

AUSTRALIAN CHRISTIAN LOBBY

australian christian lobby

### About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 125,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

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Secretary Social Policy Scrutiny Committee GPO Box 3721 DARWIN NT 0801

13 November 2018

Re: Births, Deaths And Marriages Registration And Other Legislation Amendment Bill 2018

The Australian Christian Lobby (ACL) is grateful for the opportunity to comment on the current review of laws relating to the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018.

Please feel free to contact me if I can be of further assistance in the consideration of this matter. I would be pleased to meet to discuss my submission or any other aspect in respect to this review.

Regards,

**Wendy Francis** 

Director, Queensland and Northern Territory

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### Introduction

This submission sets out the position of the Australian Christian Lobby in relation to the proposed Births, Deaths and Marriages and other Legislation Amendment Bill 2018.

In responding to the questions raised by the Social Policy Scrutiny Committee, this submission recommends that the Bill be withdrawn and that the status quo be maintained for the reasons argued below.

### RECOMMENDATIONS

- 1 A person's sex should be recorded as 'male' or 'female' in accordance with their biological identity which is scientifically determined by their chromosomal, hormonal, gonadal and anatomical characteristics. <sup>1</sup> In the very rare cases where testing is required to determine a baby's sex, some provision might be made for recording of this information. A very small number of people are born with ambiguous biological identity and this can be recorded as 'indeterminate'. The incidence of children born with indeterminate sex is estimated in The British Medical Journal as being 1:2000.<sup>2</sup>
- 2 Only the biological chromosomal data is scientifically verifiable. Sex is a vital characteristic. Gender and identity are not. To distort or falsify record data can have serious implications for the very reasons that such data is collected. To be of any value, data needs to be accurate. For this reason, any changes to 'sex' or 'gender identity' recorded by Births Deaths and Marriages Register (BDMR) must be traceable to the biological sex.
- 3 A birth, death or marriage certificate does not create an individual's identity, it records the historical event that helps the state plan. If it were to create an identity, then it would need to record much more personal and diverse information which, by and large, does not benefit the state and becomes intrusive on privacy.
- 4 Children should not be the subjects of reassignment of sex until such time as they can make autonomous, informed decisions. In our society that age is 18.
- 5 In the instance of the birth registration of a child, the historical and medical facts (i.e. time, biological sex and parentage of the child), should be the only details recorded. The purpose of this record is not to form the gender identity of a child and hence there should be no option for the parents to determine gender.

<sup>1</sup> Leonard Sax."How Common Is Intersex? A Response to Anne Fausto-Sterling," The Journal of Sex Research, vol. 39(3), 2002, pp. 174–78. (http://www.jstor.org/stable/3813612); R. Dawkins, The Ancestor's Tale, A Pilgrimage to the Dawn of Evolution, p.135 (Mariner Books ed. 2005) (stating that, "[i]ndeed, the gene determining maleness (called SRY [sex determining region y]) has never been in a female body"); National Institutes for Health, Genetics Home Reference: SRY gene, March 2015. https://ghr.nlm.nih.gov/gene/SRY.pdf (noting that "[a] fetus with an X chromosome that carries the SRY gene will develop male characteristics despite not having a Y chromosome").

<sup>2 &#</sup>x27;Parental choice on normalising cosmetic genital surgery' British Medical Journal, 2015, p. 351: https://www.bmj.com/content/351/bmj.h5124

# Purpose of collecting statistics of births, deaths and marriages

A register of births, deaths and marriages is a register of historical legal fact. It is not a register of present personal identity, gender orientation or sexual preferences.

The collection of data relating to births, deaths and marriages has two interrelated functions: Personal; and Demographic.

#### PERSONAL

Some personal benefits of civil registrations relate to maintaining records of births, deaths, marriages, changes of name, proof of age and more recently for recording civil partnerships and sex reassignment. Establishing identity and age are often necessary to obtain drivers' licences; school entry; passports; open a bank account; apply for loans; enrol as a voter; and a range of other purposes.

On a more subjective personal level it also provides genealogical information which may contribute to a personal sense of identity or place in history. It is also interesting and important information for social historians.

### **DEMOGRAPHIC**

Biological sex differences between men and women affect many different aspects of an individual's life – and therefore also affect the formation of government policy. Statistics obtained through BDMR inform the planning and implementation of government programs, particularly regarding health and welfare. This information is used to plan hospitals, schools, aged care and all infrastructure.

