



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Hearing 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:

Morgan Carpenter: Co-Executive Director, Intersex Human Rights
Australia

Anna Brown: Director of Legal Advocacy, Human Rights Law Centre

Lee Carnie: Senior Lawyer, Human Rights Law Centre

Rosalina Curtis: Private Citizen appearing with the Human Rights Law
Centre

Sally Sievers: Northern Territory Anti-Discrimination Commissioner

Dr Belinda Chaplin: Nurse Researcher Transgender Health and
Wellbeing, Charles Darwin University, College of Nursing and Midwifery

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

INTERSEX HUMAN RIGHTS AUSTRALIA

Madam CHAIR: Good morning everyone and thank you for joining us. I am Ngaree Ah Kit, Member for Karama, the 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 that this public hearing is being held on the land of the Larrakia people, and I pay my respects to Larrakia elders, past, present and emerging.

I also acknowledge my fellow committee members in attendance today: Lia Finocchiaro, Member for Spillett; Robyn Lambley, Member for Araluen; and via teleconference, Sandra Nelson, the Member for Katherine; and Chansey Paech, the Member for Namatjira. The committee is also joined by Gerry Wood, Member for Nelson.

I welcome to the table to give evidence to the committee from Intersex Human Rights Australia, Morgan Carpenter, Co-Executive Director. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

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 hearing that is being webcast through the Assembly's website. A transcript will be made for the committee's use 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 that the committee go into a closed session and take your evidence in private.

I will ask you to state your name for the record and the capacity in which you appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions.

Please state your name and the capacity in which you are appearing.

Mr CARPENTER: Hello, and thank you for the chance to speak today. My name is Morgan Carpenter, I am the Co-Executive Director of Intersex Human Rights Australia. We are an NGO primarily funded through philanthropic funding.

Madam CHAIR: Thank you very much, Morgan. Would you like to make an opening statement?

Mr CARPENTER: I would, thank you. I hope it will not be too long for you.

Intersex people are born with sex characteristics that do not fit medical or social norms for female or male bodies. There are at least 40 different intersex variations known to science. There are many different diagnoses and many of them are genetic in origin.

People can be identified as having intersex traits at a wide range of ages including early in life at birth, or early childhood; at puberty, because bodies change then; and prenatally, through the use of genetic screening.

Intersex people are diverse. We have different sex assignments at birth, we have different gender identities. We may be heterosexual or non-heterosexual. An Australian study in 2015 revealed that around half of intersex people are heterosexual. Most intersex people identify with the sex assigned at birth, but some of us do not.

A 2015 study of Australian's born with atypical sex characteristics found 75% were female or male, while around 19% have other ways of understanding their sex or gender identity.

The key issues we face as a population are forced and coercive medical interventions designed to make our bodies appear more typically female or male. These often happen in early childhood and examples of these are very well known to intersex organisations like IHRA that I am speaking on behalf of. There is also incontrovertible evidence we have from Family Court cases. In 2016, one of these cases called *Re: Carla* saw a three-year-old child reported as having had surgery that "enhanced the appearance of her female genitalia". That is a description given by the Family Court judge.

The judge also described how those surgeries were a clitoral recession and labioplasty. The case was taken to sterilise the child largely on the basis of gender stereotypes, including a reference to Minnie Mouse underwear, Barbie bedspreads and pink curtains.

The key issues we face are about protection of our bodily integrity. We have made a number of demands as a community about reforms to legislation irregularities to tackle those issues. Those issues have not been addressed so far by any State or Territory parliaments. There has been a Senate inquiry into these issues.

What we currently have as a result of the kinds of proposals put forward to the Social Policy Scrutiny Committee is a situation where intersex people are regarded by medicine—paediatric medicine in particular—as being either female or male and having what medicine calls “disorders of sex development”. While in law and other aspects of society, particularly in lots of media reporting, intersex people are framed as being neither female nor male.

These contradictions cause enormous harms. Not only to people like myself who—I am an intersex man. This assumption that intersex people are some kind of homogenous third sex is very distressing for a number of people, particular because of the contradiction between the way the law operates and the way medicine operates.

The creation of a third category called intersex, which is detailed in the regulations in Part 10 of the bill before you on pages 12 and 13 of the document constrains intersex people’s rights to self-determination rather than expands them. That creates a conflict where, whatever our actual legal sex or gender is, we are presumed to be members of this third sex.

This bill makes reference to the 2013 amendment bill to the federal *Sex Discrimination Act*. However, the explanatory memorandum to that Act, on page 12, makes it clear that the inclusion of ‘intersex status’ as an attribute in that Act, and I quote:

The definition is not intended to create a third sex in any sense.

Yet, that is what the regulations before you do.

In the ACT in 2014, a third intersex sex category was created by the ACT Government. That was done, according communications I had with the government at the time, to create a parental right to assign their children to a third category. It was also done to reduce the risk of “gender assignment” surgeries affecting intersex children. However, the latest information I have is that no children have been assigned to that category since 2014.

The rationales that were employed to underpin that legislative change lack evidence. IHRA, the organisation I represent, opposed the legislation at the time it was enacted in 2014 on the basis that it would create more stigma for parents of children with intersex variations and that it would be more likely to reinforce surgeries designed to reinforce particular sex characteristics and create an impression of more certainty about that child’s sex or gender. Parents essentially choose a familiar female or male category, rather than something unfamiliar that would subject them and their child to stigmatisation.

IHRA favours universally available solutions. We support the provision in the regulations for a universally available non-binary category that does not single out the intersex population for different treatment. We support the call of the Human Rights Law Centre to simplify access to birth certificates, and other identification documents.

We also question the necessity of sex and gender on birth certificates. In doing so, we would not wish to see intersex children singled out for special treatment, as it is likely to increase the stigma and harmful practices on infants and children.

The kind of action that the Legislative Assembly is taking, in the matter of how it treats intersex children, is incomplete. This is because you have no proposals for relevant anti-discrimination measures and you have no measures proposed to properly tackle harmful practices. I would strongly ask that you pursue those measures. Thank you.

Madam CHAIR: Thank you Mr Carpenter. I will now open it up to committee members for any questions.

Mr PAECH: Mr Carpenter, it is Chansey Paech, the Member for Namatjira. I wanted to explore the area around birth certificates.

I wanted to ask your opinion—for transgender, intersex and gender non-conforming people, do you see any potential issues if Northern Territory birth certificates were to have three categories: one being male, one female, another being ‘X’. I suppose I ask because ‘X’ would permit the inclusion of various non-binary identities under the one umbrella.

I know from my own research and experience that there other countries that have adopted this practice.

Mr CARPENTER: Thank you for the question. Firstly, you are describing two very different populations when you talk about transgender, gender diverse and intersex people ...

Mr PAECH: Yes ...

Mr CARPENTER: Transgender and gender diverse people by definition identify their gender in ways that are different to their sex assigned at birth.

Intersex people are born with bodies that do not precisely fit normative ideas of what a female or a male body looks like. However, most intersex people will identify with the sex assigned at birth. That is, most intersex people are

cisgender. Therefore, whatever you do in terms of your birth certificate reform is of no consequence to most intersex people.

However, there is a higher than typical - across the entire population - number of intersex people who have non-binary gender identities, and they would benefit—like other people who have non-binary gender identities who would benefit - from that third category.

A category called X may be defined as non-binary, as you currently have proposed in the regulations, would suit that population. Problems occur when you use a word like 'intersex' to demarcate a sex classification when there are already men and women with intersex variations who will then be othered by that categorisation.

Ms NELSON: This is Sandra Nelson, the Member for Katherine. Can you repeat that again? I want to make sure I am understanding exactly what you are saying. You said having that on the birth certificate is of no consequence to intersex people?

Mr CARPENTER: No, I didn't say that. I said that your reforms to birth certificate legislation are of no consequence to the majority of intersex people. The majority of intersex people are assigned female or male at birth—like everybody else—and most intersex people will identify with that original sex assignment.

However, there are intersex people who will benefit from reforms because they will wish to change their birth certificate classification, and some of those people will be non-binary. They are a minority of intersex people; their issues are important, but you should not assume that what you are doing is of benefit to the entire intersex population.

