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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

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

10.00 am, Monday, 19 November 2018
Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine
Mr Chansey Paech MLA, Member for Namatjira

Witnesses:

Hannah Clee: Senior Policy Lawyer, Legal Policy, Department of the
Attorney-General and Justice
Alexandra Lillis: Legal Policy Lawyer, Department of the Attorney-
General and Justice

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

Department of the Attorney-General and Justice

Madam DEPUTY CHAIR: Good morning everyone. Thank you for joining us today. I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing into the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018.

I acknowledge my fellow committee members in attendance today: Sandra Nelson, Member for Katherine; Lia Finocchiaro, Member for Spillett; and via teleconference we have Ngaree Ah Kit, Member for Karama and Chansey Paech, Member for Namatjira.

We also have Gerry Wood, the Member for Nelson, and he is sitting in not as a committee member but as an interested member of the Assembly today.

I welcome to the table to give evidence to the committee today, from the Department of the Attorney-General and Justice, Hannah Clee, Senior Policy Lawyer, Legal Policy, and Alexandra Lillis, Legal Policy Lawyer. Welcome. We appreciate you taking the time to speak to the committee this morning and look forward to hearing your information.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made available for use by the committee and may be put on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private. I ask each witness to state their name for the record and the capacity in which they are appearing. I will then ask you to make a brief opening statement and proceed to the committee's questions.

Could you please state your name and the capacity in which you are appearing today? Ms Clee would you like to make an opening statement?

Ms CLEE: My name is Hannah Clee. I am the Senior Policy Lawyer with Legal Policy in the Department of the Attorney-General and Justice. I am here today supporting Alexandra Lillis who will be making the opening statement.

Ms LILLIS: Good morning, my name is Alexandra Lillis, Legal Policy Lawyer with the Department of the Attorney-General and Justice. I have a brief opening statement.

Madam DEPUTY CHAIR: Thank you.

Ms LILLIS: The Births, Deaths and Marriages and Other Legislation Amendment Bill 2018 amends Northern Territory legislation to increase compliance with Commonwealth laws. Twelve months ago, the Commonwealth passed the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* and that act amended the definition of marriage to provide that a marriage is between two people.

As a consequence, a number of Northern Territory laws require amending to reflect the new definition, particularly in respect to ensuring there is no discrimination on the basis of marital status which is prohibited by the Commonwealth *Sex Discrimination Act*.

In considering the laws necessary for amendment, it became apparent that there was some overlap between those amendments and necessary amendments to ensure that NT laws were not discriminatory on the basis of gender identity or intersex status, which is also prohibited by the *Sex Discrimination Act*.

What this bill does is it aims to comply with the new definition of marriage in the Commonwealth *Marriage Act* as being between two people. It also aims to increase the compliance of Territory laws with the Commonwealth *Sex Discrimination Act* which as I mentioned, provides that it is unlawful to treat a person less favourably than another person in a similar situation because of their gender identity or intersex status or on the basis of marital status.

This bill represents just a first tranche of amendments in a body of work to increase Northern Territory compliance with both of those Commonwealth laws and further amendments are still under consideration by the Department of the Attorney-General and Justice. In considering the best way to achieve these two aims, the department looked to how other jurisdictions have amended their legislation. We also looked to Commonwealth legislation and the Commonwealth guidelines along with the positions that have been advocated by different representative organisations for consistency and clarity.

The department acknowledges that there may be different ways of achieving the same policy objective, however ultimately it is our view that this bill represents the aim and the intent which is to ensure compliance with Commonwealth

laws that apply across Australia and to integrate the application of Commonwealth law in a way that allows for the effective administration of NT legislation.

Overall, by reflecting the new definition of marriage in various NT laws, this bill aims to facilitate greater equality before the law and promote non-discrimination on the grounds of gender identity and intersex status.

The amendments to the requirements for registering a change of sex under the Northern Territory's *Births, Deaths and Marriages Registration Act* also aims to improve the legal recognition of sex and gender diverse people in the Northern Territory and facilitate greater and fairer access to the process for registering a change of sex. This is ultimately with the aim of promoting the right to be protected from discrimination on the basis of a person's sex or their gender identity. That is all I have to say for the opening statement.

Madam DEPUTY CHAIR: We have a number of questions we absolutely need you to answer before we open it up more broadly to members because we have had a look at this legislation with the assistance of the Legislative Assembly staff, and these questions we need to have clarified. So I will proceed to ask them.

The bill introduces the term 'gender identity' as a central concept of the proposed amendments. Given that the term is not currently defined elsewhere in the Northern Territory legislation, can you clarify why it is not defined in the bill?

Ms LILLIS: Thank you for the question, Madam Deputy Chair.

During drafting, consideration was given to whether the term 'gender identity' needed to be included in this bill. It was not considered necessary to define the term and this is because the bill proposes to include an express and limited list of recognised sex and gender identities for the purposes of registering a change under the act. For that reason, a definition of the term 'gender identity' was not considered necessary.