Information about biology also has demographic implications. Facilities that cater for women's specific health and welfare needs are an essential service in our community. These facilities must continue to respect biology. Since many of these are intended to provide for the vulnerability of women – particularly vulnerability that arises from women's distinct reproductive functions – the erasure of biology results in a framework which makes it impossible to meet these needs.

This matters for women because they do not wish to find themselves in unsafe situations at times of vulnerability.

### PERSONAL SAFETY AND NATIONAL SECURITY

This information is also used for tracking crimes and providing identity for passports which ensure security for international travel. It needs to be accurate and factual.

## Gender identity is not the same as 'intersex'

An intersex person is a person born with physical or biological sex characteristics that do not fit typical classification. It is not appropriate to meld this term with "gender identity". These are two separate issues.

A person's sex should be recorded as "male" or "female" in accordance with their biological identity which is scientifically determined by their chromosomal, hormonal, gonadal and anatomical characteristics.

In the very rare cases where testing is required to determine a baby's sex, some provision might be made for the recording of this information for a later time. A very small number of people are born with ambiguous biological identity and this can be recorded as "indeterminate". The *British Medical Journal* estimates this incidence as being 1:2000. \*\*Psychology Today\*\* suggests 0.005%\* to 0.014%\* of those assigned as male at birth and 0.002% to 0.003%\* of those assigned as female at birth may have gender dysphoria. \*\*In all cases, this is a very small minority.

In contrast to the objective fact of biological sex, "gender identity" refers to a subjective perception or feeling of being male or female, both or neither. While some people may decide to adopt an "identity" that differs from their sex, this has no bearing on the biological sex characteristics of a child at birth.<sup>5</sup>

<sup>3</sup> Ibid

<sup>4</sup> https://www.psychologytoday.com/au/conditions/gender-dysphoria (retrieved 5 October 2018)

<sup>5</sup> http://womensliberationfront.org/wa\_birth\_cert/ Retrieved 26 March 2018.

## "Gender identity" eludes definition

Biology Is not chimerical. Identity has traditionally meant an objective set of attributes that identify a person. It is now an entirely self-referenced concept of self. Gender identity could be a range of many things – neither the bill nor the explanatory memorandum reflect the definitions of "gender identity" described by the activists themselves.

The concept of gender identity as something individual and existing independently of biological sex is a recent confection of post-structuralist philosophy, which does not recognise objective truth. Truth, according to postmodernism, is relative. Different subjective individual "truths" are seen as equally valid. Knowledge can only be known by the "knower". Gender, therefore, can only be perceived by the individual themselves. Gender identity, then, is an individual's subjective perception of being either male, female, both or neither. Postmodernism also rejects the need for binaries to frame thinking: good/bad, male/female, up/down, black/white – all of these are equally guilty of cementing hierarchies and constraining diversity to a single axis. In order to satisfy the requirements of post-modernists, a truly "egalitarian" approach to gender must recognize genders that do not sit anywhere on a male–female spectrum.

Already the understanding of "gender identity" used by the transgender rights movement to argue that a subjective understanding of being the opposite sex (whereby a natal man can identify as a woman or transgender woman, for example) is outdated. Indeed, Tumblr, in researching all the genders currently in popular use has compiled these in a document revealingly entitled "Complete List of Tumblr Genders (SO FAR)"6, in reference to the fact that the understanding of 'gender' as a subjective identity is still expanding. The legal implications of protecting a subjective gender identity which is at variance with biological sex are potentially problematic, though the problems differ in type and degree depending on which working definition of gender identity is being contemplated.

As mentioned previously, however, the idea that gender diversity only exists on a male—female spectrum is already outdated. If legislation is to keep pace with this particular social trend and adhere consistently to the demands of the postmodernist ideology informing modern understandings of "gender identity", it will need to contemplate protection for all "gender identities". This again poses problems for legislation, because many of the popularly-recognised "gender identities" defy definition.

### GENDERS DON'T HAVE TO BE GENDERS AT ALL

Some of the 'genders' identified include those that explicitly state they are not entirely genders and are not fully known, even by the person experiencing them. The following examples are drawn directly from Tumblr's list:

Apogender A subset of agender in which you feel not only genderless, but entirely removed

from the concept of gender.

Cassgender Feeling as if the very concept of gender is unimportant to you.

Exgender An outright refusal to accept or identify in, on, or around the gender spectrum.