Mr PAECH: That is correct.

Mrs FINOCCHIARO: The organisation does not support intersex as a gender classification.

Mr CARPENTER: To clarify that again. I am an intersex man. So, if there are three categories: man, woman and intersex. Which one of those should I choose?

Mrs FINOCCHIARO: Yep—fair enough.

Ms NELSON: Which one would you choose?

Mr CARPENTER: I was assigned male at birth—my birth certificate still says that.

Mrs FINOCCHIARO: And that is the position of the organisation ...

Mr CARPENTER: Our position is informed by the Darlington Statement, and I will just read out for you a part of the Darlington Statement if I may?

Mrs FINOCCHIARO: Thank you.

Mr CARPENTER: The Darlington Statement is a community consensus statement of advocates across Australia and New Zealand—Aotearoa. The position in that document is that: "attempts to classify intersex people as a third sex/gender do not respect our diversity or right to self-determination. These can inflict wide-ranging harm, regardless of whether an intersex person identifies with binary legal sex assigned at birth or not."

Mrs FINOCCHIARO: Thank you.

Mr CARPENTER: We do say that while sex is assigned in law, there should be additional options. Individuals able to consent should be able to choose between female, male, non-binary, alternative gender markers and multiple options.

Madam CHAIR: Mr Carpenter, it is Ngaree, the Member for Karama. I am actually in Perth this week at a suicide prevention conference.

I guess I am interested to hear more about the harms that such classifications can cause to the intersex community. I wonder whether suicide attempts, or suicide risks, could be one of those potential harms.

Mr CARPENTER: There is an expectation that intersex people suffer a greater degree of suicidality than the general population. However, I need to state this to you as strongly as I can: I think one of the biggest problems we face as a population is misconception about who we are and what our concerns are.

Our concerns are primarily about the harmful practices and forms of violence in forced and coercive treatment that occur to us in medical settings. Secondly, we know that there are significant harms that happen to us because our bodies are perceived as not conforming to norms outside medical settings.

We know, for example, from the Australian study in 2015 that 19%, almost 1 in 5, people in that study did not complete secondary school due to issues to do with bullying and stigmatisation, and the impact of medical interventions during puberty were contributing factors to that.

Anyway, the key issue I want to get over to you is we suffer significant harms around medicalisation. I mentioned a case called *Re: Carla*. I can tell that in Australia in the period between 2002–3 to 2014–15, there were an average of 71 procedures like the procedures in *Re: Carla*, the clitorrectomy and labiaplasty, each year on children aged under 15. There were 74 procedures each year between 2007–08 and 2011–12 defined as being for congenital malformations.

We know that there are also significant numbers of unnecessary masculinising genitoplasty that take place each year, including in the year 2013–14 there were 125 repeat procedures on children aged one to four years for “repair of postoperative urethral fistula”—that is an iatrogenic surgery.

These are the things we care about. The focus on birth certificate reform seems a distraction to avoid tackling the fundamental issues we face. While I very much respect the fact you are reforming the law in this area, I ask you, please do not create a category called ‘intersex’. Do not make things even more complicated for us in describing who we are and what our needs are as a population by creating and deepening misconceptions about who we are as a population. Instead, consider ways of tackling those core issues we face.

Ms NELSON: Are you saying that by putting in a third classification it is creating an additional complication? I am a bit confused. On one hand you said it is complicating it and almost forcing people to identify themselves. But by not having it on there—by just leaving it as male and female, are you not doing the same?

Mr CARPENTER: No, and the ACT government has demonstrated this by what they did in 2014. The government at the time said the creation of a third category for infants and children would satisfy a parental right and reduce the risk that children would be subjected to “gender assignment” surgeries. Those were the rationales employed. When we have no children assigned to that category in the ACT, what does that mean? Does it mean there were no intersex children in the ACT, because there are zero children in that classification? That is not correct.

What is happening is those children are still going through the kinds of medical interventions I have talked about to make our bodies appear more typically female or more typically male.

These issues are not addressed by the births, deaths and marriages reforms you are proposing, but they need to be addressed nationally.

Ms NELSON: I agree with you that it needs to be addressed, but for the practical reasons of this particular legislation—the law states you have to have that on your birth certificate. It is the law.

Mr CARPENTER: Why does it have to be on your birth certificate in the first place?

Ms NELSON: That is a great philosophical question, but until the law changes in regard to that requirement—the law needs to change. You are asking a philosophical question ...

Mr CARPENTER: With respect, I do not believe it is a philosophical question. The issue is, the intersex population in Australia is very diverse in regard to how we identify our sex or gender—75% of intersex people identify as female or male. Around 19% of intersex people will identify themselves using non-binary markers or other categories. Trying to shove us all into one category called ‘intersex’ does not match that diversity. That is why the Darlington Statement attempt to identify intersex people as a third sex or gender do not respect our diversity or right to self-determination.

Ms NELSON: So, your recommendation is not to have a third classification at all?

Mr CARPENTER: No, I said no third classification called ‘intersex’. That word already applies to intersex women and intersex men.

Madam CHAIR: Member for Nelson, did you have a question?

Mr WOOD: I am a bit confused because this is an area we have not looked at in depth before. It has come through a piece of legislation which relates to the *Marriage Act*. Your issues regarding how intersex people are classified, if I can put it that way, raises a lot of issues.

If you were not classified—I am working on the pretext that sex is your chromosomal identification. Technically that cannot be changed—I am not saying there is not some variation. Gender is your self-identity.

Could you use the self-identity part if people wanted to go down the path of identifying that they are intersex, but at the same time leave the sex classification as male and female? Would that cover what you are concerned about?

Mr CARPENTER: Thank you for the questions, but I am not entirely sure I understand them. One of the things you mentioned was that you were not saying there is not some variation. In my personal history, and the organisation I am speaking for, we are for people who fit exactly that scenario where there is some variation.

It is not a hypothetical argument that people whose bodies do not fit narrow norms for female or male exist. This is not in doubt. But the question is, what do you do about that?

For me, the key issues are about making sure our right to self-determination and bodily integrity are protected. Making sure self-determination is protected means we should have the right to change our birth certificates if we choose, knowing that a minority of intersex people will choose that.

Creating the third option called intersex inadvertently restricts ...

Mr WOOD: What do you then change your birth certificate to?

Mr CARPENTER: I have tried to make clear in my submission that we would support male, female and non-binary—namely 'X'—and we would support alternative gender markers as well. I am putting to you the concern that having a classification called 'intersex' is not constructive.

Mr WOOD: As an intersex person, you mentioned bullying and wrote in your submission about the possible discrimination and harmful practices, especially to children. In day-to-day life, does being an intersex person actually cause any difficulties in employment or sport, for instance?

Mr CARPENTER: We are a very diverse population, so it's difficult to generalise about a single intersex experience.

Sport is a good example because there are women with intersex variations whose bodies have been problematised in sport because they have intersex variation. They are in situations where, like other women, they have been assigned female at birth and grow up to be socialised and identify as women, but they may then be told they should not compete in sport as women. This can be an issue for some women.

But, more generally, the issues we encounter socially can include things like body shaming. We are a diverse population, so some of us will not generally be visible to other people. We might be visible through our advocacy work, including peer support work, or we might suffer discrimination in those settings. Some people may be more visually ...

Madam CHAIR: This is Ngaree Ah Kit, the Chair of the Social Policy Scrutiny Committee. We have just had our next witness dial into the teleconference. Lee could I ask you to stay on hold for a moment while we finish with Mr Morgan Carpenter?

It appears that the time for our first witness is up so on behalf of the Social Policy Scrutiny Committee, Mr Carpenter, I would like to thank you for your time today in providing clarification in regards to your submission.

Mr CARPENTER: Thank you very much for the chance to speak with you today. I hope it has been helpful and I would be pleased to take any questions on notice if you have any.

Madam CHAIR: Thank you Mr Carpenter.