The use of the term 'gender identity' was modelled on South Australian legislation which allows for the registration of a change of gender identity. Gender identity is also the term used in the Commonwealth *Sex Discrimination Act*.

As I mentioned, consideration was given to whether a definition of that term needed to be included in the bill during the development and the decision was made that it was not necessary because a limited list of sex and gender identities are contained in the regulations.

Mrs FINOCCHIARO: I am going to ask about that. So where is the express and limited list?

Ms LILLIS: It is contained in the regulations. The proposed regulation 4A which is contained at Clause 35 of the bill provides a limited list of recognised sex or gender identities for the purposes of registering a change of sex or gender identity under the *Births, Deaths and Marriages Registration Act*. The recognised sex and gender identities in that list include: female, male, non-binary, intersex, and unspecified.

Madam DEPUTY CHAIR: Any other questions on that particular issue?

Mr WOOD: Yes, the last part of that definition was 'unspecified.' What does unspecified mean?

Ms NELSON: Hermaphrodite.

Ms LILLIS: The term 'unspecified' is intended to be a flexible term that may be used as an alternative to intersex or it may be used by people who do not identify as any particular gender at all.

Mr WOOD: So it is still very broad.

Ms LILLIS: It is broad and the intention of the bill is to allow for flexibility to recognise different sex and gender identities.

Mr WOOD: So really, when you say it is limited, it is not actually limited at all because that clause there allows it to be very flexible.

Ms CLEE: How it would then be identified is the gender identity would be unspecified. That is the limitation by providing that it is unspecified.

Mr WOOD: So it is basically, without putting too much of a term on it, nearly limitless. There are many gender identity terms. So there is no limit on what could be classed under that section of the regulation.

Ms CLEE: It would be unspecified. That is the way it is defined within the act. A person may nominate to have their gender identity as unspecified.

Ms NELSON: That is the legal term.

Mr WOOD: That is the legal term but they might put down who they are, what sort of gender they are.

Ms LILLIS: No. The unspecified would be the category. That is as opposed to a category would say for example 'other, please specify.' The proposed inclusion of unspecified is different to that. Unspecified would be the available category for the purposes of registering sex or gender.

Mr WOOD: So how could you be discriminated against if you are unspecified?

Ms CLEE: The individual may determine not to identify as a male or a female or non-binary. Their preference might be to be unspecified to neither.

Mr WOOD: That is alright. What I was asking was—because part of this is discrimination. If they are unspecified, how would they be discriminated against? How would the person who might be accused of discrimination, know what the gender identity of that person was if they just put unspecified?

Ms LILLIS: The aspect in relation to discrimination of a person who determines that their gender is unspecified, if you were to treat the person as a male or female for example and they have indicated that their preferred gender identity is to be treated as unspecified, if you were to treat them as a male or a female, potentially that could be discriminatory because that is not their preferred gender identity.

Mrs FINOCCHIARO: Do you mind just running through that list again? So it was male, female, unspecified, intersex...

Ms LILLIS: And non-binary.

Mr WOOD: I must admit, I would have preferred gender identity be—give us an indication of what, for instance, there is gender fluidity. You can have a lot of things under gender fluidity.

I would have thought that the definition should have at least been in the act, giving a broader understanding of what this actually means in practical terms. It is very loose-ended by having that unspecified clause there.

Madam DEPUTY CHAIR: Is 'unspecified' actually a gender identity at all? Do you know what I mean? Is that an actual gender? Is that considered a gender identity, to be unspecified?

Ms LILLIS: As I mentioned before, it is intended to be a flexible term that may be used by people who do not identify with any particular gender.

Madam DEPUTY CHAIR: Okay. It is an interesting notion that a lot of people would not have their head around, including myself. We might move on. You are not here to debate this with us. You are here for the legal information you can provide.

It has been suggested that inclusion of the word identity is confusing and unhelpful given the change that is to be achieved, is one of legally recognised gender whereas identity can exist outside legal recognition, which is what we have been alluding to.

Do you want me to read that again? What impact would it have on the operation of the legislation if the term 'gender' rather than 'gender identity' was used? We are told that in some cases, gender identity has been replaced by just gender. The identity has been dropped from the term.

Ms CLEE: Under the *Sex Discrimination Act*, the term gender identity is still used.

Ms LILLIS: It is also the term used in South Australian legislation. The department's view is that the two terms can be used interchangeably. There did not appear to be any particular reason why the term 'gender' should be used instead of 'gender identity' in the bill.

Mr WOOD: In your Australian Government guidelines, it does not mention 'gender identity', it just mentions gender.

Mrs FINOCCHIARO: Yes, the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) and the Australian Government Guidelines on the Recognition of Sex and Gender have moved away from the term 'gender identity' in favour of just 'gender.' You said it would have no impact on the bill one way or the other.

