the administration of the HRSO Act Part 4 Division 2; or
- (b) for a detainee, the chief executive officer as defined in the Young Offenders Act section 3; or
- (c) for a person subject to an early release order, the Prisoners Review Board established under the Sentence Administration Act section 102(1); or
- (d) for a prisoner, the chief executive officer as defined in the *Prisons Act 1981* section 3(1); or
- (e) for a supervised offender, the chief executive officer of the department principally assisting in the administration of the provision of the Act under which the supervised offender is supervised or monitored; or
- (f) for a supervised young offender, the Supervised Release Review Board established under the Young Offenders Act section 151(1).

Clause 9 then inserts new subsection 36C(2), which provides that subsection 36C(1) does not apply to an application made under section 33 (Application to register change of child's name approved by Family Court) of the BDMR Act.

Section 33 of the BDMR Act provides that if the Family Court has approved the change of a child's name or names any person may, in the approved form, apply to the Registrar for registration of the change of the child's name in accordance with the court orders (subsection 33(1)). The Registrar must register a change of name made on an application under section 33 (subsection 33(2)).

New subsection 36C(2) is intended to address an issue that arose during drafting, whereby the offence in 36C would be triggered in circumstances where an application is made to the Registrar to change a restricted person's name, with a Family Court order approving the change but without the written approval of the supervisory authority.

Clause 9 ensures that it is not an offence to make an application where the Family Court has made an order approving the change, and supervisory authority approval has not been obtained.

#### **Clause 10 – Section 36D amended**

Clause 10 amends section 36D (Person not to apply to change restricted person's name) of the BDMR Act. Section 36D deals with change of name applications made on behalf of restricted persons and mirrors section 36C.

Similar to the approach in clause 9, clause 10 restructures section 36D to create two subsections. The existing content of section 36D is now subsection 36D(1). Clause 10 then inserts new subsection 36D(2), which provides that subsection 36D(1) does not apply to an application made under section 33 (Application to register change of child's name approved by Family Court) of the BDMR Act.

Section 36D applies where another person (the applicant) applies to change the name of a restricted person. The amendments made to section 36D by clause 10 mirror the changes made to section 36C by clause 9, to ensure that the offence provision in subsection 36D(1) is not triggered for a change of name application for a restricted person made where the Family Court has made an order approving the change, and supervisory authority approval has not been obtained.

#### **Clause 11 – Section 36G amended**

Clause 11 amends section 36G (Supervisory authority to give documents and information) of the BDMR Act.

The amendment to subsection 36G(1)(b) provides that if a supervisory authority decides to approve the making of a change of name application by or in respect of a restricted person under section 36E of the BDMR Act, the authority must, as soon as is practicable, *notify* the Registrar or, if the application is to be made to a registering authority, the registering authority, of the approval.

This notification requirement will replace the current requirement in subsection 36G(1)(b) that the supervisory authority must provide the Registrar or registering authority (as the case may

be) with a copy of the written approval. This amendment has been made to streamline administrative processes and facilitate electronic notification of approvals.

The note to clause 11 provides that the heading to section 36G of the BDMR Act will be amended from “Supervisory authority to give documents and information” to instead read: “Supervisory authority to give, and give notice of, documents and information”.

### **Clause 12 – Part 5A inserted**

Clause 12 inserts proposed new Part 5A (Changes of registration of sex or gender and issue of acknowledgement documents) after section 36H of the BDMR Act. Proposed new Part 5A provides an administrative process to change a person’s sex or gender in the registration of the person’s birth and to allow a person born outside of Australia but resident in Western Australia for at least 12 months to apply for a document acknowledging the person’s sex or gender.

Proposed Part 5A contains the following proposed new divisions and provisions:

- Division 1 – Preliminary
  - 36I. Terms used
  
- Division 2 – Change of registration of sex or gender
  - 36J. Application to Registrar by person 18 years or more
  - 36K. Application to Registrar to change registration of sex or gender of child 12 years or more
  - 36L. Application to Family Court by parent or guardian of child 12 years or more
  - 36M. Application to Family Court by child 12 years or more
  - 36N. Application to Family Court by parent or guardian of child under 12 years
  - 36O. Application by CEO (Children and Community Services)
  - 36P. Application to Registrar if Family Court order made
  - 36Q. Entries on, and access to, Register and issue of certificates
  - 36R. Entitlement not affected by change of registration of sex or gender
  - 36S. Interaction with other laws
  
- Division 3 – Western Australian residents born outside of Australia
  - 36T. Application to Registrar for acknowledgement document by person 18 years or more
  - 36U. Application to Registrar for acknowledgement document for child 12 years or more
  - 36V. Application to Family Court by parent or guardian of child 12 years or more
  - 36W. Application to Family Court by child 12 years or more
  - 36X. Application to Family Court by parent or guardian of child under 12 years
  - 36Y. Application by CEO (Children and Community Services)
  - 36Z. Application to Registrar if Family Court order made
  - 36ZA. Issue of acknowledgement document
  - 36ZB. Entitlement not affected by issue of acknowledgement document
  - 36ZC. Interaction with other laws

- Division 4 – Restrictions on changes of registration and issue of acknowledgment documents
  - 36ZD. Terms used
  - 36ZE. Restrictions on change of registration based on frequency of change
  - 36ZF. Restrictions on issue of acknowledgement document based on frequency of issue
  - 36ZG. Supervisory authority approval required in relation to restricted person
  - 36ZH. Application by restricted person
  - 36ZI. Application on behalf of restricted person
  - 36ZJ. Approval by supervisory authority
  - 36ZK. Notice of decision by Registrar
  - 36ZL. Supervisory authority to give documents and information
  - 36ZM. Delegation by chief executive officers

Notes on each of the proposed new Divisions and sections for the BDMR Act are outlined below.

## **Proposed new Division 1 – Preliminary**

Division 1 sets out the terms used throughout proposed new Part 5A of the BDMR Act.

### **Proposed new section 36I – Terms used**

Proposed new subsection 36I(1) defines the following terms for the purpose of proposed new Part 5A:

- **acknowledgement document** has the meaning given in proposed subsection 36ZA(1). Proposed subsection 36ZA(1) defines an *acknowledgement document* as a document acknowledging a person's sex or gender issued by the Registrar on receipt of an application under proposed section 36T or 36U;
- **psychologist** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession.

Proposed subsection 36I(2) explains that terms used in Part 5A have the same meaning as they have in section 28A of the BDMR Act. Section 28A contains definitions of terms used in the context of changes of name under Part 5 (Change of name) of the BDMR Act.

Proposed subsection 36I(3) explains that a reference in Part 5A to the Family Court:

- includes a reference to the Magistrates Court constituted by a family law magistrate (as defined in section 5(1) of the *Family Court Act 1997*) so as to be able, under section 39(b) of the *Family Court Act 1997*, to exercise the Family Court's non-federal jurisdiction (subsection 36I(3)(a)); but
- does not include a reference to the Magistrates Court constituted by a magistrate sitting at a place outside the metropolitan region, as referred to in section 39(a) of the *Family Court Act 1997* (subsection 36I(3)(b)).

## **Proposed new Division 2 – Change of registration of sex or gender**

Division 2 sets out the processes for changing a person's sex or gender in the registration of the person's birth.

The Bill does not change the existing procedures that relate to the registration of sex when a child is born.

### **Proposed new section 36J – Application to Registrar by person 18 years or more**

Proposed section 36J deals with an application to the Registrar by a person who is 18 years of age or more to change the person's sex or gender in the registration of their birth.

Proposed subsection 36J(1) provides that a person who is 18 years of age or more may apply to the Registrar to change the person's sex or gender in the registration of the person's birth if the person's birth is registered in the State (subsection 36J(1)(a)), and the person believes the person's sex or gender to be the sex or gender specified in the application (subsection 36J(1)(b)).

Proposed subsection 36J(2) provides that an application under this section must:

- be made in the approved form (subsection 36J(2)(a)); and
- specify a sex or gender of a kind prescribed in the regulations (subsection 36J(2)(b)); and
- be accompanied by a statement by a doctor, or a psychologist, certifying that the person has received appropriate clinical treatment in relation to the person's sex or gender (subsection 36J(2)(c)(i)) and any other document or information prescribed by the regulations (subsection 36J(2)(c)(ii)); and
- contain a declaration by the applicant setting out whether the applicant is, at the time the application is made, a required declarant (subsection 36J(2)(d)).  
*required declarant* is as defined in section 28A of the BDMR Act and for an adult includes: a high risk serious offender; a person subject to an early release order; a prisoner; a supervised offender; or a reportable offender.