HUMAN RIGHTS LAW CENTRE

Madam CHAIR: Good morning. This is Ngaree Ah Kit, Chair of the Social Policy Scrutiny Committee. Can I please confirm that we have Anna Brown, Lee Carnie and Rosalina Curtis on the line?

Ms BROWN: This is Anna Brown, Director of Legal Advocacy, Human Rights Law Centre on the line.

Ms CARNIE: Lee Carnie, I am a senior lawyer at the Human Rights Law Centre.

Madam CHAIR: Do we also have Rosalina Curtis? Not at this stage. Thank you ladies for dialling in this morning. I am Ngaree Ah Kit, Member for Karama and 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: Lia Finocchiaro, Member for Spillett; and via teleconference alongside myself, Sandra Nelson, Member for Katherine and Chansey Paech, Member for Namatjira. The committee is also joined by Gerry Wood, Member for Nelson.

I welcome to the table to give evidence to the committee, from the Human Rights Law Centre, Anna Brown, Director of Legal Advocacy and Lee Carnie, senior lawyer. Thank you for coming in before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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.

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Also, to assist Hansard, would you please each state your name before you speak. I now invite you each to state your name and the capacity in which you are appearing.

Ms CARNIE: Lee Carnie, I am a senior lawyer at the Human Rights Law Centre.

Ms BROWN: Anna Brown, Director of Legal Advocacy, Human Rights Law Centre.

Madam CHAIR: Thank you very much. Ms Brown, would you like to make an opening statement?

Ms BROWN: Yes, I might hand over to Lee Carnie. Lee has carriage of this submission and has prepared notes for the statement.

Madam CHAIR: Thank you.

Ms CARNIE: Firstly, we would like to commend the Northern Territory Government on tabling the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018 and thank the committee for the opportunity to discuss relevant human rights, legal and policy issues relevant to this important reform.

We strongly support both objectives of the bill. First, amending provisions in various Northern Territory laws to reflect marriage equality across the Territory. If passed, trans and gender diverse Territorians will no longer be forced to choose between staying married to the person they love or having their gender identity recognised by law.

It will also mean that same sex couples, married in the Territory, will not face any inadvertent difficulties under law because of gendered language in other laws by the introduction of gender neutral language to give effect to marriage equality and recognise all marriages equally, regardless of gender.

We welcome these amendments and ask the committee to recommend that the bill be passed with this important aspect of the bill.

Secondly, we also support the objective of increasing compliance of Northern Territory births, deaths and marriages laws with the *Sex Discrimination Act 1984*. A birth certificate is the first document a person has; it says who you are and where you belong. It is the foundational document on which your other identity documents are based. Being forced to use official documents that do not match your identity, creates daily problems when applying for a job, going to Centrelink or enrolling to study as well as a range of other practical areas of your life.

Being told that you cannot change your legal gender to reflect who you are is particularly damaging for trans and gender diverse Territorians. Sadly, the current *Births, Deaths and Marriages Registration Act* imposes unnecessary and discriminatory barriers which prevent many trans and gender diverse Territorians from being able to change their legal gender.

Existing laws require a person to divorce their spouse or undergo surgery, and provide limited access to gender categories outside male and female. There are also barriers for children under 18 being legally recognised for who they are. These present unnecessary and discriminatory barriers and we support the bill's attempts to remove some of these barriers.

We strongly support the removal of the requirement for sexual reassignment surgery, allowing parents or guardians of children under 18 to access legal recognition of gender through a simple administrative process and additional categories for legal recognition: female, male, non-binary, intersex and unspecified.

We consider that the bill could be improved by removing intersex as an available sex category as I am sure Morgan Carpenter from Intersex Human Rights Australia has already explained to you today.

Replacing the requirements for appropriate clinical treatment and medical evidence of this with a statement from the applicant of the person's gender is as nominated based on principles of self-identification; setting out special circumstances in which one parent may apply to legally change a child's gender where it is not practicable to obtain the other parent's consent, and the other issues set out in our submission.

We would also note that a similar bill which is slightly different to the Northern Territory bill passed the lower house of the Tasmanian Parliament yesterday evening and we can provide further details on that bill shortly. That is a new development which is an update on the submission we provided to the committee last week.

Madam CHAIR: Thank you very much. That was very helpful. I will now open it up to Social Policy Scrutiny Committee members for any questions they may have.

Mr PAECH: Thank you Madam Chair, if I may, it is Chansey Paech here. I thank you Lee and Anna for your submission. I want to go into the area of birth certificates. We have heard from a few people in a few of our submissions about the use of intersex on birth certificates. I seek the view of the Human Rights Law Centre on this matter.

For transgender, intersex and gender non-conforming Territorians, do you see any potential issues if Northern Territory birth certificates were to include the words 'non-binary' or 'X' rather than 'intersex?' What is the mechanism which is best able to provide inclusion of various non-binary identities under one umbrella?

Ms CARNIE: Thank you for your question. We support Intersex Human Rights Australia's position that intersex should not be available as a gender category under the bill.

In relation to that, there are some reasons for that set out in a joint letter to the Commonwealth Attorney-General's department review of the Australian Government Guidelines on the Recognition of Sex and Gender from 2015, which we reference in our submission. This is consistent with the position of a number of intersex advocates in the Darlington Statement.

The reason why intersex as a descriptor is of serious concern is because intersex advocates have a concern that the continued use of intersex creates confusion about this term. It presents it as a gender identity rather than a description of people who are born with variations of sex characteristics. It may involve a structural violence in categorising intersex people as a third gender in a way which does not respect the autonomy and diversity of intersex communities.

The Darlington Statement and our submission as well also supports non-binary as a possible option. Non-binary is the option which was adopted by the South Australian Government recently when they were considering similar reforms and was recommended by the South Australian Law Reform Institute. We consider that non-binary is currently the term that is used most commonly by gender diverse people and people who do not identify as male or female and is the preferred term on birth certificates.

However, in our submission we set out that there should be a process for consultation and for adding additional terms as time progresses to allow people to be recognised as the gender that they use and best describes their gender identity. We set out the process for potentially doing that in our submission through regulations and consultations with the registrar, similar to what was proposed in the Victorian bill which failed in 2016.

In terms of your question about the category of 'X', we have not considered this in our submission but we would support the additional category of 'X.' There would be a benefit of having 'X' as a category in that there could be some consistency between the Australian Government guidelines and the Northern Territory bill.

We have heard from trans and gender diverse people who face practical difficulties because they are able to change their federal identity documents, such as their passport, to have the 'X' marker but they are unable to change their Territory-based documents because of these barriers to changing legal gender on birth certificates.

This can result in data mismatches, most commonly where a student has enrolled using their federal identity documents and there can be a mismatch with what is on the Centrelink system and what the student has provided to the university. That can result in people having their Centrelink payments cut because there is a data error that goes through that says this person's identity documents do not match and that results in having to go to Centrelink and try to sort it out which presents particular barriers to people who are in regional, remote and rural areas. There are some benefits to having the 'X' category.

Ms BROWN: Just to draw a quick distinction, 'X' is usually used as a marker rather than as a category so if you look at the federal guidelines, they draw a distinction between 'M', 'F' and 'X' and then the categories that sit alongside those are male and female and as you would know indeterminate/intersex/unspecified.

It is just a query back to you as to whether you are thinking about categories or markers and it will just depend on your data collection when it comes to the births, deaths and marriages register or registry.

Mr PAECH: To the Human Rights Law Centre, do you feel that the preference should be non-binary rather than 'X'?

Ms BROWN: I think, Chansey, if I may call you that, we have a very diverse community so it is a struggle to find one word or one marker that is fit for all of the different identities.

When the Victorian Government consulted about this, and when Lee was heavily involved in the consultation in South Australia, there are lots of different ways for people to self-describe. Not all of those will be necessarily appropriate to put on a birth certificate but it certainly indicates that there is not one descriptor that is going to be appropriate for everyone.

Our advice would be to take an approach where you allow some flexibility there. The Victorian Government was going to have a free-text box for people to nominate some options including male and female, non-gendered, agendered, or non-binary. Non-binary has become increasingly popular since 2016. That may change. Having some flexibility is important, as Lee was pointing out, built into the way you update the regulations and the classifications that are available to people.