Ms LILLIS: No I do not believe so. Although the Australian guidelines uses the term 'gender' rather than 'gender identity', there was no indication to my knowledge in the Australian guidelines that there was an intentional move away from using the term 'gender identity.'

Mr WOOD: Could I ask a slightly broader question here? When this legislation was introduced in the parliament, my understanding was it had to do with the changes to the *Marriage Act*. We also have a discussion paper coming up, I am not sure when it will come forward, about discrimination. That is the big paper that was brought out late last year.

Madam DEPUTY CHAIR: In the Northern Territory.

Mr WOOD: Is this piece of legislation not more related to the *Anti-Discrimination Act* and not the *Marriage Act*? Has this been dropped into this discussion prematurely?

Ms CLEE: There is the broader review of the Northern Territory *Anti-Discrimination Act* that is currently underway. This bill is providing for compliance with the Commonwealth *Sex Discrimination Act*. So the Commonwealth also has a body of laws in relation to discrimination which applies across Australia.

Mr WOOD: That is the argument you have for making these changes to the act already. That is what the discussion paper was about, based on the Commonwealth and this little bit which seems to have come out of the blue, which I would have expected to be in the broader discussion that a lot of people put broader submissions into, has come in very quickly, under the guise of we have to have this done by 9 December because of the changes to the *Marriage Act*.

Has this section, section 28, got anything to do with the *Marriage Act*?

Ms CLEE: Sorry, which section were you referring to?

Ms NELSON: The section where you identify the gender on the birth certificate.

Mr WOOD: We have a section on the gender and we have a section on the birth certificates.

Ms LILLIS: As I said in the opening statement, this bill has two purposes. One is to reflect the new definition of marriage in various Northern Territory laws and the second is to increase the Northern Territory's compliance with the *Sex Discrimination Act*, specifically the protections in that act from discrimination on the grounds of gender identity and intersex status. So they are two separate purposes.

The reason why the proposed amendments to the requirements for registering a change of sex under the *Births, Deaths and Marriages Registration Act* have been included in this bill is because it was identified that there was some overlap between the amendments necessary to reflect the new definition of marriage and these related amendments. The body of work relating to the reform of the Northern Territory's *Anti-Discrimination Act* is a separate project and that is ongoing.

Mr WOOD: But this, I thought, was exactly what the discussion about the *Anti-Discrimination Act* was all about. Gender is included in that discussion. I remember it being part of several submissions.

Ms NELSON: It is included in that discussion but this focuses specifically on Births, Deaths and Marriages and the amendments to that act, whereas the anti-discrimination one is broader encompassing everything including workplace discrimination, residential tenancy discrimination. This is specific to...

Mr WOOD: But this is getting rushed through. The Minister admitted that. It is not going through the normal scrutiny committee process. It is a hybrid because we had to have these things done by 9 December.

Ms CLEE: In relation to the timing, on 9 December, a consequential amendment within the *Marriage Act* amendments will take effect which will remove what is a type of exemption that currently exists in the *Sex Discrimination Act* which in particular in relation to changing sex through Births, Deaths and Marriages registration acts which provides that it was not unlawful to discriminate on the basis of unmarried, that is in relation to marital status.

Because that will no longer be exempt from being unlawful within the *Sex Discrimination Act*, our legislation would be unlawful in respect of requiring a person to be unmarried in order to register a change of sex. That is why there is a timing issue relating to this bill.

Mrs FINOCCHIARO: Sorry, can you say that again? You can only change your sex if you are unmarried?

Ms CLEE: Currently the provisions of our legislation require a person to be unmarried...

Mrs FINOCCHIARO: If they want to change their sex on their birth certificate.

Ms CLEE: Yes.

Madam DEPUTY CHAIR: So for further clarification, you have used the requirement for us to comply with the federal legislation to change other things associated, and not just focus on that particular bit.

Ms CLEE: There are also the requirements to provide that our legislation is not unlawful in respect to discrimination on the basis of gender or sexual identity. That is already in place. Technically we are already non-compliant with that component.

Madam DEPUTY CHAIR: Mr Wood makes a legitimate point. There is a significant crossover between the mooted changes to the *Anti-Discrimination Act* of the Northern Territory and what we are talking about. We are not here to debate that.

Mrs FINOCCHIARO: Just so I can understand it clearly, if the policy—obviously it is a policy decision and you are just following through on the policy direction. If the policy was okay we are going to take a stricter view on this and deal with this unmarried issue, how would it be different to what we are looking at today?

If we just had to ensure compliance by 9 December to ensure that unmarried was not a discriminating factor to changing your sex or gender on your birth certificate, could these changes be come about a different way? Is there a narrower way to achieve that or this is the way to achieve that?

Ms LILLIS: Yes, the requirement to be unmarried is the requirement that needs to be removed by 9 December. However, given this amendment needed to be made and given the crossover with other requirements of the *Sex Discrimination Act*...

