



HIGH COURT OF AUSTRALIA

6 October 2011

AB v STATE OF WESTERN AUSTRALIA & ANOR
P15/2011

AH v STATE OF WESTERN AUSTRALIA & ANOR
P16/2011
[2011] HCA 42

Today the High Court upheld appeals by AB and AH against the decisions of the Court of Appeal of the Supreme Court of Western Australia, which had set aside the decision of the State Administrative Tribunal ("the Tribunal") and refused the appellants' applications for recognition certificates ("certificates") of female to male gender reassignment under the *Gender Reassignment Act 2000* (WA) ("the Act").

The Act establishes a Gender Reassignment Board ("the Board"), and provides for the issue of a certificate which is conclusive evidence of the fact that a person has undergone a reassignment procedure and is of the sex stated in the certificate. The functions of the Board are to receive and determine applications for certificates, and to issue certificates in suitable circumstances. Before a person can apply to the Board for a certificate, the person must have undergone a reassignment procedure, as defined in s 3 of the Act.

The appellants, AB and AH, each identify themselves as male. Each applied to the Board for certificates which stated that they were male. Each of the appellants has undergone gender reassignment procedures in the nature of a bilateral mastectomy and testosterone therapy, although they retain some female sexual organs. Section 15(1)(b)(ii) of the Act relevantly provides that the Board must be satisfied that the person applying for a recognition certificate has the "gender characteristics" of the gender to which the person has been reassigned. "Gender characteristics" is defined by s 3 of the Act as "the physical characteristics by virtue of which a person is identified as male or female".

The Board was satisfied that the appearance of each of the appellants is that of a male person, but determined not to issue a certificate in each case because the appellants retained a female reproductive system. Following a review of the Board's decisions, the Tribunal set aside the decisions, granted each application for a certificate and directed the Board to issue such a certificate. The Court of Appeal of the Supreme Court of Western Australia allowed the appeals from those decisions and set aside the Tribunal's decision.

The High Court unanimously upheld the appeals and set aside the orders of the Court of Appeal, with the result that the decision and orders of the Tribunal were reinstated. The focus of the appeals to the High Court was on the meaning of "gender characteristics" in s 15(1)(b)(ii) of the Act, as defined in s 3 of the Act. The Court held that, for the purposes of the Act, the physical characteristics by which a person is identified as male or female are confined to external physical characteristics that are socially recognisable. Social recognition of a person's gender does not require knowledge of a person's remnant sexual organs. The requirements of the Act, including

s 15(1)(b)(ii), are to be given a fair and liberal interpretation in order that they achieve the Act's beneficial purposes. The Act contains no warrant for implying further requirements such as potential adverse social consequences or community standards and expectations.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*