6 https://ageofshitlords.com/list-of-all-tumblr-genders-so-far. Retrieved 6 February 2018.

Gendercosm A gender identity encompassing and surpassing the limits of the earth/society,

but doesn't incorporate existing genders from society; a gender identity so grand

and huge it cannot be explained by words.

Hemigender Feeling half one gender, and half something else, ex. hemiboy, hemigirl, etc. The

"something else" may or may not be known.

Jupitergender A gender that is so large and present, one is not quite sure what it is because

it's too big to see clearly, but it is definitely there and one knows that they're

definitely not cis.

#### GENDERS DON'T HAVE TO BE FIXED

An individual's gender identity may be subject to fluctuation and change. The same postmodernist framework that proposes a subjective identity might be a protectable attribute (as being 'true' for the individual), will also confound any efforts to insist that it must be a fixed property.

Affectugender A gender affected by mood swings.

Amicagender A gender that changes depending on which friend you're with at the moment.

Anogender A gender which fades in and out, but always comes back feeling the same.

Aquarigender A gender which is fluid between infinite feelings. Sometimes, these feelings may be

close to an existing term, and sometimes they are indescribable or abstract.

### SOME GENDERS ARE DEFINED BY BEING UNDEFINABLE

The very task of defining a gender identity may offend against those gender identities that define themselves (in whole or part) by being undefinable. Again, examples abound without even venturing out of 'A' in the whole alphabet of Tumblr genders:

Adamasgender A gender which refuses to be categorized.

Agender Having no gender or a lack of gender identity.

Anongender A gender that is unknown to both yourself and others.

Apconsugender A gender in which you know what it isn't, but not what it is, sort of like the gender is

hiding itself from you.

Atmosgender Having a gender which is present, but unable to be grasped or firmly defined.

Autogender A gender experience that feels deeply personal to one's self.

One significant problem with the proposal to recognise a subjective gender identity in law therefore, is the difficulty in defining what a 'gender identity' is and what it is not.

The problem with recognising subjective, fluid, imperfectly perceived, undefinable and essentially individual gender identities is obvious. Laws need to be defined, intelligible, clear and predictable.

The Bill itself suggests that this issue is not resolved and in proposed amendments to Sections 28DA(1) (2)(3) allows the Registrar to determine the number of times an individual may change their gender in order to "deter frivolous application". If gender is not fixed, as the activists claim, then it would be offensive to suggest the number of times a person may change their gender can be arbitrarily limited by the Registrar.

# Change of sex should continue to require sexual reassignment surgery

The Bill and explanatory notes do not discuss at what stage a "sex change" has taken place. Is this determined by "identity"; the taking of hormones or surgical reassignment? It is unclear which definition of "gender identity" this Bill is considering.

There is a problem when non-surgically transitioned persons wish to be recognised as their chosen gender which differs from their biological sex. This is particularly a problem for women as it endangers the physical and emotional safety of biological women and girls in terms of access to privacy: change rooms; bathrooms; women's refuges; even prisons. Women escaping domestic violence in a women's refuge may be further traumatised and placed at risk when accommodated with non-surgically transitioned persons identifying as women. The Canadian example of Christopher Hambrook is only one of many cases that demonstrate this point. In 2012, Hambrook was already a convicted sexual offender when he took advantage of the expansion of laws to identify as "Jessica" in order to access two female shelters, where he assaulted women. There have already been similar cases of women abused while in prison. 8

It is also concerning that transgender women are often abused in men only prisons. The amendments to the Crimes Act might consider appropriate procedures for incarceration of transgendered persons to ensure their safety and that of other inmates.

<sup>7</sup> Sam Pazzano, "Predator who claimed to be transgender declared dangerous offender", Toronto Sun, 26 February 2014. (Available here: https://torontosun.com/2014/02/26/predator-who-claimed-to-be-transgender-declared-dangerous-offender/wcm/fc2c70f0-b1a1-41e2-85db-bec9d0012ce5). (Accessed 13/11/18).

<sup>8</sup> https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison (Retrieved 12 November 2018)

<sup>9</sup> https://www.nytimes.com/2015/04/06/us/ashley-diamond-transgender-inmate-cites-attacks-and-abuse-in-mens-prison. html (retrieved 12 November 2018)

# Minors – under 18 years of age – should not be able to register change of sex/gender

In the case of gender dysphoria and children, a conservative approach to treatment is recommended. Significant studies show that children who experience gender dysphoria at a young age will desist from those feelings with the onset of adolescence. This occurs naturally as the child progresses through puberty. Proponents of transitioning suggest that delaying puberty gives the child an opportunity to explore gender identity. Some researchers, however question whether this is helpful or whether it impedes normal development which resolves the gender dysphoria.