Mrs FINOCCHIARO: While we are doing it, we should just do it in one go.

Ms LILLIS: That is correct. It was an opportunity to increase the compliance of that entire part of the act with the requirements of the *Sex Discrimination Act* which is why they have been dealt with together.

Mrs FINOCCHIARO: I just want to ask an overarching question which I think will help us with some of our questions and that is around consultations.

What consultation, if any, did the department or whoever else, maybe it was not your responsibility, I do not know, but how did you inform the development of this bill and the need, the effects, the terms, for example, how was male, female, unspecified, intersex and non-binary—was there community consultation sessions held? Did the department write to different organisations and say hey we would love your feedback? How did it come about?

Ms LILLIS: There was no public consultation process in relation to this bill. However, the department looked to model legislation in other jurisdictions, in particular, the Australian Capital Territory and South Australia have made similar amendments to their laws in the past, also the Commonwealth guidelines. Those examples were drawn on to develop this bill.

Mrs FINOCCHIARO: The reason I ask is I think it comes back to our second question: what impact would it have on the legislation if we used the word 'gender' instead of 'gender identity' because obviously we have had a public process now and some of the feedback we have received is that gender would be a more suitable term. We also received some other feedback which we will get to.

Ms NELSON: If you were to remove the word 'identity' from that, what does that do to the legislation?

Ms LILLIS: In my view, Member for Katherine, I do not believe it makes any difference to the bill. The department's view is that the terms can be used interchangeably.

Madam DEPUTY CHAIR: We might have to move it along a bit quicker.

A number of submissions to the committee raised concerns regarding the requirement that applications for a change of sex or gender identity must be accompanied by a statement from a medical practitioner or a psychologist certifying that the applicant has received appropriate clinical treatment in relation to their sex or gender identity or is an intersex person. The question is, what consideration was given to a self-identification approach in the development of the bill?

Ms LILLIS: Thank you for the question. Consideration was given to a self-identification model during the development of this bill. Ultimately though, the requirement for appropriate clinical treatment as an alternative to sexual reassignment surgery was a policy decision.

The test of appropriate clinical treatment was determined to be the best fit for our legislation. It is consistent with models in the Australian Capital Territory and South Australia. It is also consistent with requirements at the federal level, so where the Australian Passport Office requires evidence from a registered medical practitioner or a psychologist to register a person's affirmed gender on their passport.

Madam DEPUTY CHAIR: Do these professional people need any specialised training in this area? As another question, do you know how many people this affects in Australia, what percentage of the population would go experience this gender identity issue?

Ms LILLIS: In answer to your first question, the registered medical practitioners or registered psychiatrists have to be registered under the national health law. In answer to your second question, I do not have specific statistics with me but we can look that up and provide a written response.

Madam DEPUTY CHAIR: But the actual practitioners do not need to have specialised training in this area?

Ms LILLIS: They do not need—they just need to be specialists in sexual or sexual health. Yes that is correct.

Mr WOOD: What I cannot quite understand is how these changes relate to the birth certificate. Are these changes in section 28, are these related to what goes on the birth certificate?

Ms LILLIS: Yes, they are.

Mr WOOD: The changes are name, sex and gender identity. So what goes on your birth certificate? Name, sex and gender identity?

Ms LILLIS: At birth, a child's sex will be required to be registered and will be reflected on the child's birth certificate. Following an application for a change of sex or gender identity, the birth certificate will be reissued and will reflect the new sex or gender identity of that person.

Mr WOOD: According to the guidelines here and same as what the Attorney-General said, they spoke about sex as being the chromosomal identification of a person.

Considering that a birth certificate is about the facts of a person and it is a very important document, not just used by oneself but getting a bank account to getting a passport to lots of other things, does what goes on a birth certificate have to be factual, that is what you were when you were born, identification if you have changed it and thirdly, if it is going to have gender identity and it is unspecified, surely that is not a matter of fact. Your birth certificate is a matter of fact not opinion.

Is there some danger that we are eroding the very special significance of a birth certificate from the point of view of even our genealogy, looking back at who we are? Is there a danger here that we are eroding what is a very special piece of our life written down on a birth certificate by allowing people to say something that is their opinion but may not necessarily be factual from a sex point of view be actually factual and that is chromosomal?

Ms CLEE: Allowing people to change their birth certificate to reflect their preferred sex or gender identity, enables a person to be able to live their life in the way that they identify.

Mr WOOD: Does that need to be legislated? If I want to say I am something else, why does it have to be on my birth certificate? Why do I not just say that is what I am? Is it not a private matter?

Ms CLEE: As you noted, people use birth certificates for identity purposes. If a person needs to present their birth certificate in order to have their preferred sex or gender identity recognised by the banking institution, or for the purposes of obtaining a passport, which would have their—the passport office—or a job...