Mr PAECH: Sure. I have often thought, for instance, if there are other jurisdictions across the country and particularly internationally, that have adopted the term 'X' and it is basically then the definitions that are updated and practices change or new identities are formed. My thinking behind non-binary or 'X' was that if there are to be changes, then it is the definition rather than the whole piece of legislation.

Ms CARNIE: The way that the bill is currently drafted, there would not need to be legislative reform for new categories to be added. It would be changed by regulation.

Ms BROWN: Just to put it out there, when some of the consultations that I have been to.

Obviously Lee—and I do not identify as trans or gender diverse so their views are the most important and we speak from experience of lots of consultation and discussion with these sorts of communities and indeed intersex people—but the feeling when 'X' was discussed in Victoria was that people did not like it. It was saying there was something wrong with you, you put an 'X' across your name; it had a negative connotation. Those were some of the feelings that were coming up when that was floated around.

Ms NELSON: This is Sandra Nelson, Member for Katherine. I am even more confused now. What we are trying to do should be in compliance with the Commonwealth legislation. That is why we are modernising our legislation; to be in compliance with the Commonwealth legislation. If you do not have a category there—and I support you in removing the word 'identity', I support you 100% on that—and we just leave it as male and female, does that not make it just as challenging for people when they do want to change their passport?

Ms BROWN: You absolutely should have another category. We are just saying that it may be that it is good to have some flexibility in what that category likes that, whether you make it more than one descriptor available to people.

Ms NELSON: So it is an over-generalisation if you just an additional one category and hope that encompasses everybody, that is an over-generalisation, right?

Ms CARNIE: Our position is that we support most of the proposed additional categories, except for intersex. This will improve consistency with the Australian Government guidelines.

The current federal categories available are not set out under legislation, they are set out under the guidelines. Currently, what is available is 'M', 'F', and 'X' as sex markers and 'male', 'female' and 'intersex, indeterminate, unspecified' all clumped together under one category but they can be used in different ways under the 'X' marker. That is currently the federal system.

We strongly support the amendment to the regulations in the current bill which adds the additional category of 'non-binary', which is the term currently more preferred by gender diverse people. We think that over time there is scope within the bill to allow further regulations to be made to add additional categories and we would strongly support that.

Mrs FINOCCHIARO: Do you mind if I just clarify that? Say on a birth certificate, the federal guidelines are that at birth you can 'M', 'F' or 'X' and then 'X' is detailed in the regulations that can be changed and updated reasonably easily. Currently at the moment in the regulations, 'X' means male, female, intersex, unspecified, indeterminate?

Ms BROWN: The confusion might rest in the fact that federally, there is a *Sex Discrimination Act* which this law will be more in compliance with but there is no legislation regarding sex categories federally.

It is a policy document, it is called the Australian guidelines on sex and gender and so there is no legislation on these categories. It is a document that has existed since 2013 and it has been updated and reviewed. I do not think those categories have changed but there is certainly some unhappiness about those categories amongst some groups.

I actually have Rosalina that has called my phone and I have tried to join her into the call, has this worked?

Madam CHAIR: Thank you Rosalina.

Ms CURTIS: I have been trying to use the conference calling but it was not working for the last 15 minutes or so.

Ms BROWN: You are with us now Rosalina.

Madam CHAIR: Rosalina, it is Ngaree Ah Kit. I'm the Chair of the Social Policy Scrutiny Committee, so welcome to the public hearing. I was just wondering if you wanted to give us a bit of background as to why you joined in the public hearing this morning and a bit about your story.

Ms CURTIS: I am a sistergirl. A sistergirl is the terminology for an Indigenous transgender person in the NT; and a brother boy is the terminology for a trans boy or man. I would really like to see a change to gender markers happen, to give us the opportunity to change the gender markers on the birth certificate without surgery because it has a lot of effects on our life.

General things like even going to apply for jobs and you give your birth certificate, you have to have 100% ID. Birth certificate is a part of that and you want it take up most of the 100% of the ID when you are going for a job. Then the employers they do not hire you because they see we are transgender and there is a lot of complications around that.

I have applied for a lot of jobs and a lot of my friends and sistergirls, we can go to the same courses and have the same university skills and whatever and have so many certificates and the criteria to give me the job, yet we will not get the job. It is because we are trans. I want to be female on my birth certificate.

Madam CHAIR: Thank you very much for sharing Rosalina, I will open it back up to the committee for any final questions.

Mr WOOD: Lee, can I just ask a question on an area that I have difficulty with. When you are born, you are born with a recognised sex and that is put on your birth certificate; that is why it is called your birth certificate.

Would it not be possible to leave the birth certificate as it is because I think birth certificates are about the fact of someone at that time and when it comes to gender whether it is gender identity or not, that we actually have a separate legal document which identifies gender identity.

If you take what I have been reading, that some people believe that gender identity can be self-recognised, in other words it is the opinion of someone, that is not necessarily something that you would think could be put on a birth certificate because it is not necessarily a matter of fact, it is a matter of a person's self-description. Is it possible that we have a separate document that has been approved by the registrar?

Ms CURTIS: No, it should be registered as all other documents.

Ms NELSON: I agree Rosalina.

Madam CHAIR: Sorry can I just call back to order, it's Ngaree, the Chair of the committee. Can I just ask for the Member for Nelson to complete his question and we will hear the feedback. Thank you.

Mr WOOD: I was asking Lee. That was the end of my question.

Ms CURTIS: Sorry, what is your name again?

Mr WOOD: Gerry Wood.

Ms CURTIS: As an Indigenous person and from a cultural perspective, gender and diversity was always accepted in Aboriginal culture. There were no gender markers.

Mr WOOD: Well I have a wife that is Wajigan and she would not say that is true. My wife, I spoke to her last night about this issue, and she is a Wajigan elder and she does not agree.

Ms CURTIS: Excuse me. My grandmother comes from the last tribe of Australia, from Pintubi. All tribes around Australia are not the same tribes and cultures.

Mr WOOD: My question was to Lee.

Ms CURTIS: Every culture in Australia has theirs. As we all are human beings living in Australia. I am a diverse person. I speak from my heart and what I have grown up with and what I know as an Indigenous person. My grandmother comes from the last tribe to be found, from the Pintubi tribe.

Mr WOOD: My question was not relating to you, Rosalina. It was related to Lee and was a technical question in regards to how sex and gender identity or gender could be recognised as separate documents.

Ms CURTIS: It should not be separate. It should be as one document.

Ms CARNIE: Thank you for the question. In response to your question, there are three key points to make. The first is that we strongly believe that it should be in one document which is a birth certificate. There should not be a separate document which separates out the sex assigned at birth and a person's gender identity and there are three key reasons for that.

The first is that it is incredibly important for trans and gender diverse Territorians to be able to have that foundational document that says who they are, that reflects their gender and be able to correct that document.

The second is that when it comes to legal recognition, it is really important to be able to recognise that some of these terms can change over time, people can change their name and people should be able to change their gender from the gender they were assigned at birth.

The third is about how the document is used in practice. It is not just a historical document that commemorates an occasion and then sits on a shelf. It is a document that people are required to use for the rest of their life in many interactions, particularly for young people aged under 18 where they do not have alternative forms of identification such as a drivers licence.

Partly what your question gets to the point of is the legal confusion and conflation of sex and gender. Often, even though the birth certificate states sex and records sex, how it is used in practice and how it is used in corresponding Territory laws is to actually prove your gender, rather than proving biological, physical characteristics, it is used as a way of proving what your gender identity is.

To the extent that it continues to be used in that way and this is the purpose of legal recognition and how the birth certificate is used, we believe that there should still be a mechanism to change legal gender. We set out a process in our submission which sets out consideration about whether it is still necessary and relevant to collect sex on a birth certificate or not.

Putting that issue aside for the moment, there could be some ways of addressing this legal confusion and conflation of sex and gender but I think some of our concerns about that would be that because a number of other laws already conflate the two categories, there would have to be a more thorough review of other Territory laws to consider how they are used. Does that answer your question?