The term appropriate clinical treatment is not defined. This approach recognises that what comprises appropriate clinical treatment will differ significantly across individuals and will be determined in confidence between the person and their doctor or psychologist.

### **Proposed new section 36K – Application to Registrar to change registration of sex or gender of child 12 years or more**

Proposed section 36K deals with an application to the Registrar by the parents or guardians of a child who is at least 12 years of age and under 18 years of age to change the child's sex or gender in the registration of the child's birth.

Proposed subsection 36K(1) provides that the parents or guardians of a child who is at least 12 years of age and under 18 years of age may apply to the Registrar to change the child's sex or gender in the registration of the child's birth if:

- the child's birth is registered in the State (subsection 36K(1)(a)); and
- the child consents to the change in accordance with the application (subsection 36K(1)(b)); and
- each applicant believes the child's sex or gender to be the sex or gender specified in the application (subsection 36K(1)(c)).

Proposed subsection 36K(2) provides that an application under proposed section 36K must:

- be made in the approved form (subsection 36K(2)(a)); and
- specify a sex or gender of a kind prescribed in the regulations (subsection 36K(2)(b)); and
- be accompanied by a statement by a doctor, or a psychologist, certifying that the child:
  - has received appropriate clinical treatment in relation to the child's sex or gender (subsection 36K(2)(c)(i)); and
  - understands the meaning and implications of the application (subsection 36K(2)(c)(ii)); and
- be accompanied by a statement by the child consenting to the change (subsection 36K(2)(d)(i)), and any other document or information prescribed by the regulations (subsection 36K(2)(d)(ii)); and

- contain a declaration by each applicant setting out whether the child is, at the time the application is made, a required declarant (subsection 36K(2)(e)).  
*required declarant* is as defined in section 28A of the BDMR Act and for a child will include: a detainee; a young offender being supervised in the community; a young offender on a supervised release order; or a reportable offender.

Proposed subsection 36K(3) provides that an application under subsection 36K(1) may be made by one parent if, and only if, the applicant is the sole parent named in the registration of the child's birth under the BDMR Act (subsection 36K(3(a)), or the child's other parent is dead (subsection 36K(3(b))).

Proposed subsection 36K(4) provides that an application under subsection 36K(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36K(5) provides that, without limiting subsection 36K(4), an application under subsection 36K(1) may be made by joint guardians if, and only if, the joint guardians are unanimous in making the application.

As will be outlined below, the Bill contains provisions to manage situations for applications for a child aged 12 years or more where both parents or guardians do not support the application, or where there is no support from a parent or guardian for the application.

### **Proposed new section 36L – Application to Family Court by parent or guardian of child 12 years or more**

Where an application for a child does not have the unanimous support of both parents or guardians, proposed section 36L facilitates an application process to the Family Court. Applications may be made by a parent or guardian of a child who is at least 12 years of age and under 18 years of age for an order approving the change of the child's sex or gender in the registration of the child's birth.

Proposed subsection 36L(1) provides that a parent or guardian of a child may apply to the Family Court for an order approving the change of the child's sex or gender in the registration of the child's birth if the child is at least 12 years of age and under 18 years of age (subsection 36L(1)(a)), and the child's birth is registered in the State (subsection 36L(1)(b)).

Proposed subsection 36L(2) provides that the application must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36L(3) provides that an application under subsection 36L(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36L(4) provides that the Family Court may make the order if satisfied that it is in the child's best interests.

Proposed subsection 36L(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child’s maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child’s views (subsection 36L(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36L(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child’s sex or gender (subsection 36L(5)(c)).

**Proposed new section 36M – Application to Family Court by child 12 years or more**

Proposed section 36M deals with an application to the Family Court by a child who is at least 12 years of age and under 18 years of age for an order approving the change of the child’s sex or gender in the registration of the child’s birth where each parent or guardian of the child does not support the change of sex or gender.

Proposed subsection 36M(1) provides that this section applies if each parent or guardian of a child who is at least 12 years of age and under 18 years of age does not support the change of the child’s sex or gender in the registration of the child’s birth (subsection 36M(1)(a)), and the child’s birth is registered in the State (subsection 36M(1)(b)).

Proposed subsection 36M(2) provides that the child may apply to the Family Court for an order approving the change of the child’s sex or gender in the registration of the child’s birth.

Proposed subsection 36M(3) provides that the application must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36M(4) provides that the Family Court may make the order if satisfied that it is in the child’s best interests.

Proposed subsection 36M(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child’s maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child’s views (subsection 36M(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36M(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child’s sex or gender (subsection 36M(5)(c)).

**Proposed new section 36N – Application to Family Court by parent or guardian of child under 12 years**

All applications for children aged under 12 years must be made to the Family Court.

Proposed section 36N deals with an application to the Family Court by a parent or guardian of a child under 12 years of age for an order approving the change of the child’s sex or gender in the registration of the child’s birth.

Proposed subsection 36N(1) provides that a parent or guardian of a child under 12 years of age whose birth is registered in the State may apply to the Family Court for an order approving the change of the child’s sex or gender in the registration of the child’s birth.

Proposed subsection 36N(2) provides that the application must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36N(3) provides that an application under subsection 36N(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36N(4) provides that the Family Court may make the order if satisfied that it is in the best interests of the child.

Proposed subsection 36N(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child's views (subsection 36N(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36N(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child's sex or gender (subsection 36N(5)(c)).

#### **Proposed new section 36O – Application by CEO (Children and Community Services)**

Proposed section 36O deals with circumstances where a protection order (time-limited) or a protection order (until 18) is in force in respect of a child and the CEO (Children and Community Services) makes an application under section 36K (Application to Registrar to change registration of sex or gender of child 12 years or more), section 36L (Application to Family Court by parent or guardian of child 12 years or more) or section 36N (Application to Family Court by parent or guardian of child under 12 years).

This proposed section was included to expressly allow the CEO to make an application directly to the Registrar (under section 36K) and also ensure that consideration is given to the role of the child's parents when a child is under the CEO's parental responsibility (see notes on proposed subsection 36O(3) below).

Proposed subsection 36O(1) provides that in this section:

- **CEO (Children and Community Services)** means the CEO as defined in section 3 of the CCS Act: the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the CCS Act (currently the CEO of the Department of Communities);
- **parent** has the meaning given in section 3 of the CCS Act: (a) a person, other than the CEO, who at law has responsibility for: (i) the long-term care, welfare and development of the child; or (ii) the day-to-day care, welfare and development of the child; and (b) if a protection order (other than a protection order (supervision)) has been made for the child, includes a person who would have been a parent of the child if the order had not been made.

Proposed subsection 36O(2) provides that if a protection order (time-limited) or a protection order (until 18) is in force in respect of a child under the CCS Act:

- the CEO (Children and Community Services) may make an application under section 36K, 36L or 36N in respect of the child (subsection 36O(2)(a)); and
- no other person can make the application (subsection 36O(2)(b)).

Proposed subsection 36O(3) provides that before making an application under section 36K the CEO (Children and Community Services) must take reasonable steps to notify each parent of the child of the proposed application and give them a reasonable opportunity to provide their written views on the making of the application.

Proposed subsection 36O(4) provides that an application may be made under section 36K only if no parent notified under subsection 36O(3) opposes the making of the application.

### **Proposed new section 36P – Application to Registrar if Family Court order made**

Proposed section 36P deals with an application to the Registrar to change a child's sex or gender in the registration of the child's birth where the Family Court has made an order under section 36L (Application to Family Court by parent or guardian of child 12 years or more), section 36M (Application to Family Court by child 12 years or more) or section 36N (Application to Family Court by parent or guardian of child under 12 years) approving the change.

Proposed subsection 36P(1) provides that any person may apply to the Registrar to change a child's sex or gender in the registration of the child's birth if the Family Court has made an order under section 36L, 36M or 36N approving the change. This is consistent with the position in subsection 33(1) of the BDMR Act, which allows any person to apply to the Registrar for registration of a change of a child's name where the Family Court has approved the change.

Proposed subsection 36P(2) provides that the application to the Registrar must:

- be made in the approved form (subsection 36P(2)(a)); and
- be accompanied by a copy of the order and any other document or information prescribed by the regulations (subsection 36P(2)(b)(i) and (ii)); and
- contain a declaration by the applicant setting out whether the child is, at the time the application is made, a required declarant (subsection 36P(2)(c)).