Mr WOOD: Or a job. What happens if that job is specifically for a male or female?

Ms NELSON: If they have changed from male to female, now they are female.

Mr WOOD: Well chromosomally they are not and people need to know what they are and what they wanted to change to?

Ms LILLIS: The Commonwealth guidelines indicate that the preference at the Australian level is to collect gender information as opposed to sex information.

Mr WOOD: Why does it have to be on the birth certificate?

Ms LILLIS: The Western Australian Law Reform Commission also recently released a discussion paper which observes that in most cases it is information about a person's gender which government, private business and community organisations will require to identify a person and determine what services or rights should apply to that person.

I reiterate that these changes to registering a change of sex or gender identity under the *Births, Deaths and Marriages Registration Act* are considered to be necessary to ensure that this part of the Northern Territory laws comply with the requirements of the *Sex Discrimination Act*.

Mr WOOD: But we are our own parliament and you have said you have not consulted with anyone over this bill. This is the only chance I have to discuss very important issues, in limited time, that I have never even had a chance to debate.

I have never had to deal with this legislation type before. So the questions I am asking, what I believe are proper questions because I am not sure that I have to accept what the Commonwealth said. These are guidelines, only guidelines, not requirements.

Ms LILLIS: I just make two quick points.

First, the Commonwealth *Sex Discrimination Act* applies across Australia.

Secondly, although no public consultation process was conducted by the department. It was also modelled on information and communication received from different groups in the community as well as model legislation in other jurisdictions.

Madam DEPUTY CHAIR: I just have one question, if this goes through parliament and it is decided to just go with the bit that has to be done by 9 December which is the requirement to change the legislation about being unmarried to change your gender identity, what would the implications of that be for the Northern Territory? If we just stuck with what absolutely has to go through on the 9th?

Ms LILLIS: The implications of that is that after 9 December, the requirement for surgery is still in our legislation and that requirement needs to be removed to comply with the *Sex Discrimination Act*.

Madam DEPUTY CHAIR: We have a few more questions to go so we are going to run overtime. I think we can safely say this is going to end at 11 o'clock, this session, which is half an hour more than we planned. Is that okay?

The next question is: section 48 of the *Births, Deaths and Marriages Registration Act* provides a person aggrieved by the decision of the registrar may apply to NTCAT for review of the decision.

The question is: given this provision, can you clarify for the committee why proposed sections 28D and 28DA do not require the registrar to provide an applicant with written notification of the reasons for decisions made in respect of refusing to make requested changes to the register or rejecting an application in relation to a person?

Ms LILLIS: The department does not consider that an express provision that requires the registrar to provide reasons for an adverse decision made under the act, is necessary.

That is because, as you mentioned, section 48 provides that a person aggrieved by a decision of the registrar with a right of review to the NTCAT. Section 34 of NTCAT will apply to decisions made under the *Births, Deaths and Marriages Registration Act* and that provision requires the registrar to provide an aggrieved person with written notice of the decision.

The fact that the person has a right for the decision to be reviewed and the fact that the person also has the right to request a statement of reasons for the decision. Section 35 of that NTCAT act further goes on to provide that a person may request the decision maker to provide reasons and the statement of reasons had to be in writing and made within 28 days.

Mr WOOD: Are we still on section 28?

Ms NELSON: 28D and 28DA is what we are talking about.

Madam DEPUTY CHAIR: I will just ask a follow up question to that. Proposed section 28DA provides that the registrar may determine a limit on the number of applications that may be made in respect of a person under this part.

In the absence of any criteria that the registrar must take into account when determining a limit, it may be argued that this section inappropriately gives the registrar the job of making the law. Why does the bill not provide criteria that the registrar must take into account when determining a limit and on what basis is it expected that the registrar will determine a limit?

Ms LILLIS: Section 28DA is a broad provision which will give discretion to the registrar to determine the limit.

Ms NELSON: Why not put that in the actual legislation then? Why leave it to the registrar?

Ms CLEE: Setting a limit?

Ms NELSON: Yes.

Ms CLEE: It comes down more to the administrative operation of the act. The registrar is responsible for administering the register and ensuring that is done in—so that the objects of the *Births, Deaths and Marriages Registration Act* provide that the registrar is to maintain the register in the most economical and efficient way.

Mr WOOD: Can I argue the case that by putting a limitation on the number of times a person can change their gender identity—not that I am necessarily supporting that—but if you have under the classification of 'unspecified' the view that some people can be gender fluid, then are you not discriminating against those people who wish to change their gender day by day or month by month?

Ms NELSON: That is a terrible assumption that people want to do that.

Mr WOOD: I am going on the definition that gender fluidity actually allows people to do that. I am not saying I necessarily agree with that but that is what is allowed and if you have a section in the act that says the registrar can limit that, is that not to some extent discriminatory against that person?