The "Dutch protocol" treatment for gender dysphoria, presumes that natural sex characteristics interfere with the "exploration" of gender identity, when one would expect that the development of natural sex characteristics might contribute to the natural consolidation of gender identity. It also presumes that interfering with the development of natural sex characteristics can allow for a more accurate diagnosis of the gender identity of the child. But it seems equally plausible that the interference with normal pubertal development will influence the gender identity of the child by reducing the prospects for developing a gender identity corresponding to his or her biological sex. 12

80% to 98% of cases of gender dysphoria resolve at the onset of puberty. Therefore, puberty blockers should not be administered prior to the onset of puberty.<sup>13</sup> Puberty blockers also reduce bone density<sup>14</sup> especially with prolonged use. It is also likely to affect neural development. This is a time of rapid brain development and little research is available on the role of hormones on the developing brain. In recent years, a small but growing number of human behavioural and neuroimaging studies, including in populations with endocrine disruptions, have provided evidence that pubertal hormones might influence the structure and function of the developing human brain.<sup>15</sup>

<sup>10</sup> Kenneth Zucker, Hayley Wood, Devita Singh, and Susan J. Bradley, "A Developmental, Biopsychosocial Model for the Treatment of Children with Gender Identity Disorder", Journal of Homosexuality, vol. 59, March 2012; American Psychiatric Association, "Gender Dysphoria," DSM-5, 455.

<sup>11</sup> Whitehall, J., "Childhood Gender Dysphoria and the Law", Quadrant, 10 May 2017. (Available at: http://quadrant.org.au/magazine/2017/05/childhood-gender-dysphoria-responsibility-courts/)

<sup>12</sup> Paul W. Hruz, Lawrence S. Mayer, Paul R. McHugh; Growing Pains: Problems with Puberty Suppression in Treating Gender Dysphoria, https://www.thenewatlantis.com/publications/growing-pains (retrieved 5 October 2018)

<sup>13</sup> McCall, B,; Nainggolan, L; Caring for Transgender Kids: Is Clinical Practice Outpacing the Science? https://www.medscape.com/viewarticle/901017\_2

<sup>14</sup> Klink, D, Caris M, Heijboer, A van Trotsenburg, Rotteveel, J; 'Bone Mass in Young Adulthood Following Gonadotropin-Releasing Hormone Analog Treatment and Cross-Sex Hormone Treatment in Adolescents With Gender Dysphoria'

The Journal of Clinical Endocrinology & Metabolism, Volume 100, Issue 2, 1 February 2015, Pages E270–E275, https://doi.org/10.1210/jc.2014-2439

<sup>15</sup> Blakemore, S; Burnet S; Dahl R; The role of puberty in the developing adolescent brain in *Human Brain Mapping* Volume 31, Issue 6, Challenges and Methods in Developmental Neuroimaging https://doi.org/10.1002/hbm.21052 (Retrieved 6 October 2018)

Blocking puberty has repercussions on fertility. The implications of this might seem far in the distant future for someone whose reproductive life has barely begun. Endocrynologist Gary Butler, a professor of paediatrics at University College London Hospitals points out:

GnRH analogue therapy stops gonadotropin and gonadal sex hormone secretion but also suspends gonocyte maturation. Oocytes remain dormant and spermatogenesis is halted. It is at this point that questions regarding future fertility arise.<sup>16</sup>

The practice of "sex change surgery", even for adults, is highly contentious. Some adult members of the LGBT community who have undergone the surgery themselves, still do not recommend it for minors. This is the equivalent of human experimentation and basic medical ethics should prevent it being available to vulnerable children.<sup>17</sup>

### HOW SPECIALISED ARE THE SPECIALISTS?

Gender dysphoria is a relatively new phenomenon. As suggested by the article, "Caring for Transgender Kids: Is Clinical Practice Outpacing the Science?" Clinical practice is not all that well-developed and treatment is still largely experimental. McCall and Nainggolan note that: "Nearly 80% of endocrinologists have treated a transgender person, but the same percentage (80.6%) have never received formal training on care for these patients." 18

It would be imprudent for law to race ahead of medicine in enshrining practices that are still experimental and highly contentious.

