

SUBMISSION ON BIRTHS DEATHS AND MARRIAGES AND OTHER LEGISLATION AMENDMENT BILL

This is an important piece of legislation that is being rushed through on the premise that the Commonwealth requires for it to be passed by the 9th December this year.

If this is because of a Commonwealth deadline why has there been no attempt by the NT Government to ask for an extension of time from the Commonwealth so we can deal with it properly?

Rushing the Bill through has meant the scrutiny committee process has been shortened which has reduced the opportunity for people to firstly know that the Government has introduced this Bill and then to put in submissions. Secondly it reduces the time for the committee to find out what the views are of people especially those from remote areas and other cultures. Are there going to be meetings up and down the track or out bush?

There has been no good reason given as to why we have to toe the Commonwealth line – I thought our Government was against the Commonwealth telling the NT what to do when it came to passing our own laws.

It is interesting to note that the Government has been very quiet about this Bill –there was no media release about this new legislation.

Perhaps the reason for this was the statement made by the Attorney General when introducing the Bill.

I note that this is a topic that many people find emotive and people have very different views, but this is the Northern Territory putting in place our legislative and legal requirements to match that legislation. It is not intended to create debate, although I do recognise that it will encourage conversation.

Whilst that's nice, but I am sure this piece of legislation needs debate not just a conversation. The question is why do we have to put *in place our legislative and legal requirements to match that legislation?* Why can't we have our own version or leave our existing legislation as it is? What are the consequences if we don't approve these changes?

The Attorney General says that the changes proposed are needed because of changes to the Marriage Act. What have the changes to the Objects of the Act and recognition of gender identity by a registrar got to do with the recent changes to the Marriage Act? Aren't they really about

the Anti-discrimination Act and isn't that supposed to be part of the Government's discussion paper on discrimination that is currently before the Government? Surely this section of the Bill should have been left out. It appears as if this part of the Bill is being snuck through whilst no one's looking.

THE LEGISLATION

BIRTHS DEATHS AND MARRIAGES ACT

The Bill includes the following amendments to the Act

(Sec 4) Objects of the Act

It amends the Objects of the Act to allow for change to clause 3(b) which presently allows for changes to name and sex, but under the proposed changes the words *gender identity* would be added.

The term *gender identity* is not defined in the Act although there is a mention in the regulations under new section 4A as to what is recognised as sex or gender identity.

For Section 28B(5) of the Act each of the following is a recognised sex or gender identity (a) female, (b) male, (c) non-binary (d) intersex (e) unspecified.

The Australian Human Rights Commission says **Gender identity** means *the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person. This includes the way people express or present their gender and recognises that a person's gender identity may be an identity other than male or female. Some terms used to describe a person's gender identity include trans, transgender and gender diverse. The Sex Discrimination Act (SDA) does not use these labels however it is intended to cover these identities and more. The SDA provides protection from discrimination for people who identify as men, women and neither male nor female. It does not matter what sex the person was assigned at birth, or whether the person has undergone any medical intervention.*

According to the ABC web page: Many gender identities exist outside of masculine and feminine. Sex refers to a person's biological characteristics, while gender is a person's identity (who they feel they are inside) and the mix of those things can mean a person may identify as male, female, both or neither.

Gender diversity includes people who identify as transgender, genderfluid, intersex, gender questioning and genderqueer people. Gender diverse people do not owe an explanation for who they are, how they feel or how they look.

People who identify as genderfluid live between, above, behind, around gender. Some genderfluid people feel very masculine on some days, and feminine on others, while some live free from definition entirely.

So from those definitions it is obvious that the term gender identity as proposed in the changes to the Act means many things. For the average person on the street when you speak about this they just shake their head in disbelief and ask where is our Government taking us and hasn't it got other things to do. If you publicly question gender identity you get howled down by the activists – how dare someone question their views? It's worth listening to an interview by BBC Newsnight's Kirsty Wark with Germaine Greer on 24 Oct 2015.

What is hard to understand with the proposed changes is actually what does this mean in practice?

A birth certificate states facts, not opinions, about your name, your sex, where you were born, date of both, parents, etc. These are known facts about you, including your sex. A birth certificate is something that records those facts, it helps us get a job, a bank account, a passport, and it is important when tracing our family history or the history of our society. It shows who we are, not who we like to think we are. These proposed changes break away from those uses and traditions.