Mr WOOD: It probably starts up a whole lot of other questions but I think time will kill us here. I have been using the guidelines that you mentioned before from the Commonwealth Government on gender and sex and they are fairly clear, if you use those guidelines, that sex is a biological concept. It also involves chromosomes, sexual reproductive anatomy, hormones et cetera.

To me, that is fairly clear whereas gender, whether it is gender identity or just gender, has been recognised as how a person identifies or expresses their masculine, feminine or other traits. That is a person's view and not necessarily something that can be tested.

Normally, when you are born—there may be some exceptions, there would be fairly few of them—you know that you are a boy or a girl and that is the fact that is put down in a birth certificate. It is called a birth certificate, it is not called a later-on certificate.

Madam CHAIR: Sorry, ladies and gentleman. This is Ngaree Ah Kit, the Social Policy Scrutiny Committee Chair. We have run out of time for this current set of witnesses. Thank you to Ms Brown, Ms Carnie and Ms Curtis for taking the time to appear before the public hearing on the bill this morning.

Ms CURTIS: Can I say something? I have a response, one last say. In that response to Mr—sorry I forgot your name—in my tribe, I am Central Arrernte. We have skin names and skin names is defined in the kinship we belong in the family. We have one name for man and woman. My skin name is ngale. It can be a boy or a girl. This is thousands of years of culture behind it.

Mr WOOD: Skin names is what you belong to, it is not your gender.

Madam CHAIR: Thank you very much Ms Curtis and thank you to Ms Carnie and Ms Brown for appearing before the committee today. The committee will take a one minute break before we will recommence with our next witness.

NORTHERN TERRITORY ANTI-DISCRIMINATION COMMISSION

Madam CHAIR: Good morning. This is Ngaree Ah Kit, the Member for Karama and 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: Lia Finocchiaro, Member for Spillett; and via teleconference alongside myself, Sandra Nelson, Member for Katherine and Chansey Paech, Member for Namatjira. The committee is also joined by Gerry Wood, Member for Nelson.

I welcome to the table to give evidence to the committee, Sally Sievers, Northern Territory Anti-Discrimination Commissioner. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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 will ask you to state your name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions.

Could you please state your name and the capacity in which you are appearing?

Ms SIEVERS: Good morning everyone. Sally Sievers, I am the Anti-Discrimination Commissioner for the Northern Territory.

In relation to the amendments to the *Births, Deaths and Marriages Registration Act*, I congratulate the Northern Territory for moving forward on this issue and the two really key areas for the dignity of our community are the amendments in relation to not requiring trans people to divorce prior to doing a change of gender on their birth certificate, and the other is no longer requiring surgery.

Both of those things are to meet compliance with the *Marriage Act* amendments which went through in December last year and also at long last, to comply with the amendments which were made to the *Sex Discrimination Act* back in 2014. However, unfortunately by the time we get here, Tasmania are already one further generation on of reforms than we are. We are behind the eight ball in this.

Last night in Tasmania they passed legislation with two key features: one was to have parents opt-in for a sex or gender to be recorded on birth certificates which would totally remove the bulk of the conversation you have all had this morning about whether we include intersex, non-binary, female and male potentially; and then secondly that they move totally away from medicalising this procedure to the dignity of people self-identifying.

Even if this in its current form, with the types of amendments which are suggested passes, we are still a generation behind where the rest of Australia is moving. We also know that the Western Australian Law Reform Commission also recommended that putting on sex and gender on a birth certificate be an opt-in procedure.

Unfortunately with this legislation as I have set out in our submission, the lack of consultation means that today we come and spend time about a community who this legislation might be seen to be protecting but in fact, they do not want it.

We are spending a huge amount of time on intersex being included when it is really clear from that group's submissions in the ACT, that groups of people—so Morgan Carpenter's submission in Queensland, that creating a third sex is totally undesirable and we would reinforce that. It is not something that should be included in the legislation.

Similarly there is progress on when there is going to be a change, how that change is proven. We have taken the legislation from the ACT but the ACT is a very small jurisdiction with a different make up of population. As we have said in our submission, it is difficult for people, say sistergirls in Central Australia like Rosalina or sistergirls out in Tiwi, to do the medicalised approach which is suggested in this. They are the community which will most benefit from these changes.

In relation to making beneficial changes to legislation, it is that whole concept of nothing about us, without us. Consulting with intersex people and the trans NT community before putting up the changes would have been desirable. I note that they all have to be done by 9 December, which is exactly the same as Tasmania, but we have had four years to consult on the *Sex Discrimination Act* amendments and at least 12 months for the *Marriage Act*. Both of those things are disappointing.

I will not talk about the terminology issue about excluding intersex because that has been covered by the community which is most impacted. It is really clear and we would support that there is no way that we want to create a third sex and as everyone else has said, having a further marker is desirable to include people who are not male or female but how that is defined probably needs more consultation.

In relation to some of the comments that Mr Wood has made this morning about people being male or female, you have heard evidence this morning from Morgan Carpenter. The statistics in relation to intersex or people with variations with sex characteristics, it is 1.7%, so it is as many people as who have red hair in our community who do not fit into the male or female binary and increasing numbers as our genetic testing becomes more sophisticated.

It is not a really small part of our community that actually fit in between the two. There does need to be more education on the needs and who is in that community; 30 to 40 conditions fit into that community and you probably know people who do and you would not even know.

In relation to the process, our submission still is that it should be non-medicalised. We should go the whole hog and as Tasmania did last night, have self-declaration of gender or sex to change rather than the more onerous requirements of people going to doctors or counsellors.

The aim is about increasing dignity and the rights of people, that is what this legislation is aimed at and it should be reflecting what they want to see from this legislation. Thank you.

Madam CHAIR: Thank you Miss Sievers. I now open it up to the Social Policy Scrutiny Committee members for any questions.

Mrs FINOCCHIARO: Commissioner, I had a question in relation to your submission about the number of times a person could potentially apply, either because they are getting knocked back because maybe their paperwork does not meet whatever the requirements would be or maybe they are making that decision to change a number of times. We discussed your comments and were concerned about that as well.

The Anti-Discrimination Commission thinks there should not be a limit and we were wondering how you thought it should be dealt with if there were frivolous applications or in dealing with some of those issues I think they had in South Australia. Could you talk a little bit more to that—I know it is a very rare instance.

Ms SIEVERS: I do not know the specifics of what the South Australian incidents were but the life-changing nature of doing something like this. Having that debate about whether there would be frivolous applications would be really exceptional. I note from reviewing the new changes in Tasmania that they were saying one a year if you were going to put time limits on it.

Also thinking, it will come with a fee so the fee will be self-limiting because the groups of people who might want to do this are not affluent. Lots of trans people, with the prejudice and discrimination, do not work and so the fee itself may be a limitation on how frequently people apply. Maybe formalising a process when the registrar thinks it is too much but I think it will be a really tiny percentage for the message that it sends that we have to limit people—that people are going to go back and forward—when really it is some really significant change.

Mrs FINOCCHIARO: Commissioner, did you mention—I know it is fresh given it was last night—Tasmania have limited to one per year.

Ms SIEVERS: Yes, that was when I was reading the bill this morning. Obviously it has only passed the lower house. They think that it has a really good chance of passing the upper house as well from the contact I have had with people in Tasmania overnight.

Mrs FINOCCHIARO: Thank you.

Madam CHAIR: Are there any further questions from the committee?

Mr WOOD: I have a question when the committee members have finished.

Ms NELSON: Hi Sally. What would you recommend to have on there as a third category or would you recommend removing one completely?

Ms SIEVERS: Well obviously from the conversation—the Human Rights Law Centre, so Lee Carnie and Anna Brown have a lot more day-to-day contact with the communities who will be affected. They were talking about non-binary and indeterminate being the preferred Victorian model, with the capacity to change via regulation.

It really needs consultations with the community that might be impacted. I do not have that level of contact with those communities. The Human Rights Law Centre advocates do.

Mrs FINOCCHIARO: That lack of consultation presents a huge problem for us as lawmakers because like you said, we are trying to do something for people who have had no voice in the process.