### **Proposed new section 36Q – Entries on, and access to, Register and issue of certificates**

Proposed section 36Q sets out the obligations of the Registrar upon receiving an application under section 36J (Application to Registrar by person 18 years or more), section 36K (Application to Registrar to change registration of sex or gender of child 12 years or more) or section 36P (Application to Registrar where Family Court order made).

Proposed subsection 36Q(1) provides that on receipt of an application under section 36J or 36K, the Registrar must make the requested change (subsection 36Q(1)(a)) or refuse to make the requested change (subsection 36Q(1)(b)).

Proposed subsection 36Q(2) provides that on receipt of an application under section 36P, the Registrar must make the change in accordance with the order of the Family Court. The effect of this provision is that if the Family Court has made an order approving a change to a child's sex or gender in the registration of their birth and a person has made an application to the Registrar in accordance with that court order, the Registrar must register the change.

Proposed subsection 36Q(3) provides that if a person's sex or gender in the registration of the person's birth is changed under this section, the Registrar:

- must retain on the Register the particulars contained in the entry in the Register relating to the person's sex or gender before the registration was changed (subsection 36Q(3)(a)); but
- must not:
  - allow access to the particulars contained in the entry in the Register relating to the person's sex or gender before the registration was changed (subsection 36Q(3)(b)(i)); or
  - issue a birth certificate for the person showing the person's sex or gender before the registration was changed (subsection 36Q(3)(b)(ii)).

Proposed subsection 36Q(4) provides that the restriction in subsection 36Q(3)(b)(i) on allowing access to particulars contained in the entry in the Register relating to the person's sex or gender before the registration was changed does not apply if an application for access to the particulars is made by:

- the person (subsection 36Q(4)(a)); or
- a person or body prescribed by the regulations (subsection 36Q(4)(b)).

### **Proposed new section 36R – Entitlement not affected by change of registration of sex or gender**

Proposed section 36R provides that an entitlement under a will or a trust or otherwise by operation of law is not affected by a change of registration of sex or gender, except as otherwise provided under the will, the trust or by the law conferring the entitlement.

Proposed subsection 36R(1) provides that subsection 36R(2) applies to a person who has an entitlement under a will or a trust, or otherwise by operation of law.

Proposed subsection 36R(2) provides that a person does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because the person's sex or gender in the registration of their birth has been changed.

The protection offered by this provision was recommended by the LRCWA and is in place in the Births, Deaths and Marriages Registration Acts in Queensland, the Australian Capital Territory, South Australia and Tasmania.

### **Proposed new section 36S – Interaction with other laws**

Proposed section 36S provides that if a person's sex or gender in the registration of their birth is changed under Division 2 (Change of registration of sex or gender) of new Part 5A of the

BDMR Act, the person is a person of the sex or gender as changed for the purposes of, but subject to, a law of the State.

In most instances, where a person has changed their registration of sex or gender, they are to be treated for the purposes of other laws as the sex or gender as altered. However, this provision will allow for the amendments in the Bill (if enacted) to be read alongside other legislation to produce a logical reading. For example, where other Acts use the terms male and female, and the intent is that they are read with reference to the sex characteristics of a person, then these Acts can continue to be read accordingly and will capture a person on the basis of their sex characteristics, regardless of what the person's registered sex or gender may be.

All States and Territories have an "Interaction with other laws" provision in their Births, Deaths and Marriages Registration Acts.

### **Proposed new Division 3 – Western Australian residents born outside of Australia**

Division 3 contains provisions that set out the processes for a person who is a WA resident who was born outside of Australia to apply for a document acknowledging the person's sex or gender and the effects of such documents.

#### **Proposed new section 36T – Application to Registrar for acknowledgement document by person 18 years or more**

Proposed section 36T deals with an application to the Registrar for an acknowledgement document where a person who is 18 years of age or more was born outside of Australia and has lived in the State for at least 12 consecutive months immediately before the day the application is made.

Proposed subsection 36T(1) provides that a person who is 18 years of age or more may apply to the Registrar for an acknowledgement document for the person if:

- the person was born outside of Australia (subsection 36T(1)(a)); and
- the person has lived in the State for at least 12 consecutive months immediately before the day the application is made (subsection 36T(1)(b)); and
- the person believes the person's sex or gender to be the sex or gender specified in the application (subsection 36T(1)(c)).

Proposed subsection 36T(2) provides that an application under section 36T must:

- be made in the approved form (subsection 36T(2)(a)); and
- specify a sex or gender of a kind prescribed in the regulations (subsection 36T(2)(b)); and
- be accompanied by a statement by a doctor, or a psychologist, certifying that the person has received appropriate clinical treatment in relation to the person's sex or gender (subsection 36T(2)(c)(i)); and
- be accompanied by any other document or information prescribed by the regulations (subsection 36T(2)(c)(ii)); and

- contain a declaration by the applicant setting out whether the applicant is, at the time the application is made, a required declarant (subsection 36T(2)(d)).  
*required declarant* is as defined in section 28A of the BDMR Act and for an adult includes: a high risk serious offender; a person subject to an early release order; a prisoner; a supervised offender; or a reportable offender.

**Proposed new section 36U – Application to Registrar for acknowledgement document for child 12 years or more**

Proposed section 36U deals with an application to the Registrar for an acknowledgement document for a child by the parents or guardians of a child who is at least 12 years of age, was born outside of Australia and has lived in the State for at least 12 consecutive months.

Proposed subsection 36U(1) provides that the parents or guardians of a child who is at least 12 years of age and under 18 years of age may apply to the Registrar for an acknowledgement document for the child if:

- the child was born outside of Australia (subsection 36U(1)(a)); and
- the child has lived in the State for at least 12 consecutive months immediately before the day the application is made (subsection 36U(1)(b)); and
- the child consents to the issue of the document in accordance with the application (subsection 36U(1)(c)); and
- each applicant believes the child’s sex or gender to be the sex or gender specified in the application (subsection 36U(1)(d)).

Proposed subsection 36U(2) provides that an application under section 36U must:

- be made in the approved form (subsection 36U(2)(a)); and
- specify a sex or gender of a kind prescribed in the regulations (subsection 36U(2)(b)); and
- be accompanied by a statement by a doctor, or a psychologist, certifying that the child: has received appropriate clinical treatment in relation to the child’s sex or gender; and understands the meaning and implications of the application (subsection 36U(2)(c)(i) and (ii)); and
- be accompanied by a statement by the child consenting to the issue of the document (subsection 36U(2)(d)(i)); and
- be accompanied by any other document or information prescribed by the regulations (subsection 36U(2)(d)(ii)); and
- contain a declaration by each applicant setting out whether the child is, at the time the application is made, a required declarant (subsection 36U(2)(e)).  
*required declarant* is as defined in section 28A of the BDMR Act and for a child will include: a detainee; a young offender being supervised in the community; a young offender on a supervised release order; or a reportable offender.

Proposed subsection 36U(3) provides that an application under subsection 36U(1) may be made by one parent if, and only if, the applicant is the sole parent named in the registration of the child’s birth (subsection 36U(3)(a)), or the child’s other parent is dead (subsection 36U(3)(b)).

Proposed subsection 36U(4) provides that an application under subsection 36U(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36U(5) provides that, without limiting subsection 36U(4), an application under subsection 36U(1) may be made by joint guardians if, and only if, the joint guardians are unanimous in making the application.

### **Proposed new section 36V – Application to Family Court by parent or guardian of child 12 years or more**

Proposed section 36V governs an application to the Family Court by a parent or guardian of a child who is at least 12 years of age, was born outside of Australia and has lived in the State for at least 12 consecutive months for an order approving the issue of an acknowledgement document for the child.

Proposed subsection 36V(1) provides that a parent or guardian of a child may apply to the Family Court for an order approving the issue of an acknowledgement document for the child if:

- the child is at least 12 years of age and under 18 years of age (subsection 36V(1)(a)); and
- the child was born outside of Australia (subsection 36V(1)(b)); and
- the child has lived in the State for at least 12 consecutive months immediately before the day the application is made (subsection 36V(1)(c)).

Proposed subsection 36V(2) provides that an application under subsection 36V(1) must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36V(3) provides that an application under subsection 36V(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36V(4) provides that the Family Court may make the order if satisfied that it is in the child's best interests.

Proposed subsection 36V(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child's views (subsection 36V(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36V(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child's sex or gender (subsection 36V(5)(c)).

### **Proposed new section 36W – Application to Family Court by child 12 years or more**

Clause 36W governs an application to the Family Court by a child who is at least 12 years of age, was born outside of Australia and has lived in the State for at least 12 consecutive months for an order approving the issue of an acknowledgement document for the child in

circumstances where the child's parents or guardians do not support the issue of an acknowledgement document.