Ms LILLIS: The limit would be discretionary so if the registrar does set a limit, then the registrar would still be able to accept an application that exceeds the limit. Any decision made under the act by the registrar is also reviewable by NTCAT.

Mrs FINOCCHIARO: Is the department not concerned that it changes the goal posts for different people? For example, if it is entirely at the discretion of the registrar, they might get 10 applications from one person and say that is enough, this is ridiculous but then get five from another person and say well that is enough for you. Rather than an actual limit being prescribed for everyone or no limit being prescribed at all.

Ms LILLIS: The provision is worded such that the registrar would determine a limit and publish that limit so that limit would apply to all people.

Mrs FINOCCHIARO: But you just said the registrar would have the power to go beyond the limit.

Ms LILLIS: Yes, at their discretion. If somebody subsequently makes an application that exceeds the limit that had been determined, the registrar will still have discretion to accept that application in the circumstances.

Madam DEPUTY CHAIR: Not knowing anything about this sort of thing really, and I imagine a lot of people would not know much about how this happens in the real world, is it likely that people would make multiple applications to change their gender? Is that a likely or possible scenario? In your research for writing this legislation, have you read anything about that?

Ms LILLIS: It is a possible scenario and the provision was drawn modelled largely on the South Australian legislation which includes a similar provision.

Mr WOOD: Back onto 28B(2) which is the registration of a child. If you are saying this legislation is related to the *Marriage Act*, then why is the section which allows a parent to change the child's sex or gender identity of a child permitted to be in this legislation, which I think is something I completely disagree with.

Ms LILLIS: The provisions relating to the registration of a change of sex or gender identity for a child are related to the amendments designed to increase the Northern Territory's compliance with the requirements in the *Sex Discrimination Act*.

Mr WOOD: But not the *Marriage Act*?

Ms LILLIS: No.

Mr WOOD: So it does not need to be here? That is a really controversial piece of legislation.

Mrs FINOCCHIARO: It is like what we talked about before. Technically, you would only need to change...

Mr WOOD: Yes I realise, but then they argued but if you are an unmarried person, we need to change the legislation and the legislation then has to get rid of the use of surgical treatment and allow it to be broader than that. Whether I live with that or not, I will wait and go through this legislation again. The section about a parent being able to change the gender identity of a child to me is absolutely wrong.

Madam DEPUTY CHAIR: Why is it in there?

Ms CLEE: There are already in requirements in the legislation that enables a parent to make an application to change the sex of their child. The provisions relating to change of sex that currently exist in Northern Territory legislation, require for an adult that they be unmarried and that they undergo sexual reassignment surgery.

The provisions that then follow on that relate to a child, there is no requirement to be unmarried obviously because they cannot be married but it still has the requirement for them to undergo sexual reassignment surgery. We are addressing both of those components as part of this bill.

Mr WOOD: I understand.

Madam DEPUTY CHAIR: Why is that in this bill? Why have you chosen to include that?

Ms CLEE: Because the requirement to register a change of sex—currently Part A requires that they be unmarried and subsequently that they also undergo sexual reassignment surgery. The component in relation to requiring them to undergo sexual reassignment surgery is potentially discriminatory under the *Sex Discrimination Act*.

So rather than just remove 'unmarried', we are dealing with the provision as a whole; removing both the requirement for them to be unmarried and the requirement for them to undergo sexual reassignment surgery.

Madam DEPUTY CHAIR: And for children to be able to change their...

Ms CLEE: That follows on within the same provision, it follows on.

Mrs FINOCCHIARO: Otherwise you would have a situation where children could only change their gender identity if they had had surgery whereas if you are an adult you would be allowed to change it without having to have had surgery.

Ms CLEE: It would be inconsistent.

Mrs FINOCCHIARO: If we change the law to remove unmarried and surgery for adults, you are reflecting it to be the same for children as well.

Ms CLEE: That is correct.

Madam DEPUTY CHAIR: Just going back to the question I asked before. The limit the registrar may place on the number of applications to change gender identity, what is the criteria for making that decision? How do they make that decision?

Ms LILLIS: There is no express criteria in the bill however the registrar's functions give the registrar the power to administer the registration system established by the act and ensure that it operates efficiently, effectively and economically and to ensure that the act is administered in the best way calculated to achieve its objectives. Any limit was to be determined by the registrar would be determined in accordance with those functions and objects.

Madam DEPUTY CHAIR: Which are not very prescriptive are they? You were satisfied that they were? Your department, your office.

Ms LILLIS: Yes.

Mrs FINOCCHIARO: That is only in relation to limit though. There is no express criteria for determining whether or not the registrar makes the decision about the change as well. They have to make a decision about whether this will go ahead or will I reject it.

If I reject it, there is a set of criteria and if it is going ahead—well that is kind of the same thing. I am just thinking, how will the registrar determine if someone's change on the birth certificate can go ahead?

Ms LILLIS: If an application is submitted and fulfils the statutory requirements and is supported by the relevant statements then the registrar will approve the change.

