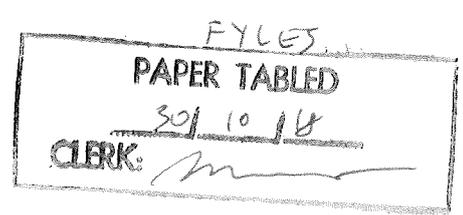


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## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

### **Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018**

#### **Serial no. 70**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

#### **OVERVIEW OF THE BILL**

This Bill has two objectives. One is to amend provisions in various Northern Territory laws to ensure that they reflect the new definition of 'marriage' in the *Marriage Act 1961* (Cth). On 9 December 2017, the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) commenced to allow two people the freedom to marry regardless of their sex or gender.

This new definition has given rise to the need for a number of consequential amendments to NT laws. Mostly the amendments are necessary to ensure that existing NT provisions that relate to marriage also encompass same-sex and gender-diverse marriages, through the use of gender-neutral language such as 'spouse' and 'surviving spouse'. The Bill will also ensure that a person's marital status is no longer an impediment to the person registering a change of sex under the *Births, Deaths and Marriages Registration Act*. Given that the *Marriage Act 1961* (Cth) now allows for marriages between same sex couples, the fact that a person is married should not prevent them from registering a change of their sex.

The second objective of this Bill is to increase the compliance of NT laws with the *Sex Discrimination Act 1984* (Cth), in circumstances where an Act that requires amendment to reflect the new definition of 'marriage' also requires amendments to remove discrimination on the grounds of gender identity or intersex status. In 2013, the *Sex Discrimination Act 1984* (Cth) was amended by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) to, among other things, provide protections for people against unlawful discrimination on the grounds of gender identity and intersex status. In an effort to increase the NT's compliance with the *Sex Discrimination Act 1984* (Cth), the Bill will make a number of additional amendments to the NT's *Births, Deaths and Marriages Registration Act*, particularly in relation to the requirements in that Act for registering a change of sex. In summary, these additional amendments include:

- replacing the requirement that a person must have undergone sexual reassignment surgery in order to register a change of sex with a requirement to have undergone 'appropriate clinical treatment' in relation to the person's sex or gender identity, and inserting provisions that account for persons born with variations in sex characteristics;
- ensuring that the *Births, Deaths and Marriages Registration Act* also provides for the registration of a change of gender identity;

- ensuring that provisions relating to the registration of a change of sex or gender identity clearly allow a person to register their sex or gender identity as something other than 'male' or 'female'; and
- removing the requirement that a person must publish a notice in a newspaper, in order to register a change of their name.

These amendments improve the legal recognition of sex and gender diverse people in the NT.

In relation to the requirements in the *Births, Deaths and Marriages Registration Act* for registering a change of sex, the Bill will also:

- insert a requirement that applications to register a change of sex/gender identity be accompanied by a statement from a registered doctor or psychologist certifying that the person has received 'appropriate clinical treatment' or is an intersex person;
- insert additional requirements for registering a change of sex/gender identity for a child. In particular, applications in relation to a child are to be made by the parents/guardian of the child, and only in circumstances where the parents/guardian considers the change to be in the 'child's best interests'. In addition, as an additional safeguard for children, a provision has been included whereby the Registrar must not register a change of sex/gender for a child in circumstances where the child is aware of the meaning and implications of the change and does not consent to the change;
- allow the Registrar to place a limit on the number of times a change of sex/gender identity can be registered for the same person, and require the Registrar to publish any such limit;
- amend the provisions relating to the Registrar's decision to register a change of sex so that there is less emphasis on the determination by the Registrar as to whether the sex/gender identity of the person has actually been changed and more emphasis on whether the person's application satisfies the legislative requirements, such that the change ought to be registered for the person; and
- make a number of consequential amendments to the definitions and the Births, Deaths and Marriages Registration Regulations.

This Bill represents the first tranche of amendments to ensure that NT laws reflect the new definition of 'marriage' and to increase the compliance of our laws with the *Sex Discrimination Act 1984* (Cth). A second tranche of amendments is still under consideration.