Proposed subsection 36W(1) provides that section 36W applies if:

- each parent or guardian of a child who is at least 12 years of age and under 18 years of age does not support the issue of an acknowledgment document for the child (subsection 36W(1)(a)); and
- the child was born outside of Australia (subsection 36W(1)(b)); and
- the child has lived in the State for at least 12 consecutive months immediately before the day the application is made (subsection 36W(1)(c)).

Proposed subsection 36W(2) provides that the child may apply to the Family Court for an order approving the issue of an acknowledgement document for the child.

Proposed subsection 36W(3) provides that the application must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36W(4) provides that the Family Court may make the order if satisfied that it is in the child's best interests.

Proposed subsection 36W(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child's views (subsection 36W(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36W(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child's sex or gender (subsection 36W(5)(c)).

### **Proposed new section 36X – Application to Family Court by parent or guardian of child under 12 years**

Proposed section 36X governs an application to the Family Court by a parent or guardian of a child who is under 12 years of age, was born outside of Australia and has lived in the State for at least 12 consecutive months for an order approving the issue of an acknowledgement document for the child.

Proposed subsection 36X(1) provides that a parent or guardian of a child under 12 years of age may apply to the Family Court for an order approving the issue of an acknowledgement document for the child if:

- the child was born outside of Australia (subsection 36X(1)(a)); and
- the child has lived in the State for at least 12 consecutive months immediately before the day the application is made (subsection 36X(1)(b)).

Proposed subsection 36X(2) provides that an application under section 36X must specify a sex or gender of a kind prescribed in the regulations.

Proposed subsection 36X(3) provides that an application under subsection 36X(1) may be made by a guardian if, and only if, the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities for the child.

Proposed subsection 36X(4) provides that the Family Court may make the order if satisfied that it is in the best interests of the child.

Proposed subsection 36X(5) provides that in determining whether or not to make the order, the Family Court must consider:

- any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the Family Court thinks are relevant to the weight it should give to the child's views (subsection 36X(5)(a)); and
- any views expressed by a parent or guardian of the child (subsection 36X(5)(b)); and
- whether the child has received appropriate clinical treatment in relation to the child's sex or gender (subsection 36X(5)(c)).

### **Proposed new section 36Y – Application by CEO (Children and Community Services)**

Proposed section 36Y deals with circumstances in which a protection order (time-limited) or a protection order (until 18) is in force in respect of a child and the CEO (Children and Community Services) makes an application under section 36U (Application to Registrar for acknowledgement document for child 12 years or more), section 36V (Application to Family Court by parent or guardian of child 12 years or more) or section 36X (Application to Family Court by parent or guardian of child under 12 years) in respect of the child.

Proposed subsection 36Y(1) provides that in this section:

- **CEO (Children and Community Services)** means the CEO as defined in section 3 of the CCS Act: the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the CCS Act (currently the CEO of the Department of Communities);
- **parent** has the meaning given in section 3 of the CCS Act: (a) a person, other than the CEO, who at law has responsibility for: (i) the long-term care, welfare and development of the child; or (ii) the day-to-day care, welfare and development of the child; and (b) if a protection order (other than a protection order (supervision)) has been made for the child, includes a person who would have been a parent of the child if the order had not been made.

Proposed subsection 36Y(2) provides that if a protection order (time-limited) or a protection order (until 18) is in force in respect of a child under the CCS Act:

- the CEO (Children and Community Services) may make an application in respect of the child under section 36U (Application to Registrar for acknowledgement document for child 12 years or more), section 36V (Application to Family Court by parent or guardian of child 12 years or more) or section 36X (Application to Family Court by parent or guardian of child under 12 years) (subsection 36Y(2)(a)); and
- no other person can make the application (subsection 36Y(2)(b)).

Proposed subsection 36Y(3) provides that before making an application under section 36U the CEO (Children and Community Services) must take reasonable steps to notify each parent of the child of the proposed application and give them a reasonable opportunity to provide their written views on the making of the application.

Proposed subsection 36Y(4) provides that an application may be made under section 36U only if no parent notified under subsection 36Y(3) opposes the making of the application.

### **Proposed new section 36Z – Application to Registrar if Family Court order made**

Proposed section 36Z governs an application to the Registrar for an acknowledgement document for a child if the Family Court has made an order approving the issue of the acknowledgement document under section 36V (Application to Family Court by parent or guardian of child 12 years or more), section 36W (Application to Family Court by child 12 years or more) or section 36X (Application to Family Court by parent or guardian of child under 12 years).

Proposed subsection 36Z(1) provides that any person may apply to the Registrar for an acknowledgement document for a child if the Family Court has made an order under section 36V, 36W or 36X approving the issue of the acknowledgement document.

Proposed subsection 36Z(2) provides that the application to the Registrar under section 36Z must:

- be made in the approved form (subsection 36Z(2)(a)); and
- be accompanied by a copy of the order (subsection 36Z(2)(b)(i)); and
- be accompanied by any other document or information prescribed by the regulations (subsection 36Z(2)(b)(ii)); and
- contain a declaration by the applicant setting out whether the child is, at the time the application is made, a required declarant (subsection 36Z(2)(c)).  
*required declarant* is as defined in section 28A of the BDMR Ac and for a child will include: a detainee; a young offender being supervised in the community; a young offender on a supervised release order; or a reportable offender.

### **Proposed new section 36ZA – Issue of acknowledgement document**

Proposed section 36ZA governs the issue of an acknowledgement document by the Registrar.

Proposed subsection 36ZA(1) provides that a document issued under subsection 36ZA(2) or (3) is an ***acknowledgement document***.

Proposed subsection 36ZA(2) provides that on receipt of an application under section 36T (Application to Registrar for acknowledgement document by person 18 years or more) or section 36U (Application to Registrar for acknowledgement document for child 12 years or more), the Registrar must issue a document acknowledging the person's sex or gender (subsection 36ZA(2)(a)) or refuse to issue the document (subsection 36ZA(2)(b)).

Proposed subsection 36ZA(3) provides that on receipt of an application under section 36Z, the Registrar must issue a document acknowledging the person's sex or gender in accordance with the order of the Family Court. The effect of this provision is that if the Family Court has made an order approving the issue of an acknowledgement document for a child and a person

has made an application to the Registrar in accordance with that court order, the Registrar must issue the acknowledgment document.

Proposed subsection 36ZA(4) provides that an acknowledgement document must not state the applicant's former sex or gender unless the applicant has requested, in writing, that the information be included.

### **Proposed new section 36ZB – Entitlement not affected by issue of acknowledgement document**

Proposed section 36ZB provides that an entitlement under a will or a trust or otherwise by operation of law is not affected by the issue of an acknowledgement document, except as otherwise provided under the will, the trust or by the law conferring the entitlement.

Proposed subsection 36ZB(1) provides that subsection 36ZB(2) applies to a person who has an entitlement under a will or a trust, or otherwise by operation of law.

Proposed subsection 36ZB(2) provides that the person does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because an acknowledgement document has been issued for the person.

### **Proposed new section 36ZC – Interaction with other laws**

Proposed section 36ZC provides that if an acknowledgement document is issued for a person, the person is a person of the sex or gender specified in the document for the purposes of, but subject to, a law of the State.

In most instances, where a person has been issued with a document acknowledging their sex or gender, they are to be treated for the purposes of other laws as the sex or gender as on the acknowledgement certificate.

However, this provision will allow for the amendments in the Bill (if enacted) to be read alongside other legislation to produce a logical reading. For example, where other Acts use the terms male and female, and the intent is that they are read with reference to the sex characteristics of a person, then these Acts can continue to be read accordingly and will capture a person on the basis of their sex characteristics, regardless of what the person's sex or gender on an acknowledgement document may be.

All States and Territories that have an equivalent of an acknowledgement document also extend the "Interaction with other laws" provision to capture residents born elsewhere.

## **Proposed new Division 4 – Restrictions on changes of registration and issue of acknowledgement documents**

Division 4 contains provisions that set out certain restrictions on changes of registration of sex or gender and the issue of acknowledgement documents, including restrictions based on frequency of change and approval requirements which apply to applications by restricted persons as defined in section 36A (Terms used) of the BDMR Act.