The Attorney General says in her second reading-

The amendments promote the right to be protected from discrimination on the basis of one's sex or gender identity.

The bill achieves this by allowing for the registration of a change of sex or gender identity. This is rather than a change of sex only 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 terms 'sex' and 'gender' are often used interchangeably. However, according to the Australian Government Guidelines on the Recognition of Sex and Gender (the Australian Guidelines), 'sex' refers to the chromosomal or anatomical characteristics associated with biological

sex. Further, 'gender' is part of a person's social and personal identity, the way a person presents and is recognized in the community.

So does that mean that a person can change their chromosomal characteristics as well as their gender identity? Surely if the Government is going to allow gender identity to be added to a birth certificate which is a self-description of how someone feels at a particular time than it must ensure that the sex of the person on the birth certificate is the actual chromosomal identification of the person. You can't have it both ways.

Neither the present Act nor the proposed new Bill defines sex but as it is defined in the second reading speech by the Attorney General then sex is chromosomal and therefore cannot be changed and therefore the idea that you can change both sex and identity doesn't make sense.

Having your biological sex on your birth certificate is not discriminatory especially if everyone is required to do it and it means that only facts are recorded on the certificate.

The terms sex and gender identity should be defined clearly in the Bill.

(Sec 23) Application to register change of adult's name

The new Bill allows people to change their name on their birth certificate without having it published in newspaper. The Minister hasn't given a reason for the change.

From the original Bill *Thursday 29 February 1996.*

It should be noted that, in respect of the change of name provisions, the Northern Territory bill differs from the model bill in so far as there has been a retention of the requirement that there be an advertisement of the intention to change the name. The policy is that changes of name should be made public other than in the limited situations where the change is being made to preserve the privacy of an individual - for example, where a woman wants to assume a new identity for the purpose of escaping the attentions of a former husband.

Reason for the change from the original Bill need to be explained properly.

(Sec 28A) Definitions

There has been a change to the definition of a **recognition certificate**. The present definition mentions sex only and not gender identity. The new definition mentions both. It says that the certificate will show that a person has a sex or gender identity that is different than in the Registrar. I reiterate what I said earlier. How can a person's sex be different if you use the definition quoted by the Attorney General? Surely you can't change your chromosomes?

(28B) Application to register of sex or gender identity

The requirement for surgical reassignment to be part of the requirement for a change of sex or identity will now not be necessary. All that will be required is that an adult receives **appropriate clinical treatment** in relation to the adult's sex or gender identity and then be given a recognition certificate.

According to the explanatory statement the term '**appropriate clinical treatment**' has not been defined, to ensure that professional medical opinions are not impeded by the Act, and to recognise that different types and levels of clinical treatment will be appropriate for different individuals. Without some guidelines to what this means the *appropriate clinical treatment* is very open for interpretation.

You have to wonder how far the concept of gender identity is heading in our society. The original meaning related to surgical changes presumably from male to female and vice versa. Now as you read the definition of gender identity you can be anything without surgical intervention and that includes not being male or female.

As mentioned before under the regulations section 28B(5) of the Act, each of the following is a recognised sex or gender identity: (a) female;(b) male;(c)non-binary;(d) intersex;(e) unspecified.

Unspecified as a category is not defined in the Bill. Surely there needs to be a definition otherwise Parliament would be agreeing to something unknown.

The third part of this section allows for a parent to register a change of the child's sex or gender identity. I feel that this is totally wrong. Leave children alone and if they have some issues let them work it out when they are adults. This seems a case of just adding a layer of complexity and uncertainty to a child's life and it's no wonder some kids are all mixed up. The committee should recommend that this part 28B(2) be deleted.

Following on from this part it therefore makes sense to delete part 28B(2).

Today we carry on about protecting our children from harm. These two parts of the Bill do not protect our children. The Government should be promoting the idea of children growing up as boys and girls without all the muddle headed stuff being pushed on them by people and the media who seem to promote experimentation and social engineering as fine with little or no questioning about the reason for these changes or the effect of these changes.

Section 28C deals with information that is required for an application to the Registrar to change sex or gender. The information must be accompanied by a statement from a medical practitioner or a psychologist to say an adult has received appropriate clinical treatment (still not defined). This section also deals with what paper work is needed for an application for a child. That part of the Bill should be removed.