Ms SIEVERS: To be fair, it is a very difficult—Morgan is a fantastic advocate but to have people disclose because of the potential stigma and discrimination, I know when the Australian Human Rights Committee have done work on this, they have received ethics approval so that they do no harm. That would be my reluctance. You are guided by the peaks in this morning's discussion.

Mrs FINOCCHIARO: And that is the only access we have had.

Ms NELSON: For me, I am just having difficulty with this whole public hearing and the conversation. I am looking at it from a practical point of view. The whole intention is to modernise the legislation which provides options for people. That is how I am looking at this.

So getting into this whole conversation about whether you use the term intersex or non-binary—I just have difficulty with this conversation. I am trying to get some clarification. To move forward, what would be the best way to move forward to ensure there are options available for everybody that is not going to ...

Mr SIEVERS: So you are not going to go towards totally removing sex and gender from the birth certificate. You need to have a third category. At the moment, we just have male and female. The modernisation and the step forward for that for the Northern Territory is to have another category or another marker so that people are excluded are now included.

The question for the committee is, what should that marker be called or should it have a box that—one of the suggestions from the Human Rights Law Centre was that it is free text. The other is to suggest in brackets non-binary, indeterminate, 'X' so people have some guidance about what would be covered. It does need some more consideration.

That is a step forward. That is the next step for the Northern Territory. At the moment we just have male and female. The next step is to have the third option.

Ms NELSON: What you said Sally, is exactly it. If it was up to me, I would have nothing on there. That is just me though. In order to be compliant with national legislation and for all practical reasons the way our laws are, you have to have some sort of identity on the birth certificate.

Ms SIEVERS: No you do not. That is just the point of the discussion and the debates that happened for hours and hours in Tasmania last night. There is a real difference between the way things are recorded, there is no way it is not going to be recorded on your hospital records or other records, it is just what goes on that identity document that you hand over when you get your first job, at the bank, all of those places where we see the discrimination.

The discrimination complaints in this area that the Anti-Discrimination Commission get are in relation to trans people's documentation not fitting how they are presenting when they are presenting in those places where identification is needed. Identification is your name. There is a real misnomer that in fact, it does need to include sex and gender and so the opt in provisions which have been passed in Tasmania, passed the first phase, they answer those questions and solve those problems.

The other issue that I did not raise was one about time for families who may never have heard about variation of sex characteristics or intersex, and then they have a child and the doctors are saying 'hey it has one of these number of— giving people more time to record the sex or gender of their child as well is another solution which has been put forward. Tasmania moved to 120 days rather than the 60 that we have so that parents can educate themselves so there is not that pressure to put something on a piece of paper.

You make a decision that is life-changing for your child about surgery or something because you have 60 days to put something on a document. One of the other solutions to enable people to have more time to consider all of the available information about what they are going to choose for their child and the rest of their child's life is to extend that time frame and offer more information.

Mr WOOD: We have a number of submissions, I have been trying to get through them all. One was from the Feminist Legal Clinic in Glebe in New South Wales. It said—because we were talking about self-identification before—the accurate recording of biological sex is essential for many legal, medical and administrative purposes.

It goes onto say that self-identification of sex is already having a negative impact in many contexts including women's sport, women's prisons, women's refuge accommodation, hospital wards, lesbian groups and other women's clubs and services, affirmative action quotas and scholarships, recording of crime statistics, public toilets and change rooms, girl guides and any other currently sex-segregated activity for women or girls.

It says towards the end that legislative changes that recognise sex upon self-identification or which confuse the concepts of sex and gender, significantly impede the viability of any special measures that have been introduced specifically for the protection and advancement of women. Do you have any comment on that?

Ms SIEVERS: There is a whole array of views on this and clearly I present all the time on special measures and the gender pay gap. I am actually drafting a letter for a school out in your constituency at the moment. I do not think those two things cannot happen at the same time. I still think that for a large percentage of the population there will be no change and we will still be able to record that there are this many women in this workplace, there are this many men.

For the first time this year, the sexual harassment prevalence survey also then went down into other categories, so dealt with sexual harassment of lesbian women, bisexual women and trans as well. All it will do is enable us to have a more nuanced data collection. What we know, in relation to sexual harassment, it is more prevalent for Aboriginal women, lesbian women and bisexual women. It is just more information, rather than less.

Mr WOOD: People who are employing people in special organisations like a girls' school, they might be wanting to employ someone at the gym, or it could be in the prisons, do they not have the right to know what the sex is rather than the gender identity is?

Ms SIEVERS: It is quite a nuanced—I do not think it helps this. They are really particular issue and they can be resolved by setting out clearly what it is that you require in that job. I think we are moving forward whereas the shelters here in the Northern Territory, particularly the Alice Springs Women's Shelter, has accepted and has provided accommodation for trans women for ages. A lot of it is an educative process about the issues.

I sat next to Hannah Mouncey, the woman who wanted to play AFLW football. What having high profile people like her speaking out does, is educate the community. My kids get this stuff. They know from at school, the kids who are hurting and harming themselves, they are the kids who are gender questioning and whose families may not be accepting them or whose community are not accepting them.

Lots of this is just education about the diversity of humanity and us moving forward to make sure that everyone is included.

Mr WOOD: It is just that some of these other submissions have similar lines. They have concerns about these changes to health—I probably would not use that word—to women in particular areas. That is what I have read in these submissions and it does not seem to come into much discussion when we are talking about this matter.

Ms SIEVERS: I have not read the submissions. I am not privy to what they are.

Mr WOOD: There are some very detailed submissions there. That is a major concern that they have raised.

Ms SIEVERS: They raise it as a major concern and that is about the variety of viewpoints and the diversity of our community is that you are entitled to have those viewpoints. What I would contend with is that some of the statements that you have made about these things are necessary for this—so some of their foundational comments about needing to collect this information because it enables us to do this with your health.

What we know is that in relation to prescribing drugs, the anti-psychotics that women are on or other medicine—they are all tested on men and so this whole issue about the importance of men and women in health or medicine, I in some ways would go to the foundational premise that the later statement is built on.

Madam CHAIR: Ms Sievers, it is Ngaree Ah Kit, the Member for Karama, I just have a question in regards to your submission. Under section 3, restrictions on registration changes, I am in Perth at a Suicide Prevention Conference where there is an LGBTQI stream throughout the four-day conference which is fantastic because it is all about inclusion and helping to reduce the rates of LGBTQI suicide around the country and the world.

You state that the mental health statistics and general health issues for people likely to take advantage of the application to change their sex on their birth certificate. Do you think that by not having a limit on the amount of times they can apply to change their sex, it might be better for their mental health and wellbeing?

Ms SIEVERS: That is a question that should be directed to the groups that you are meeting with. It is about asking the communities who are impacted about one, what the message having limits sends that people think this could be a trivial issue about your identity which is one thing that is fairly offensive, and second, what the actual capacity to change frequently would do.

I think that question would be better directed to the people who are in that stream than me. I do not have any specialist knowledge on that.

Madam CHAIR: Thank you very much. We have time for one final question from the committee.

Mr WOOD: I asked previously, why can we not separate sex and gender? It is in the guidelines as fairly distinct but everywhere I read in a lot of the documents, people put the two together. If the two were separate, would it not make it a lot better for people wanting to self-identify and still keep a record of what that person was at birth?

At the moment, I read documents here—I am not sure whether people are asking for change of sex or change of gender.

Ms SIEVERS: As you have said, you get what the sex is, the sex is the biology, and the gender is the identity. It is the move across Australia for one identity document. What you are saying is if you separate it out to a gender identity document it is something other. It is the same conversation that happened in the marriage equality debate, that you could have registration of your relationship, but that is other.

Our birth certificate is our primary identification document and everyone, whether it is a change of your sex or a change of your gender—and yes, they are different concepts but both of them across Australia are being included in birth certificates. If the NT is going to have a birth certificate that records sex, it should also have a birth certificate that includes gender identity.

Mrs FINOCCHIARO: I was just going to ask about that. Would you remind repeating yourself? Some birth certificates have sex and gender on the birth certificate, is that right?