### **Proposed new section 36ZD – Terms used**

Proposed section 36ZD provides that in Division 4:

- **restricted person** has the meaning given in section 36A (Terms used): a person, other than a reportable offender, who is any of the following: (a) a high risk serious offender; (b) a detainee; (c) a person subject to an early release order; (d) a prisoner; (e) a supervised offender; (f) a supervised young offender;
- **supervisory authority** has the meaning given in section 36A (Terms used):
  - (a) for a high risk serious offender, the chief executive officer of the department principally assisting in the administration of the HRSO Act Part 4 Division 2; or
  - (b) for a detainee, the chief executive officer as defined in the Young Offenders Act section 3; or
  - (c) for a person subject to an early release order, the Prisoners Review Board established under the Sentence Administration Act section 102(1); or
  - (d) for a prisoner, the chief executive officer as defined in the *Prisons Act 1981* section 3(1); or
  - (e) for a supervised offender, the chief executive officer of the department principally assisting in the administration of the provision of the Act under which the supervised offender is supervised or monitored; or
  - (f) for a supervised young offender, the Supervised Release Review Board established under the Young Offenders Act section 151(1).

### **Proposed new section 36ZE – Restrictions on change of registration based on frequency of change**

Proposed section 36ZE sets out restrictions that apply to changes of a person's sex or gender in the registration of their birth based on the frequency of change.

Proposed subsection 36ZE(1) provides that the Registrar must not change a person's sex or gender in the registration of the person's birth on an application under section 36J (Application to Registrar by person 18 years or more) if the Registrar is aware that:

- (a) a change of the person's sex or gender in the registration of the person's birth has been made (whether in this State or another State) within the period of 12 months immediately before the day the application is made (subsection 36ZE(1)(a)); or
- (b) 3 or more changes of the person's sex or gender in the registration of the person's birth have been made (whether in this State or another State) (subsection 36ZE(1)(b)).

Proposed subsection 36ZE(2) provides that when counting the number of changes for the purposes of subsection 36ZE(1)(b), a change of a person's sex or gender in the registration of the person's birth made before the person reached the age of 18 years must not be counted.

Proposed subsection 36ZE(3) provides that, despite subsection 36ZE(1)(b), the Registrar may, on application, change a person's sex or gender in the registration of the person's birth if the Registrar is satisfied that the change is justified by exceptional circumstances.

Proposed subsection 36ZE(4) provides that the Registrar may require the person to provide evidence to enable the Registrar to be satisfied under subsection 36ZE(3).

Proposed subsection 36ZE(5) provides that the Registrar must not change a child's sex or gender in the registration of the child's birth on an application under section 36K (Application to Registrar to change registration of sex or gender of child 12 years or more) if the Registrar is aware that a change of the child's sex or gender in the registration of the child's birth has been registered (whether in this State or another State) within the period of 12 months immediately before the day the application is made.

### **Proposed new section 36ZF – Restrictions on issue of acknowledgement document based on frequency of issue**

Proposed section 36ZF sets out restrictions that apply to the issue of acknowledgement documents based on the frequency of issue.

Proposed subsection 36ZF(1) provides that in this section, ***interstate document***, for a person, means a document issued by a registering authority that acknowledges the person's sex or gender.

Proposed subsection 36ZF(2) provides that the Registrar must not issue an acknowledgment document for a person on an application under section 36T (Application to Registrar for acknowledgement document by person 18 years or more) if the Registrar is aware that:

- an acknowledgment document or interstate document for the person has been issued within the period of 12 months immediately before the day the application is made (subsection 36ZF(2)(a)); or
- 3 or more acknowledgment documents or interstate documents for the person have been issued (subsection 36ZF(2)(b)).

Proposed subsection 36ZF(3) provides that when counting the number of acknowledgement documents and interstate documents for the purposes of subsection 36ZF(2)(b), a document issued before the person reached the age of 18 years must not be counted.

Proposed subsection 36ZF(4) provides that despite subsection 36ZF(2)(b), the Registrar may, on application, issue an acknowledgment document for a person if the Registrar is satisfied that the issue is justified by exceptional circumstances.

Proposed subsection 36ZF(5) provides that the Registrar may require the person to provide evidence to enable the Registrar to be satisfied under subsection 36ZF(4).

Proposed subsection 36ZF(6) provides that the Registrar must not issue an acknowledgement document for a child on an application under section 36U (Application to Registrar for acknowledgement document for child 12 years or more) if the Registrar is aware that an acknowledgement document or interstate document for the child has been issued within the period of 12 months immediately before the day the application is made.

## **Proposed new section 36ZG – Supervisory authority approval required in relation to restricted person**

Proposed section 36ZG sets out a requirement for approval by a supervisory authority in order for the Registrar to change a restricted person's sex or gender in the registration of their birth or issue an acknowledgement document for a restricted person.

A **restricted person** is defined in section 36A of the BDMR Act as a person, other than a reportable offender, who is a high risk serious offender, a detainee, a person subject to an early release order, a prisoner, a supervised offender or a supervised young offender.

A **supervisory authority** is defined in section 36A of the BDMR Act as:

- (g) for a high risk serious offender, the chief executive officer of the department principally assisting in the administration of the HRSO Act Part 4 Division 2; or
- (h) for a detainee, the chief executive officer as defined in the Young Offenders Act section 3; or
- (i) for a person subject to an early release order, the Prisoners Review Board established under the Sentence Administration Act section 102(1); or
- (j) for a prisoner, the chief executive officer as defined in the *Prisons Act 1981* section 3(1); or
- (k) for a supervised offender, the chief executive officer of the department principally assisting in the administration of the provision of the Act under which the supervised offender is supervised or monitored; or
- (l) for a supervised young offender, the Supervised Release Review Board established under the Young Offenders Act section 151(1).

Proposed subsection 36ZG(1) provides that the Registrar must not change a restricted person's sex or gender in the registration of their birth, or issue an acknowledgement document for a restricted person, on an application, unless the Registrar has been given a copy of the written approval for the application by the supervisory authority for the person.

Proposed subsection 36ZG(2) provides that subsection 36ZG(1) does not apply if the Registrar receives an application under section 36P (Application to Registrar if Family Court order made) or 36Z (Application to Registrar if Family Court order made). That is, where the Family Court has made an order approving a change in a child's sex or gender in the registration of their birth under section 36L (Application to Family Court by parent or guardian of child 12 years or more), section 36M (Application to Family Court by child 12 years or more) or section 36N (Application to Family Court by parent or guardian of child under 12 years); or where the Family Court has made an order approving the issue of an acknowledgement document for a child under section 36V (Application to Family Court by parent or guardian of child 12 years or more), 36W (Application to Family Court by child 12 years or more) or section 36X (Application to Family Court by parent or guardian of child under 12 years).

### **Proposed new section 36ZH – Application by restricted person**

Proposed section 36ZH prevents a restricted person from applying to change their sex or gender or for the issue of an acknowledgement document without the written approval of the relevant supervisory authority. The exception to this is where the restricted person is a child and the Family Court has made an order under section 36P or 36Z approving the change of sex or gender or the issue of the acknowledgement document.

Proposed subsection 36ZH(1) provides that a restricted person must not apply, under this Act, to the Registrar:

- to change the restricted person's sex or gender in the registration of the person's birth (subsection 36ZH(1)(a)); or
- for the issue of an acknowledgement document for the person (subsection 36ZH(1)(b)),

unless the person has obtained the written approval of the supervisory authority for the restricted person.

The penalty for an offence under subsection 36ZH(1) is imprisonment for 2 years and a fine of \$12,000.

Proposed subsection 36ZH(2) provides that subsection 36ZH(1) does not apply to an application made under section 36P or section 36Z. The intention of subsection 36ZH(2) is to ensure that the offence provision in subsection 36ZH(1) does not apply where an application is made to the Registrar to change a restricted person's sex or gender or for the issue of an acknowledgement document with a Family Court order approving the change or issue of the document, but without the approval of the supervisory authority.

This is consistent with the approach adopted in the Bill to amend sections 36C and 36D of the BDMR Act to ensure that the relevant offence provisions are not triggered for a change of name application for a restricted person made where the Family Court has made an order approving the change, and supervisory authority approval has not been obtained.

### **Proposed new section 36ZI – Application on behalf of restricted person**

Proposed section 36ZI prevents a person from applying on behalf of a restricted person to change the restricted person's sex or gender or for the issue of an acknowledgement document without the written approval of the relevant supervisory authority. The exception to this is where the restricted person is a child and the Family Court has made an order under section 36P or 36Z approving the change of sex or gender or the issue of the acknowledgement document.

Proposed subsection 36ZI(1) provides that a person (the **applicant**) must not, in respect of a restricted person, apply, under this Act, to the Registrar:

- to change the restricted person's sex or gender in the registration of the person's birth (subsection 36ZI(1)(a)); or
- for the issue of an acknowledgement document for the restricted person (subsection 36ZI(1)(b)),

unless the applicant has obtained the written approval of the supervisory authority for the restricted person.

