



**SUPREME COURT  
OF WESTERN AUSTRALIA**

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

2 September 2010

**JUDGMENT SUMMARY:**

***State of Western Australia v AH – CACV 113/2009***  
***State of Western Australia v AB - CACV 114/2009***

The Court of Appeal, by a majority of two Judges to one, today upheld an appeal by the State of Western Australia from a decision of the State Administrative Tribunal. The tribunal had granted recognition certificates to two persons who had been born as females, but had sought certificates recognising the reassignment of their gender from female to male.

Orders have been made suppressing publication of the identity of the individuals the subject of the proceedings. The facts pertaining to each individual are set out in the reasons published by the Court. Each had applied to the Gender Reassignment Board of Western Australia for the grant of a recognition certificate. The Board refused each application. Each appealed to the State Administrative Tribunal, which upheld their appeal and granted the certificates which they sought. The effect of the decision of the Court of Appeal is to set aside the decision of the State Administrative Tribunal, and restore the decision of the Gender Reassignment Board refusing each application for the issue of a recognition certificate.

A majority of the Court, Martin CJ and Pullin JA, took the view that the essential question in each case was whether the physical characteristics of each person, including their internal and external genitalia, were such that they would be identified as a member of the male gender according to community standards. In their 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. Buss JA dissented.

The full judgment of the Court of Appeal is available on the Supreme Court of Western Australia website at [www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)