Ms SIEVERS: Not as separate.

Mrs FINOCCHIARO: So sex slash gender.

Ms SIEVERS: Yes.

Mr WOOD: Should there be two sections then?

Ms SIEVERS: No.

Mr WOOD: To me you leave it confusing. That is confusing, that is not fact.

Ms SIEVERS: It is fact because as you heard from Rosalina, it is her fact, it is her reality. It is not your reality but it is hers and that is what is actually really important. It is the individual's reality, not what is being imposed from outside by someone else who does not understand that person's reality.

Mr WOOD: So are you saying it cannot be questioned?

Ms SIEVERS: I think it is disrespectful to question. It would be incredibly disrespectful to question that person's gender identity.

Mr WOOD: But if it is to go on an official document then the registrar could question it, then it would not be disrespectful?

Ms SIEVERS: In relation to personally in the Northern Territory, the Registrar of Births, Deaths and Marriages does not actually want to question it. He wants the legislature to come up with a process of registration that sets out a framework and they just tick off on the framework. He does not want that level of discretion about having to determine are you right or are you wrong.

What we know about sisters that I come in contact with, lots of those people have had that gender identity in their community since they were children. For them and their community, it is their reality. To have this idea that it has to be this, because this is the way a percentage of the population use sex and gender is out of touch with where the community is.

Madam CHAIR: Thank you very much for that Ms Sievers. Ladies and gentleman, we have now reached the end of our time allocated for this witness. Thank you for appearing before the committee for today's public hearing. We will now take a short break as we prepare for our final witness in one minute's time.

CHARLES DARWIN UNIVERSITY: COLLEGE OF NURSING AND MIDWIFERY

Madam CHAIR: Good morning everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and 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: Lia Finocchiaro, Member for Spillett; and via teleconference alongside myself, Sandra Nelson, Member for Katherine and Chansey Paech, Member for Namatjira. The committee is also joined by Gerry Wood, Member for Nelson.

I welcome to the table to give evidence to the committee from the College of Nursing and Midwifery at Charles Darwin University, Dr Belinda Chaplin, Nurse Researcher, Transgender Health and Wellbeing. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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 will ask you to state your name for the record and the capacity in which you appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions.

Could you please state your name and the capacity in which you are appearing?

Dr CHAPLIN: Good morning, my name is Dr Belinda Chaplin and I am a nurse researcher at Charles Darwin University in the College of Nursing and Midwifery.

Madam CHAIR: Thank you very much Dr Chaplin. I note that the Member for Araluen has re-joined proceedings. Welcome back. Dr Chaplin, I would now like to invite you to make an opening statement.

Dr CHAPLIN: Thank you. First of all I would like to say that I am really quite nervous as this is the first time that I have been approached to do something like this. I have gone a little bit dry and had heart palpitations.

Ms NELSON: You only have to be nervous of the Member for Nelson. He is the only scary one.

Dr CHAPLIN: Yes I was warned about that.

Ms NELSON: I am kidding.

Mrs FINOCCHIARO: We are just trying to best inform ourselves so please do not be nervous.

Dr CHAPLIN: First of all, I would like to say that this is really important legislation that needs to come to the Northern Territory to bring it in line with the rest of Australia. First off, the changes to the requirement to remain unmarried is very welcome. That was first enacted in the ACT in 2014 and that has never been a problem in that jurisdiction.

Also, a very positive move in that sex reassignment surgery, or alteration or removal of your reproductive organs, is no longer a requirement for changing your marker on a birth certificate. That is also very welcome.

Where I have a bit of difficulty is with the proposal of self-identification. I am a woman of trans experience and I had my sex reassignment surgery back in 1983 when things were a lot different. I have always found through my decades of experience that having some type of formal recognition from a professional, in some states that is actually two professionals need to provide written documentation that you have had appropriate clinical treatment, I think is very important that we at least have one type of written documentation.

In the case of the brotherboys and sistersgirls, knowing that gender identity for those people has been in their community lifestyle for thousands of years, I do not see a problem with elders of the community providing some type of written documentation that the proponent is actually a brotherboy, sistersgirl, transgender or whatever they choose to call themselves. I think it is really important that there is some type of documentation.

I am a member of many groups on Facebook and all those types of social media platforms and I see people who self-identify as transgender talking in language that makes me feel like they are doing this because it is a bit of a trend. I am not saying that is how they are but that is how their language comes across when they are talking online. That is one of the main reasons why I think it is really important that we have some type of documentation showing that you have had some type of clinical treatment, or in the case of brother boys and sister girls that is your identity.

As far as terminology goes, I think that there needs to be some type of other box to denote sex at birth but I do not think that list should be extensive. I would prefer something along the lines of unspecified not inclusive of intersex or indeterminate which is what is inclusive on the Australian passport application. That gets a little bit messy.

When you start introducing terms like non-binary, gender fluid, gender queer, it just messes up the whole thing. It needs to be crisp and clear and if you do not identify as male or female then you can become unspecified and the same as when a birth is registered, it gives those parents who have intersex children that opportunity to say unspecified.

It may also give those parents that do not want to categorise their child in either male or female, the option of an unspecified. If we are treating that as a gender identity issue, gender identity is a personal thing. I have heard of some parents who are actually doing that in other jurisdictions and letting the child, when they are old enough to do so, make that decision of what they identify as which I think is probably a good option as well.

Madam CHAIR: Thank you very much Dr Chaplin. I will now open it up to Social Policy Scrutiny Committee members for any questions they may have.

Mrs FINOCCHIARO: Thank you very much for that and you did not appear nervous at all.

Dr CHAPLIN: I was alright once I got started.

Mrs FINOCCHIARO: So you think it is very important that there be some form of formal recognition, this is both at birth and if you decide to change?

Dr CHAPLIN: I think not so much at birth. I would say that is a parent's decision. If they want to categorise their child as male, female or unspecified, they can have the choice to do so. They can make that informed decision in consultation with medical professionals if the child is intersex or indeterminate.

Mrs FINOCCHIARO: Then as an adult, you believe there should still be some sort of recognition and not a self-identification.

Dr CHAPLIN: Some type of independent recognition that you are actually living in that lifestyle. If you are perhaps non-binary or gender fluid, you can be going back from one to the other. They may decide that they are going to stay in one and that will be different to what could be on their birth certificate.

Mrs LAMBLEY: How could that work in practice, having someone independent recognise that? How practically could that work?

Dr CHAPLIN: It works quite well in other jurisdictions.

Mrs LAMBLEY: How does it work?

Dr CHAPLIN: You go to your doctor, have some type of psychological evaluation. If you decide, and hormone therapy is not a given, some trans people do not go on hormone therapy for a lot of reasons and some of that is to do with reproductive facility because a lot of trans people want to have children these days and a lot of trans people do have children these days. In consultation with doctors, psychologists and endocrinologists.

Mrs LAMBLEY: For the brother boys and sistergirls that you referred to earlier, they would have some sort of other independent means of recognising...

Dr CHAPLIN: Just if they were recognised by their elders. I am sure that would not be a problem to provide that information at that level.

Mrs LAMBLEY: It is not necessarily a physical requirement to have something physical happen to you to create that recognition. You do not have to have that surgery.

Dr CHAPLIN: No, there is no requirement for surgery. There is no requirement for hormones. Just some type of clinical treatment would be sufficient I think.

Mr WOOD: Our bill that is before us has a section of definitions. A recognition certificate means a certificate issued under any law certifying that a person has a sex or gender identity that is different to the sex or gender identity specified for that person in the register. I am presuming that is the Births, Deaths and Marriages certificate.

Is that what you are talking about? Having a recognition certificate?

Dr CHAPLIN: No I do not think that is necessary.

Mr WOOD: That is what is in our amendments. How it applies in the rest of the act, I have not quite worked out either.

Dr CHAPLIN: I am Victorian, so it just appears on my birth certificate what my gender is now. Also, a good safeguard to think about it removing the former name from the birth certificate, because some birth certificates still have the former name—formerly known as. People do change their names.