The penalty for an offence under subsection 36ZI(1) is imprisonment for 2 years and a fine of \$12,000.

Proposed subsection 36ZI(2) provides that subsection 36ZI(1) does not apply to an application made under section 36P or section 36Z. The intention of subsection 36ZI(2) is to ensure that the offence provision in subsection 36ZI(1) does not apply where an application is made to the Registrar to change a restricted person's sex or gender or for the issue of an acknowledgement document where the Family Court has made an order approving the change or the issue of the document but without the approval of the supervisory authority.

### **Proposed new section 36ZJ – Approval by supervisory authority**

Proposed section 36ZJ sets out provisions governing approval by a supervisory authority of the making of a change of sex or gender application, or the making of an application for an acknowledgment document for a restricted person.

Proposed subsection 36ZJ(1) provides that in section 36ZJ ***change of sex or gender application*** means an application proposed to be made by or in respect of a restricted person to change the restricted person's sex or gender in the registration of the person's birth.

Proposed subsection 36ZJ(2) provides that a person may apply to a supervisory authority for approval to make a change of sex or gender application (subsection 36ZJ(2)(a)), or approval to make an application for an acknowledgment document for a restricted person (subsection 36ZJ(2)(b)).

Proposed subsection 36ZJ(3) provides that the application for approval must be made in a manner approved by the supervisory authority.

Proposed subsection 36ZJ(4) provides that a supervisory authority must not approve the making of a change of sex or gender application, or the making of an application for an acknowledgment document, unless the authority is satisfied that the change of the restricted person's sex or gender in the registration of the person's birth or issue of an acknowledgment document is in all the circumstances necessary or reasonable.

Proposed subsection 36ZJ(5) provides that a supervisory authority must not approve the making of a change of sex or gender application, or the making of an application for an acknowledgment document, if the authority is satisfied that the change of the restricted person's sex or gender in the registration of the person's birth or issue of an acknowledgment document is reasonably likely:

- if the restricted person is detained, to have an adverse effect on the security, discipline or good order of the place in which the restricted person is detained (subsection 36ZJ(5)(a)); or
- to be regarded as offensive by a victim of crime or a significant sector of the community (subsection 36ZJ(5)(b)); or
- to frustrate the administration of any of the following Acts:
  - the HRSO Act (subsection 36ZJ(5)(c)(i));

- the *Prisons Act 1981* (subsection 36ZJ(5)(c)(ii));
- the *Sentence Administration Act* (subsection 36ZJ(5)(c)(iii));
- the *Sentencing Act* (subsection 36ZJ(5)(c)(iv));
- the *Young Offenders Act* (subsection 36ZJ(5)(c)(v)).

### **Proposed new section 36ZK – Notice of decision by Registrar**

Proposed section 36ZK provides that the Registrar must notify the supervisory authority for a restricted person if the Registrar makes a decision in relation to changing a restricted person's sex or gender in the registration of their birth or issuing an acknowledgment document for a restricted person.

Proposed subsection 36ZK(1) provides that the Registrar must notify the supervisory authority for a restricted person if the Registrar:

- changes the person's sex or gender in the registration of the person's birth (subsection 36ZK(1)(a));
- refuses to change the person's sex or gender in the registration of the person's birth (subsection 36ZK(1)(b));
- issues an acknowledgment document for the person (subsection 36ZK(1)(c)); or
- refuses to issue an acknowledgment document for the person (subsection 36ZK(1)(d)).

Proposed subsection 36ZK(2) provides that when notifying a supervisory authority under subsection 36ZK(1), the Registrar must give the authority sufficient information to identify the restricted person.

### **Proposed new section 36ZL – Supervisory authority to give documents and information**

Proposed section 36ZL sets out the documents and information that a supervisory authority that decides to approve the making of a change of sex or gender application or the making of an application for an acknowledgment document must provide to the Registrar and to the person who wishes to make the application.

Proposed subsection 36ZL(1) provides that if a supervisory authority decides to approve the making of a change of sex or gender application or the making of an application for an acknowledgment document under section 36ZJ, the authority must, as soon as practicable, give written approval to the person who wishes to make the application (subsection 36ZL(1)(a)) and notify the Registrar of the approval (subsection 36ZL(1)(b)).

Proposed subsection 36ZL(2) provides that for the purposes of the Registrar verifying the details of an application to change a restricted person's sex or gender in the registration of their birth, or an application for an acknowledgment document for a restricted person, each supervisory authority must, if the Registrar requests, give the Registrar the following:

- the name of each restricted person for whom they are the supervisory authority (subsection 36ZL(2)(a));
- any other name by which the person is, or has previously been, known (of which the supervisory authority is aware) (subsection 36ZL(2)(b));
- the date of birth of the person (subsection 36ZL(2)(c)); and
- any other information that may be used to identify the person (subsection 36ZL(2)(d)).

### **Proposed new section 36ZM – Delegation by chief executive officers**

Proposed section 36ZM allows a chief executive officer to delegate a power or duty they have under Division 4 (Restrictions on changes of registration and issue of acknowledgement documents) of Part 5A.

Proposed subsection 36ZM(1) provides that a chief executive officer referred to in the definition of supervisory authority in section 36A may delegate to any person any power or duty of the chief executive officer under another provision of Division 4 of Part 5A.

Proposed subsection 36ZM(2) provides that the delegation must be in writing signed by the chief executive officer.

Proposed subsection 36ZM(3) provides that a person to whom a power or duty is delegated under this section cannot delegate the power or duty.

Proposed subsection 36ZM(4) provides that a person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

Proposed subsection 36ZM(5) provides that unless the contrary is shown, it is to be presumed that a document purporting to have been signed by a person as a delegate of the chief executive officer was signed by a person in the performance of a function that at the time was delegated to the person by the chief executive officer.

Proposed subsection 36ZM(6) provides that nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

### **Clause 13 – Section 49 amended**

Clause 13 amends section 49 (The Register) of the BDMR Act to insert a new subsection 49(2A) that provides that the Registrar may maintain on the Register records of information, in addition to registrable information relating to registrable events, if its inclusion is considered appropriate by the Registrar. This new subsection is intended to ensure that the Registrar may record on the Register matters relating to acknowledgement documents.

### **Clause 14 – Section 54 amended**

Clause 14 amends section 54 (Access to and verification of Register) of the BDMR Act to insert a new subsection 54(4) that provides that the operation of section 54 is affected by subsection 36Q(3)(b)(i) of the BDMR Act.

Section 54 of the BDMR Act empowers the Registrar to provide a person with access to the Register or with information from the Register. Proposed new subsection 36Q(3)(b)(i) provides that if a person's sex or gender in the registration of the person's birth is changed under section 36Q (Entries on, and access to, Register and issue of certificates), the Registrar must not allow access to the particulars contained in the entry in the Register relating to the person's sex or gender before the registration was changed.

### **Clause 15 – Section 61 amended**

Clause 15 amends section 61 (Falsification of certificate etc.) of the BDMR Act to extend the operation of subsection 61(3)(c) to allow the Registrar to impound or require the return of a certificate under this Act about a registrable event if the entry in the Register about the event or other registrable information has been cancelled or corrected since the issue of the certificate. This amendment ensures that the Registrar is able to impound or require the return of an acknowledgement document that has been cancelled or corrected.

### **Clause 16 – Section 62 amended**

Clause 16 amends section 62 (Revocation of registration of registrable events obtained by fraud) of the BDMR Act to:

- insert new subsection 62(1A) to provide that the Registrar may revoke a change made under Part 5A to a birth registration if it appears that the change was obtained by fraud or other improper means (subclause 16(1)); and
- amend subsection 62(2) to include a reference to the Registrar revoking a change made to a birth registration under Part 5A (subclause 16(2)).

The note to clause 16 provides that the heading to amended section 62 of the BDMR Act is to read: “Revocation of registration or Part 5A change obtained by fraud”.

### **Clause 17 – Section 63 amended**

Clause 17 amends section 63 (Unauthorised disclosure of information) of the BDMR Act to use more gender-neutral wording, by deleting the reference to “a person who has access to the Register in the course of his or her employment” and inserting a reference to “a person who has access to the Register in the course of their employment”.

### **Clause 18 – Section 68A inserted**

Clause 18 inserts proposed new section 68A (Review of amendments made by *Births, Deaths and Marriages Registration Amendment (Sex or Gender Changes) Act 2024*) into the BDMR Act.