<sup>16</sup> As quoted op cit McCall, B; Nainggolan, L; https://www.medscape.com/viewarticle/901017\_3

<sup>17</sup> Whitehall, J., "Gender Dysphoria and Surgical Abuse", 15 December 2016, Quadrant. (Available here: https://quadrant.org.au/magazine/2016/12/gender-dysphoria-child-surgical-abuse/)

Whitehall, J., "Experimenting on Gender Dysphoric Kids", 24 July 2018. *Quadrant. (Available here:* http://quadrant.org.au/magazine/2018/07/experimenting-children-gender-dysphoria/).

<sup>18</sup> op cit McCall, B; Nainggolan, L; https://www.medscape.com/viewarticle/901017\_4

# Health risks of sexual transitioning

The Law Reform Commission provides some discussion of the mental health trauma of persons experiencing gender dysphoria, but no discussion is given to the physical trauma of surgery required to sexually transition and whether this should be sanctioned. As already noted, practice is outpacing the science.

It is also the case that many who transition are still dissatisfied with their bodies. For example, a 44-year-old transsexual woman whose botched sex-change operation left her with physical deformities that she felt made her look like a "monster" was assisted to suicide in Belgium in 2013.<sup>19</sup> For others, it is the wrong decision.<sup>20</sup> Jill Stark tells the story of both Andrew and Angela who trace their feelings of gender dysphoria to childhood sexual abuse, but this is not a narrative that the psychiatrists at the clinic they attended will entertain, but it is not an uncommon association. Walt Meyer, himself a victim of child abuse who transitioned to a woman but regretted the choice, tells the story of Billy also abused and desiring to be a girl.<sup>21</sup> Making a wrong decision is something the trans-activists will not acknowledge.

Transgender activist, Nevo, was born female but has undergone surgical transitioning to male. In a recent conversation at the Wheeler Centre she recounts her decision to have a mastectomy:

I remember my surgeon saying to me 'you know, once you do this you cannot go back. This is it. You cannot have your breasts again, you can't...' and I was like 'that's a lie. Like, that's not true. Like, yeah, ok, so I won't have my breast but if I really turn around one day and thought 'Oh, you know, I actually want breasts again', I could get them. It's not that hard...<sup>22</sup>

Nevo makes light of the situation. The reality is that if she wanted breasts again, they would not be breasts. They would be surgical saline implants and would not function as breasts but merely look like breasts. And additional surgery would be accompanied by physical trauma and possibly psychological trauma and readjustment.

<sup>19</sup> Damien Gayle, "Transsexual, 44, elects to die by euthanasia after botched sex-change operation turned him into a 'monster", Daily Mail, 2nd October 2013. Available at: http://www.dailymail.co.uk/news/article-2440086/Belgiantranssexual-Nathan-Verhelst-44-elects-die-euthanasia-botched-sex-change-operation.html

<sup>20</sup> Stark, Jill; I will never be able to have sex again; Sydney Morning Herald, 31 May 2009. https://www.smh.com.au/national/i-will-never-be-able-to-have-sex-again-ever-20090530-br41.html (retrieved 8 October 2018).

<sup>21</sup> Heyer, W; Childhood Sexual Abuse, Gender Dysphoria, and Transition Regret: Billy's Story, The Public Discourse, 26 March, 2018 http://www.thepublicdiscourse.com/2018/03/21178/ (retrieved 8 October, 2018)

<sup>22</sup> Nevo Zisin: Beyond the Binary, Wheeler Centre, 3 December 2017; https://www.youtube.com/watch?v=biLm3HDaLfl (retrieved 7 October, 2018)

### Conclusion

The Births, Deaths and Marriages and Other Legislation Amendment Bill 2018, does not and cannot reflect the broad divergence of views of transgender ideologies.

Surgical and medical treatments of persons with transgender issues are largely experimental and that the medical experts do not always get it right.

Available scientific data suggests that most instances of gender dysphoria in children will resolve itself as they pass through puberty.

The experience of world-leading genital reconstructive surgeon Professor Miroslav Djordjevic, indicates that there is new and growing evidence that many persons who have transitioned are re-transitioning to their birth sex.<sup>1</sup>

After evaluating available studies and data, it is strongly recommended that this Bill be withdrawn.

<sup>1</sup> https://www.smh.com.au/lifestyle/more-people-are-asking-for-gender-reversal-surgery-20171002-gysgce.html (Retrieved 13 November 2018)