Section 28CA should be removed. This section talks about a child's consent to a change of sex or identity. This section should be changed so that the registrar cannot approve a change of sex or gender identity until the person is an adult.

Section 28DA recognises that a person may want to change their gender identity a number of times and the registrar can limit the number of times that can happen.

When I read 28DA I wonder why gender identity has to be identified on a birth certificate in the first place, especially if it can be changed many times. After all, according to the Australian Government Guidelines, *Gender is part of a person's personal and social identity. It refers to the way a person feels, presents and is recognised within the community. A person's gender may be reflected in outward social markers, including their name, outward appearance, mannerisms and dress.*

The birth certificate is a certificate of fact and all that should be recorded is whether a person is male or female or intersex based on chromosomes. An opinion of one self is not necessarily a fact and does not have to be accepted by others or will the law make it a requirement that we do?

Surely that vital piece of factual information is the information that needs to be known if someone is employed in a job where there is a need for separation of sexes whether at school, at sport, in a gym, a women's refuge, in a dressing room, etc. Won't there be a requirement for a duty of care by employers or managers?

The Minister in promoting this legislation uses the **Yogyakarta Principles** and she said in her second reading speech quoting from those principles- *this amendment aims to acknowledge that:*

Each person's gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.

The Yogyakarta Principles have never been accepted by the United Nations and the attempt to make gender identity and sexual orientation new categories of non-discrimination has been repeatedly rejected by the General Assembly, the UN Human Rights Council and other UN bodies.

So how does that work in relation to this legislation?

Amendments to the Criminal Code, Domicile Act, Evidence (National Uniform Legislation) Law of Property Act, Law Reform (Miscellaneous Provision) Act, Married Persons (Equality of Access) Act and Summary Offences Act.

These amendments are mainly to remove the terms husband and wife, brother and sister, half brother and sister and widow and widowers from these Acts and replace them with spouse, sibling, half sibling and surviving spouse.

Does this mean I cannot use the term husband in documents as I am now only to be described as spouse. Who says so?

Does this mean that the traditional marriage vows many people make on their Marriage Day and hold dear will now not say the following:

I (name) take you (name) to be my wife/husband. I promise to be faithful to you in good times and in bad, in sickness and in health, to love you and to honour you all the days of my life.

Will it now be *take you to be my spouse*? No thanks. You are not only dumbing down the language and you are doing so with no approval from anyone.

Surely this is discrimination and is quite offensive. Who gives the Government the right to change the name *husband* or *wife* but at the same time using this same legislation allow people to call themselves anything they like.

I can't find the word spouse in the Batjamahl dictionary. Batjamahl is my wife's language, the language spoken by Wadjiginy people. Husband is *nangareny* and wife *ngangareny* – no spouse business. Husband and wife are universal names for male and female people who are married to one another.

If the Government insists on the use of the word spouse the committee should recommend a choice of names be allowed e.g. husband, wife **or** spouse – brother, sister **or** sibling – half-brother, half-sister **or** half sibling – widow, widower, **or** surviving spouse.

Let people have the option and not lose their traditions, their names and their rights to the anonymous language police.

Amendment of Births, Deaths and Marriages Registration Regulations

There are changes in the regulations which now allow under Section 2 and Section 3 the definition of what can be filled in for the sex of a child. The amendment proposes a child's sex be either male, female, intersex or unspecified. A child's sex should only be based on chromosomes or the biological facts. These amendments should be removed.

Summary

We now have in our society a minority groups closely aligned and influential in the Government and even though unelected are able to manipulate the Government into supporting their view of the world reflected in this type of legislation.

The problem with this legislation is that it has not been advertised in the Government media releases, it has been rushed through and there is only a short time frame for the scrutiny committee to hear submissions. The rushing through suits the Government – less chance for consultation and opposition. If the Government had done some sampling on the ground it would have found the average Territorian would totally disagree with this so called gender legislation.

Western society has traditions and concepts developed over thousands of years. It is the same for our Indigenous societies. They are based on wisdom and learning and insight into how to live in a sustainable society. It seems we now have Governments who cannot stand up and protect those values but with the stroke of a pen and for the sake of not upsetting a few, try to overturn our tradition, our history, our lives and the

things many of us believe in without asking us what we think. This legislation is a classic example of that.

My recommendation is to leave our existing legislation as it is – it's not the best but let's not make it worse.

Gerry Wood

Independent Member for Nelson

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