Proposed subsection 68A is a review provision which, at (1), requires the Minister to review the operation and effectiveness of the amendments made to the BDMR Act by this Act and prepare a report based on that review as soon as practicable after the third anniversary of the day on which clause 12 (Part 5A inserted) comes into operation.

Proposed subsection 68A(2) provides that the Minister must cause the report of that review to be tabled in Parliament as soon as practicable after it is prepared, but not later than 12 months after the third anniversary.

### **Clause 19 – Section 70A inserted**

Clause 19 inserts proposed new section 70A (Savings provisions for recognition certificates issued under *Gender Reassignment Act 2000*) and provides that despite the repeal of the Gender Reassignment Act:

- a recognition certificate issued under the Gender Reassignment Act continues in force (subsection 70A(a)); and
- the Registrar may act under sections 17 and 18 of the Gender Reassignment Act as if the sections had not been repealed (subsection 70A(b)).

### **Part 3 – *Gender Reassignment Act 2000***

Part 3 deals with the repeal of the Gender Reassignment Act and the Gender Reassignment Regulations.

#### **Clause 20 – Written laws repealed**

Subclause 20(1) repeals the Gender Reassignment Act.

Subclause 20(2) repeals the Gender Reassignment Regulations.

## **Part 4 – Other Acts amended**

Part 4 consequentially amends other Acts.

### **Division 1 – *Children and Community Services Act 2004* amended**

Division 1 amends the CCS Act.

#### **Clause 21 – Act amended**

Clause 21 provides that Division 1 amends the CCS Act.

#### **Clause 22 – Section 63 amended**

Clause 22 amends section 63 (Conditions of protection order (special guardianship)) of the CCS Act to insert proposed new subsection 63(3A) to provide that the Family Court may, on an application made by the special guardian, permit the making of a change of name application if:

- the change of name application is to change a given name or given names of a child (subsection 63(3A)(a)); and
- the change of name application is made at the same time as the special guardian makes an application to the Family Court under section 36L (Application to Family Court by parent or guardian of child 12 years or more) or 36N (Application to Family Court by parent or guardian of child under 12 years) of the BDMR Act (subsection 63(3A)(b)); and
- the Family Court is satisfied that it is in the best interests of the child to permit the making of the change of name application (subsection 63(3A)(c)).

### **Division 2 – *Community Protection (Offender Reporting) Act* amended**

Division 2 amends the CPOR Act.

#### **Clause 23 – Act amended**

Clause 23 provides that Division 2 amends the CPOR Act.

#### **Clause 24 – Section 26 amended**

Clause 24 amends section 26 (Initial report by reportable offender of personal details) of the CPOR Act. Section 26 of the CPOR Act specifies the personal details that a reportable offender must report to the Commissioner of Police and includes details such as the offender's name, date of birth, address, details of involvement with children, motor vehicle details and disclosure of relevant convictions. A "reportable offender" is defined in section 6 of the CPOR Act to include any person who has been sentenced by a court for a reportable offence.

Clause 24 inserts proposed new subsection 26(1)(ca), which provides that the personal details that a reportable offender must report to the Commissioner include the offender's sex or gender:

- as registered under the BDMR Act or a corresponding law as defined in section 4 of the BDMR Act (subsection 26(1)(ca)(i)); or

- as acknowledged in a document issued under section 36ZA (Issue of acknowledgement document) of the BDMR Act, or a document issued under a corresponding law as defined in section 4 of the BDMR Act, for the purpose of acknowledging a person's sex or gender (subsection 26(1)(ca)(ii)); or
- if neither subparagraph (i) nor (ii) apply in respect of the offender, being a sex or gender prescribed in regulations under the BDMR Act and identified by the offender as the offender's sex or gender (subsection 26(1)(ca)(iii)).

#### **Clause 25 – Section 29 amended**

Clause 25 amends section 29 (Reportable offender to report changes to relevant personal details) of the CPOR Act. Section 29 of the CPOR Act requires a reportable offender to report to the Commissioner of Police any change in the offender's personal details.

Clause 25 inserts proposed new subsection 29(2A) of the CPOR Act to provide that, for the purposes of a reportable offender reporting to the Commissioner of Police changes to their personal details under subsection 29(1) of the CPOR Act, a change occurs in the reportable offender's personal details relating to sex or gender only if:

- the registration of the offender's sex or gender under the BDMR Act or a corresponding law (as defined in section 4 of the BDMR Act) is changed (subsection 29(2A)(a)); or
- a document is issued under section 36ZA (Issue of acknowledgement document) of the BDMR Act or a corresponding law (as defined in section 4 of the BDMR Act) for the purpose of acknowledging the offender's sex or gender (subsection 29(2A)(b)).

The inclusion of proposed subsection 29(2A) ensures that reportable offenders are only required to report a change in sex or gender where the change has been formally registered under the BDMR Act or an acknowledgment document has been issued.

#### **Clause 26 – Section 40 amended**

Clause 26 amends section 40 (Power to take photographs) of the CPOR Act. Section 40 of the CPOR Act provides a power for an authorised person to photograph a reportable offender, including being able to require the reportable offender to expose a part of their body to be photographed.

Clause 26 amends section 40 to:

- delete gender-specific language in subsections 40(1)(b) and 40(2) and replace it with gender-neutral, non-binary language (subclauses 26(1) and 26(2));
- replace references in subsection 40(1)(b) to an "officer" with references to an "authorised person" (subclause 26(1)); and
- remove the reference in subsection 40(2) to "males undergoing a reassignment procedure within the meaning of the *Gender Reassignment Act 2000*" and replace it with a reference to "persons identifying as female" (subclause 26(2)).

#### **Clause 27 – Section 63 amended**

Clause 27 amends section 63 (Failure to comply with reporting obligations) of the CPOR Act to delete gender-specific language and replace it with gender-neutral, non-binary language by:

- deleting the reference to “his or her reporting” in subsection 63(2) and replacing it with “the person’s reporting” (subclause 27(1)); and
- deleting subsection 63(2)(c) and inserting “(c) whether the form of notification given to the person as to the person’s obligations was adequate to inform the person of those obligations;” (subclause 27(2)).

#### **Clause 28 – Various references to gender removed**

Clause 28 amends multiple provisions of the CPOR Act to replace gendered language with gender-neutral terms.

#### **Division 3 – *Constitution Acts Amendment Act 1899* amended**

Division 3 amends the *Constitution Acts Amendment Act 1899* (Constitution Acts Amendment Act).

#### **Clause 29 – Act amended**

Clause 29 provides that Division 3 amends the Constitution Acts Amendment Act.

#### **Clause 30 – Schedule V amended**

Clause 30 amends Schedule V Part 3 (Bodies membership of which is vacated on election) of the Constitution Acts Amendment Act to delete the reference to “The Gender Reassignment Board of Western Australia established by the *Gender Reassignment Act 2000*”.

#### **Division 4 – *Criminal Code Act Compilation Act 1913* amended**

Division 4 amends the *Criminal Code Act Compilation Act 1913*.

#### **Clause 31 – Act amended**

Clause 31 provides that Division 4 amends the Criminal Code.

#### **Clause 32 – Section 306 amended**

Clause 32 amends section 306 (Female genital mutilation) of the Criminal Code.

Subclause 32(1) amends section 306(1) to insert a definition of **genital reconfiguration surgery** as meaning “a surgical procedure to give a person the genital appearance of a particular sex, whether male or female”.

Subclause 32(2) amends the definition of **female genital mutilation** in section 306(1) to delete paragraph (d), which currently provides that **female genital mutilation** does not include a reassignment procedure within the meaning of the Gender Reassignment Act carried out on a person’s genitals by a medical practitioner as defined in section 3 of that Act.

Subclause 32(2) inserts a new paragraph (d), which excludes from the definition of **female genital mutilation** “genital reconfiguration surgery carried out by a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession”.

## **Division 5 – *Criminal Investigation Act 2006* amended**

Division 5 amends the *Criminal Investigation Act 2006* (Criminal Investigation Act).

### **Clause 33 – Act amended**

Clause 33 provides that Division 5 amends the Criminal Investigation Act.

### **Clause 34 – Section 3 amended**

Clause 34 amends section 3 (Terms used) of the Criminal Investigation Act to delete the existing definition of ***private parts*** in section 3(1) and replace it with a proposed new definition stating that ***private parts***, in relation to a person, means the person's genital area, anal area and buttocks and, in the case of a female or person identifying as female, includes the person's breasts.