## **HUMAN RIGHTS IMPLICATIONS**

This Bill will primarily affect the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community, and promotes the following rights referred to in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), for the benefit of that community.

### ***The right to equality before the law and to non-discrimination***

The rights to equality and non-discrimination are contained in Articles 2, 16 and 26 of the ICCPR, which generally provide that all persons are equal before the law and are entitled to the equal protection of the law without discrimination on any ground. The new definition of 'marriage' in the *Marriage Act 1961* (Cth) has provided all people in Australia with equal rights with respect to marriage, removing discrimination on the

basis of sexual orientation, gender identity and intersex status. By reflecting this new definition in various NT laws, the Bill facilitates greater equality before the law and further removes discrimination on the above grounds for LGBTIQ people in the NT.

The additional amendments to the *Births, Deaths and Marriages Registration Act* relating to the requirements for registering a change of sex in the Territory also promote the rights to equality before the law and to non-discrimination, for the benefit of gender diverse and intersex members of our community. In particular, by:

- allowing for the registration of a change of sex or gender identity;
- replacing the requirement for sexual reassignment surgery with a requirement to have undergone 'appropriate clinical treatment' for the alteration of the person's sex or gender identity;
- inserting provisions that account for persons born with variations in sex characteristics; and
- ensuring that provisions relating to the registration of a change of sex or gender identity clearly allow a person to register their sex or gender identity as something other than 'male' or 'female';

The Bill improves the legal recognition of sex and gender diverse Territorians, facilitates greater and fairer access to the mechanism for registering a change of sex or gender in the NT, and in doing so promotes the right to be protected from discrimination on the basis of a person's sex or gender identity.

To the extent that the Bill limits these human rights, namely by:

- requiring applicants to have received 'appropriate clinical treatment' in order to register a change of sex or gender;
- requiring a statement from a doctor or psychologist certifying that the person has received 'appropriate clinical treatment' or is an intersex person; and
- allowing the Registrar to place a limit on the number of times a change of sex/gender identity can be registered for the same person,

those limitations are considered to be reasonable, necessary and proportionate, for the following reasons:

- the requirements for having received 'appropriate clinical treatment' and to provide medical evidence in support of an application aim to strike a balance between recognising that the registration of a change of sex/gender is a matter of individual choice, while maintaining some level of regulation to ensure that people access some level of care and support during the process; and
- allowing the Registrar to place a limit of the number of applications is necessary to deter frivolous applications which may result in a waste of resources. It is noted that a person who is aggrieved by a decision of the Registrar will have a right of review to the NT Civil and Administrative Tribunal, pursuant to section 48 of the *Births, Deaths and Marriages Registration Act*.

### ***The right to privacy and attacks on reputation***

Article 17 of the ICCPR provides that 'no one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.' This Bill will promote the right to privacy by removing the requirement that a person must publish a notice in a newspaper, in order to register a change of their name. Such a requirement could place a person who registers a change of their name subsequent to an application to register a change of

their sex/gender identity at risk of discrimination. In addition, by removing the requirement for sexual reassignment surgery and also allowing for the registration of a person's gender identity, the Bill will address a current inconsistency between Federal and NT requirements for registering a change of sex/gender on identity documents which in some cases has resulted in individual's holding mismatching identity documents. In so far as mismatching identity documents indicate a person's change of sex or gender identity, this may be an interference with the person's privacy, and could also place the person at risk of discrimination.

***The best interests of the child and the opportunity to be heard***

Article 3 of the CRC generally provides that in all actions concerning children, the best interests of the child shall be a primary consideration. This Bill promotes this principle in so far as it stipulates that any application for the registration of a change of sex for a child, must be in the best interests of the child. Article 12 of the CRC further provides that a child who is capable of forming his or her own views is to be assured the right to express those views freely in all matters affecting the child. This principle is also promoted in so far as the Bill provides that Registrar must not register a change of sex/gender for a child in circumstances where the child is aware of the meaning and implications of the change and does not consent to the change.

**CONCLUSION**

This Bill is compatible with human rights because it advances the protection of human rights, particularly the rights to equality before the law and to protection from discrimination. To the extent that the Bill limits these rights, those limitations are reasonable, necessary and proportionate.