Ms NELSON: It would be just like applying for a passport. You get your passport if you provide dot, dot, dot and follow blah blah blah. Right? That is pretty much how he would determine if the application was approved or denied.

Ms LILLIS: Yes.

Ms NELSON: Something as simple as that.

Mrs FINOCCHIARO: It is a bit different for the child though because you have the parent involved.

Mr WOOD: Why can it not be a separate registration certificate, as distinct from the birth certificate?

Ms LILLIS: As we mentioned at the outset, there are different ways of achieving the same policy objective and ultimately it came down to a policy decision.

Mr WOOD: The one change is the fundamental reason for a birth certificate is to write down the facts of who you are when you are born. Those facts are indisputable. You are allowing those facts to be changed which means the birth certificate is not accurate anymore.

Ms CLEE: However, a birth certificate is also used as an identity document by people in day to day life. If it does not reflect what their current status is, then they might be discriminated against.

Mr WOOD: That is their current status but it is a birth certificate. It is what you are when you are born. It is not what you are in fifty years' time.

Mrs FINOCCHIARO: But you can change it now. You can change your birth certificate now.

Mr WOOD: But you will have it, there will still be an original birth certificate that says who you were and you can change it, but there will be a record of who you were.

Ms NELSON: There is an original birth certificate, they are just getting a new one to reflect who they are today.

Madam DEPUTY CHAIR: Was that considered in the process?

Ms LILLIS: That is correct and there are provisions in the act which allow in certain prescribed people, for example the applicant, to obtain a copy of an old birth certificate.

Mr WOOD: There is also a clause which allows the original birth certificate not to have that information on it?

Ms LILLIS: The reissued birth certificate will not reflect that the person has changed sex or gender identity. It will reflect the new status.

Mr WOOD: So is there still a copy of the original birth certificate?

Ms LILLIS: Yes, that information will be held in the register and certain people, including the applicant, will be able to access old birth certificates.

Ms NELSON: Are you asking if a prospective employer could access it, or a neighbour?

Mr WOOD: My concern is, that there are certain jobs for instance where you do not want a male in it, and there may be certain jobs where you do not want a female as well. I would have thought there are some allowances given to employers to have the ability to know, in certain circumstances according to the jobs, that they need to make sure they cover the safety of the people that are under their charge.

It could be a girl's school for instance, or a women's refuge or it could be a few things where you need to be very careful of the people you employ. You may need to make sure that person is exactly the person.

Ms NELSON: But if they have changed to female, and the job requires a female, if they have gone through the whole process, they have transitioned and they are living as a female, then they are females. That is who they are.

Mr WOOD: They are not females according to their sex. They are chromosomal males.

Ms CLEE: I think this might go beyond the scope of the legislation.

Madam DEPUTY CHAIR: That turned into an interesting debate which we need to play out in parliament, I think, rather than today. One final question I have here, the committee has heard that the intersex community does not support the inclusion of intersex as a sex or gender category.

What consultation was undertaken with key stakeholders in the development of proposed sex and gender categories, which you have already answered? How would it impact on the operation of the legislation if intersex was removed as a sex or gender category? You would be aware of that argument through your research.

Ms LILLIS: Yes. The inclusion of intersex as a recognised sex or gender category was included as just one of a number of recognised sex or gender identities in the act. The legislation will not prevent an intersex man or woman from being registered as male or female or non-binary if that is preferred.

A multitude of sex or gender markers were included with the aim of creating flexibility and providing choice so that the legislation is as inclusive as possible and not discriminatory which is the intent of the bill.

If the category of intersex was removed from the bill, the implications of that would simply be that is not an option of category and intersex people would have the option of choosing something else. It was just included as an additional option.

Mrs FINOCCHIARO: It is interesting that two separate sets of feedback said that it would be better if it was not a category. That is why it is so important that consultation take place on bills because you can obviously be intending to do the right thing and the unintended consequences that you are not meeting the expectation in the end despite best intentions. So it is interesting feedback for us that intersex should not be a category.

Madam DEPUTY CHAIR: Are there any more questions?

Mr WOOD: I have a couple more. The change of name not having to be published in the newspaper now. Can you give us a reason? There is no reason in the second reading why that has been changed.

Ms LILLIS: The intention behind that proposed amendment is to remove the risk that a person will be discriminated against in circumstances where they register to change their name subsequent to an application to register a change of sex or gender identity.

Mr WOOD: Why was that not explained in the bill? The normal thing is, you see an application in the paper for someone to change their name.

I would be interested to know, from the broader community—we have pop-ups for everything but if you took this pop-up down to Coolalinga Central, people would just shake their head about what you are doing. They do not understand this bill. This is a bill that very few people know is happening.

So we are now going to change that you do not have to put your advertisement in the paper to change your name so I would not mind asking the real estate industry, the police and other people what they think of this change. I have no feedback on this whether it is a good thing or a bad thing.