## **Division 6 – *Criminal Investigation (Identifying People) Act 2002* amended**

Division 6 amends the *Criminal Investigation (Identifying People) Act 2002* (Criminal Investigation (Identifying People) Act).

### **Clause 35 – Act amended**

Clause 35 provides that Division 6 amends the Criminal Investigation (Identifying People) Act.

### **Clause 36 – Section 3 amended**

Clause 36 amends section 3 (Terms used) of the Criminal Investigation (Identifying People) Act to delete the existing definition of ***private parts*** in section 3(1) and replace it with a proposed new definition stating that ***private parts***, in relation to a person, means the person's genital area, anal area and buttocks and, in the case of a female or person identifying as female, includes the person's breasts.

## **Division 7 – *Equal Opportunity Act 1984* amended**

Division 7 amends the *Equal Opportunity Act 1984* (Equal Opportunity Act).

### **Clause 37 – Act amended**

Clause 37 provides that Division 7 amends the Equal Opportunity Act.

### **Clause 38 – Section 4 amended**

Clause 38 amends section 4 (Terms used) of the Equal Opportunity Act to delete the definition of ***gender reassigned person*** in section 4(1) and to insert a proposed new definition of ***gender reassigned person***.

Under the proposed new definition, a ***gender reassigned person*** means:

- a person who has been issued with a recognition certificate under the Gender Reassignment Act or a certificate that was an equivalent certificate for the purposes of that Act (paragraph (a)); or
- a person whose sex or gender in the registration of the person's birth under the BDMR Act has been changed under section 36Q of that Act (subparagraph (b)(i)); or

- a person who has been issued a document acknowledging the person's sex or gender under section 36ZA of the BDMR Act (subparagraph (b)(ii)).

### **Division 8 – *Family Court Act 1997* amended**

Division 8 amends the *Family Court Act 1997* (Family Court Act).

#### **Clause 39 – Act amended**

Clause 39 provides that Division 8 amends the Family Court Act.

#### **Clause 40 – Section 244A inserted**

Clause 40 amends the Family Court Act to insert proposed new section 244A (Rules for proceedings under the BDMR Act).

Proposed subsection 244A(1) provides that the judges, or a majority of them, may make rules providing for and in relation to:

- the practice and procedure to be followed in the Court exercising jurisdiction conferred on it under Part 5A (Changes of registration of sex or gender and issue of acknowledgement documents) of the BDMR Act (subsection 244A(1)(a)); and
- all matters and things necessary or convenient to be prescribed for the conduct of any business in the Court exercising jurisdiction conferred on it under Part 5A (Changes of registration of sex or gender and issue of acknowledgement documents) of the BDMR Act (subsection 244A(1)(b)).

Proposed subsection 244A(2) provides that if no provision is made under subsection 244A(1) in relation to a matter for which rules may be made under that subsection, the rules under section 244 that are most nearly applicable in relation to the matter apply.

### **Division 9 – *Guardianship and Administration Act 1990* amended**

Division 9 amends the *Guardianship and Administration Act 1990* (Guardian and Administration Act).

#### **Clause 41 – Act amended**

Clause 41 provides that Division 9 amends the Guardianship and Administration Act.

#### **Clause 42 – Section 45 amended**

Clause 42 amends section 45 (Authority of plenary guardian) of the Guardianship and Administration Act. Section 45 of the Guardianship and Administration Act sets out the functions and powers of a plenary guardian appointed under that Act. Subsection 45(3) specifies certain acts or functions a plenary guardian cannot do on behalf of a represented person.

Clause 42 inserts a new paragraph (e) to subsection 45(3) to make it clear that a plenary guardian cannot carry out a function of the parent of a child under Part 5A of the BDMR Act on behalf of a represented person. This means that if a represented person is a parent and has a child, the plenary guardian of the represented person cannot make decisions or consent

to the making of an application for change of registration of sex or gender or the issue of an acknowledgment document for the child of the represented person.

### **Division 10 – Prisons Act 1981 amended**

Division 10 amends the *Prisons Act 1981* (Prisons Act).

#### **Clause 43 – Act amended**

Clause 43 provides that Division 10 amends the Prisons Act.

#### **Clause 44 – Section 44 deleted**

Clause 44 amends the Prisons Act by deleting section 44 (Separation of male and female prisoners) of that Act. Section 44 currently provides that in a prison containing prisoners of each sex, separate cells and sleeping quarters in different parts of the prison shall be allocated to male and female prisoners. This does not allow for the placement of prisoners who are of a sex or gender other than the binary categories of “male” and “female”.

WA and the Northern Territory appear to be the only two jurisdictions that specifically provide for the separation of male and female prisoners in their relevant Acts. In most other jurisdictions, assessments for placement or separation of prisoners are based on a number of factors. In all jurisdictions, including WA, the actual placement of prisoners is supported by detailed policies and operating procedures which consider the needs of trans, gender diverse and intersex prisoners.

Clause 44 deletes section 44 of the Prisons Act. Placement of prisoners in Western Australian prisons will continue to be supported by detailed policies and processes outlined in the Commissioner’s Operating Policies and Procedures (COPPs), which consider the needs of all prisoners.

#### **Clause 45 – Section 49 amended**

Clause 45 amends section 49 (Power to search and question persons entering prison) of the Prisons Act. Section 49 of the Prisons Act empowers the superintendent of a prison to require and direct a search of a person entering, seeking to enter or near a prison, a person who is permitted to enter a prison or having been permitted to enter has just left a prison, or an examination of an article in the possession or under the control of such a person. Subsection 49(4) currently provides that a search of a female person or a child apparently under the age of 10 years shall be conducted by a female prison officer or some other female person authorised by the superintendent and in the presence only of female persons.

Clause 45 amends subsection 49(4) of the Prisons Act to replace references to a “female person” or “female prison officer” with references to a “person identifying as female” or a “prison officer identifying as female”.

These amendments ensure that a search under section 49 of a person identifying as female or a child apparently under the age of 10 years shall be conducted by a prison officer identifying as female or some other authorised person identifying as female, and in the presence only of persons identifying as female.

#### **Clause 46 – Section 110 amended**

Clause 46 amends section 110 (Regulations) of the Prisons Act. Section 110 of the Prisons Act empowers the Governor to make regulations prescribing all matters that are required or permitted by that Act to be prescribed, or are necessary or convenient to be prescribed.

Clause 46 deletes the reference in subsection 110(1)(p) to the Governor making regulations “regulating the association of male and female prisoners” and inserts a reference to the Governor making regulations “regulating the association of prisoners of different sexes”.

#### **Division 11 – *Terrorism (Extraordinary Powers) Act 2005* amended**

Division 11 amends the *Terrorism (Extraordinary Powers) Act 2005* (Terrorism (Extraordinary Powers) Act).

#### **Clause 47 – Act amended**

Clause 47 provides that Division 11 amends the Terrorism (Extraordinary Powers) Act.

#### **Clause 48 – Schedule 2 amended**

Clause 48 amends Schedule 2 (Searching people) to the Terrorism (Extraordinary Powers) Act. Schedule 2 to that Act governs how searches of people are to be conducted by police officers authorised by that Act. Clause 1 of Schedule 2 currently contains a definition of **private parts** that includes the breasts of “a male undergoing a reassignment procedure, as that term is defined in the *Gender Reassignment Act 2000* section 3”.

Clause 48 deletes the existing definition of **private parts** in clause 1 of Schedule 2 and replaces it with a new definition stating that **private parts**, in relation to a person, means the person’s genital area, anal area and buttocks and, in the case of a female or person identifying as female, includes the person’s breasts.

#### **Division 12 – *Terrorism (Preventative Detention) Act 2006* amended**

Division 12 amends the *Terrorism (Preventative Detention) Act 2006* (Terrorism (Preventative Detention) Act).

#### **Clause 49 – Act amended**

Clause 49 provides that Division 12 amends the Terrorism (Preventative Detention) Act.

#### **Clause 50 – Schedule 2 amended**

Clause 50 amends Schedule 2 (Searching people) to the Terrorism (Preventative Detention) Act. Schedule 2 to that Act governs how searches of people are to be conducted by police officers authorised by that Act. Clause 1 of Schedule 2 currently contains a definition of **private parts** that includes the breasts of “a male undergoing a reassignment procedure, as that term is defined in the *Gender Reassignment Act 2000* section 3”.

Clause 50 deletes the existing definition of **private parts** in clause 1 of Schedule 2 and replaces it with a new definition stating that **private parts**, in relation to a person, means the person’s genital area, anal area and buttocks and, in the case of a female or person identifying as female, includes the person’s breasts.