Mr WOOD: Our birth certificates allow that to happen, but the name must be kept at the back of the certificate.

Dr CHAPLIN: In Victoria the name is removed from the certificate and kept in the government register. It is not on the certificate because it can become public knowledge. I recommend that part of it be removed, especially for those who have had sex reassignment surgery. Legally, once you have sex reassignment surgery you are no longer that person.

Mrs LAMBLEY: When a child is born, if there is no physical reason for the child not to be deemed male or female but the parents decide to tick the 'unspecified' box—I am just trying to think through the implications of that. Is there a problem there from your perspective?

Dr CHAPLIN: You could look at it from—I mentioned the perspective of the parents before—not wanting to preclude what identity their child might be.

On the other side of the hat, you might have a child who identifies as male and/or female and comes across their birth certificate and says, 'Hey, mum and dad, I am unspecified. What is all that about?'

Mrs LAMBLEY: That is what I mean.

Dr CHAPLIN: That is a negative to that issue.

Mr WOOD: You need to protect the rights of the child, as well.

Dr CHAPLIN: Yes. But I know that is allowable in some jurisdictions.

Mr WOOD: I have a different point of view. In the Aboriginal communities I have been to, there is diversity I have never before seen. I am married to an Aboriginal woman who was born out bush. She does not recognise that as anything—even in their dictionaries it is not recognised.

I wonder if it is more of a modern thing that some Aboriginal people have picked up on our Western society's views. It has different views on this sort of thing. You might say through a peer group it has become fashionable. They have identified themselves in that area.

Older Aboriginal women would have said, 'This is not what we know'. That is not to say it does not exist, but from a traditional point of view I do not believe it did exist. I am not an anthropologist, but I can only go on my having lived in those communities.

It is not to say there were not some people who ...

Dr CHAPLIN: That is right. I do not think you can generalise across an entire ...

Mr WOOD: I do not think it is as clear cut.

Ms NELSON: Dr Chaplin, we heard quite a bit of evidence delivered this morning and there has been a lot of discussion from some of the committee members that there has not been consultation with transgender people or people who identify as intersex. Please feel free to—it is a personal question. What does this legislation mean in practical terms for you?

Dr CHAPLIN: For me, absolutely nothing. My legality was decided 45 years ago.

Ms NELSON: There has also been some discussion about having a third classification on intersex classifications. If that were to be removed and replaced with X, what would that mean to you?

Dr CHAPLIN: I think having 'X' on something brings its own problems. I know people who have 'X' on their passports and have been stopped at certain airports around the world because that was questioned. I do not think 'X' is an appropriate classification.

Ms NELSON: Do you think intersex would be the best one—or multiple classifications?

Dr CHAPLIN: I think I would prefer to stick with 'unspecified' because that would not limit the number of labels that can be used, and it covers all possibilities.

Ms NELSON: Had that option been available 45 years ago, would that have changed your life?

Dr CHAPLIN: No, not at all, because—that is a hard question to answer.

Mrs FINOCCHIARO: You obviously do not have talk personally about, if you think it is too personal ...

Dr CHAPLIN: It is not that it is personal, I just cannot relate to it. That was not my reality.

Madam CHAIR: Following on from the Member for Katherine's questions, I am looking for whether you think this legislation could have some potential benefits for younger people who may be wanting to change their sex on their birth certificates in the coming years.

Would the process be a lot easier and accepting in today's society? I guess a lot easier because they do not have to undergo gender-reassignment surgery in order to do that.

Dr CHAPLIN: I am not really an expert on children, so I do not think I can answer that question.

The only thing I would say, is that it will probably improve mental health outcomes for that population. There was a recent study done in Western Australia, conducting with people aged from 14 to 25. Approximately 80% of the participants who identified as transgender, had self-harmed. 40% of trans people have either committed suicide or attempted to commit suicide.

The figures around mental health outcomes are pretty horrific around the whole country. Enacting legislation such as this goes some way in providing comfort and positivity for those people.

Madam CHAIR: Thank you, Dr Chaplin. Are there any final questions from the committee?

Mrs FINOCCHIARO: So, I wanted to ask, and this is something we are grappling with, you are labelling people essentially. We were trying to find a way—is 'X' more inclusive, is 'unspecified'? I am wondering, as we keep trying to bring it back to the practical. How would this practically affect someone's life, or how would it would in practice.

The people you know who travelled overseas, their passports said 'X' and they were stopped. I wonder, if it said 'unspecified' or any number of things, would they still get stopped? Are they still experiencing that questioning of that category?

I guess that is a statement really—you may have a view on it.

Dr CHAPLIN: If you are letting people decide that themselves, then it does not matter as it is their suggestion, is it not? They are taking that chance.

I know if I was unspecified I would not be going to those countries where I know there was going to be an issue. I am talking of places like Saudi Arabia and Iran. Not because of their religious beliefs. That is what they do—they stop people who are different.

Mrs LAMBLEY: I have a question about the medical and psychological treatment or assessments specified in this legislation. Is this a specialised area of medicine and psychology?

Dr CHAPLIN: Yes, it is a specialised area of medicine. There is a professional organisation in Australia called ANZPATH, which is the Australian and New Zealand Professional Association for Transgender Health. I am the secretary of that organisation, but I am not talking on its behalf today. The membership consists of psychologists,

psychiatrists, general practitioners, endocrinologists, lawyers and social workers, who all have an interest in transgender health.

Mrs LAMBLEY: If someone is living in the bush and having difficulty coming to terms with their gender or however you term it. I am not across the language and how these things are phrased. Do they need to access specialists to assist them and how would they do that?

Dr CHAPLIN: It is preferable. In the Northern Territory we have the Northside clinic at Coconut Grove in Darwin. They have a monthly LGBTI clinic that runs for two or three days. The majority of the patients in that clinic are transgender. They come from Darwin and places like Katherine and other rural areas to access hormone therapy, initiate the discussion around their psychological and other needs.

The GP is always the first port of call in the treatment and will organise for patients to get psychological treatment and endocrinological treatment if required.

Mrs LAMBLEY: Where would someone who lives in Central Australia go? Would they be referred to the Northside clinic?

Dr CHAPLIN: Yes. At the moment, the Darwin clinic is the only one in the Northern Territory. The primary health network is looking at trying to get some expansion into other major centres, such as Alice Springs and Katherine.

Mrs LAMBLEY: Would people outside of Darwin be entitled to PATS assistance? Do you know much about that? I am thinking of the logistics and practicalities ...

Dr CHAPLIN: I do not know about that.

Mrs LAMBLEY: That is travel assistance through the Department of Health.

Dr CHAPLIN: I gathered that. I do not know if they are. I know they have specialist GPs who fly interstate to hold the clinics here. They are all well versed in the treatment. They will organise psychological treatment if it is needed. That is needed if you want to go on to have hormone therapy.

Mrs LAMBLEY: For the purposes of this bill, to change your gender on your birth certificate, what sort of help do people need to make that decision? Do you think they need specialised counselling and advice?

Dr CHAPLIN: It is a special area. Definitely.

Ms NELSON: It is not just for the purpose of the bill. If people are making the transition and living their life as their authentic self, in order to go through that transition, part of the suite of medical support is mental health support whether this bill was in existence or not, correct?

Dr CHAPLIN: That is correct, yes.

Ms NELSON: So this bill would not make any difference to the medical support they are already receiving.

Dr CHAPLIN: That is right.

Mrs FINOCCHIARO: I think the Member for Araluen was getting to the point that, under the bill you need to have seen a practitioner.

Mrs LAMBLEY: Yes, we are talking specifically about the bill.

Mrs FINOCCHIARO: You need to have seen someone to provide that certificate, or whatever it is called.

Madam CHAIR: Ladies and gentleman, I note the time is 11 o'clock and as such, the time with our witness expired. Doctor Chaplin, on behalf of the Social Policy Scrutiny Committee I thank you for appearing before us this morning. Your information has been quite insightful. I hope you found the process to not be as scary as you once thought.

That concludes the public hearing on the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018. We will close proceedings now.

Thank you, everybody, for your contributions.