There was no explanation about what it was for. It might be a good for but that is the first explanation I have heard in this and it is very limited as to the reasons why. What does the broader community think of that change?

Madam DEPUTY CHAIR: That is a question I do not think these people can answer. It is a good question.

Mr WOOD: It is in the legislation. Here we changed it. Can I just ask are you able to answer that now because I have some fairly basic questions to ask.

Ms LILLIS: I just make one comment in relation to the registration of a change of name, the registrar has the power to require applicants to provide evidence to the registrar's satisfaction that a change of name is not sought for any fraudulent or improper purpose.

Given that provision and the risks that a person will be discriminated against when they advertise a change of name subsequent to registering a change of sex, a policy decision was made that the requirement to advertise a change of name should be removed.

Mr WOOD: That is a very small area you are talking about that now covers the entire community. Is that correct? So nobody has to worry about putting an ad in the paper to say you have changed your name?

Ms LILLIS: That is correct.

Mr WOOD: That seems to be a little bit throw the baby out with the bath water. Surely you could have perhaps found an exception clause in the act to say in certain circumstances.

Madam DEPUTY CHAIR: Did you consider that? Making it rather by request than just dumping that whole requirement that people advertise.

Ms LILLIS: Given that requirement for the registrar to request further information in relation to an application to change a person's name, the requirement to advertise such applications was not considered to be necessary.

Ms NELSON: If I want to change my name and I put in an application, I have to explain why I want to change my name along with that application.

There is some sort of requirement in that application to say why do you want to change your name? It could just be because I want to. It is not like the registrar looks at the application and says 'oh that is a lovely name, I can see why you want to change it, ok, go.' They ask questions.

Mr WOOD: Well you advertise it so people can...

Madam DEPUTY CHAIR: We are not here to debate this. We really need to keep going.

Mr WOOD: Can we get onto the one area that to me deals with the *Marriage Act* and that is the change of terminology. So you are now going to get rid of husband, wife, brother and sister, half-brother and half-sister, widows and widowers. I think it is discriminatory that you get rid of those terms.

If you put husband, wife, spouse, most people would accept that so you have a choice of what goes on the certificate. You are now dumbing us all down to just one plain title. I have no problem with people putting spouse down, but when I have raised this out in the community, and said the certificates will now only have spouse on them now, not husband...is that correct?

Ms CLEE: Which certificates are you talking about?

Mr WOOD: The ones you have in here, you are talking about the changes in terminology.

Ms CLEE: We do not actually deal with the marriage certificates within this legislation. That is within the Commonwealth...

Mrs FINOCCHIARO: So it is on the birth certificate.

Mr WOOD: You have several amendments here which get rid of husband and wife and replace it with spouse.

Mrs FINOCCHIARO: That is on the baby's birth certificate.

Mr WOOD: That is right but what you are doing in general is getting rid of that terminology. My question is, I do not believe we should get rid of that terminology. If people want to be called a spouse, that is fine, but if people want to be called husband, wife, brother, sister. Why are you getting rid of something that we have known for a long time as part of who we are?

Ms LILLIS: Those particular amendments are technical amendments that are proposed to be made to the Criminal Code, the *Domicile Act*, the *Evidence (National Uniform Legislation) Act*, the *Law of Property Act*, the *Law Reform (Miscellaneous Provisions) Act*, and the *Married Persons (Equality of Status) Act*. They are not related to the designations on particular forms and they do not relate to the information that is recorded on somebody's marriage certificate.

Mr WOOD: Why get rid of those terms at all? Why not 'or'?

Ms CLEE: It ensures inclusivity by referring to spouse rather than husband or wife.

Mr WOOD: It makes it exclusive that I can be called a husband.

Ms CLEE: It is not about what you are being called, it is about a reference in the legislation to a particular marriage status.

Mr WOOD: Why can you not leave them in there with the inclusion of husband and wife, brother and sister, widow and widower? Why are they taken out?

Ms NELSON: For example, not every religion even acknowledges husband and wife.

Madam DEPUTY CHAIR: We are not here to debate this but what difference would it make if those terms remained? Would there be any implication?

Ms CLEE: In terms of drafting clarity, it would just make it messier. Using the one term 'spouse' is inclusive of husband, wife.

Madam DEPUTY CHAIR: Really it would not make too much difference to include it: spouse, husband, wife, de facto partner.

Mr WOOD: Could I not argue it is discriminatory against me? Why not? They changed the legislation and the legislation says it is going to remove a term I am happy with.

Madam DEPUTY CHAIR: I think you have made your point, Mr Wood, and I appreciate where you are coming from.

I do not have any more questions, does anyone else have any more questions from the panel? Thank you both for being put through that grilling. Very helpful. This is quite a controversial that is before us and I thank you for your persistence in answering our questions. Thank you very much for your time.