

WA Appeal denies transsexuals gender change

AMANDA BANKS Legal Affairs Editor, The West Australian September 2, 2010, 11:20 am
<http://au.news.yahoo.com/thewest/a/-/wa/7869676/appeal-denies-transsexuals-gender-change/>

Attorney General Christian Porter has won a landmark appeal which will strip two female-to-male transsexuals of the right to be legally recognised as men.

A majority Court of Appeal decision handed down this morning over-ruled a State Administrative Tribunal ruling that the two transsexuals, whose identities have been suppressed, could be issued with certificates which reassigned their gender to males.

The SAT decision had overturned a Gender Reassignment Board ruling which refused the change of gender.

The Court of Appeal test case was launched by Mr Porter in a bid to clarify gender reassignment legislation passed 10 years ago and is likely to set a precedent on the extent of physical changes which are required for a person to be legally recognised as having changed their gender.

In a majority decision, Supreme Court Chief Justice Wayne Martin and Justice Christopher Pullin upheld one of Mr Porter's appeal grounds and issued orders to set aside SAT's ruling and cancelled the gender recognition certificates which had been issued.

In a summary of the 63-page judgment, the court said Chief Justice Martin and Justice Pullin took the view that the essential question was whether the physical characteristics of the two transsexuals, including their internal and external genitalia, would identify them as a member of the male gender.

"In their (the majority) view, because each individual possessed none of the genital and reproductive physical characteristics of a male, and retained nearly all of the normal external genital characteristics and the internal reproductive organs of a female, they would not be identified as males by reference to community standards, despite the existence of some secondary male physical characteristics," the summary said.

The gender reassignment legislation, passed by State Parliament in 1999, allowed certificates to be issued when a person demonstrates a belief in the gender they have been reassigned, has adopted the lifestyle and "gender characteristics" that gender and has had counselling.