

**Ms FYLES (Attorney-General and Justice):** Madam Speaker, last year we all would remember the postal plebiscite in our country on same-sex marriage, in which the majority of Australians voted 'yes'. That was national survey which determined Australian support for legalising same-sex marriage. Whether we agreed with that postal vote taking place in the first place, it took place and the majority of Australians welcomed same-sex marriage in our country.

Following the vote, the federal parliament made amendment to the definition of marriage just over a year ago to uphold the principle of that ballot. The amendment to the *Marriage Act 1961* enabled marriage to be between two people, rather than being only between a man and a woman. As a consequence, the Northern Territory law requires amending to reflect the new definition of marriage following that historic vote.

We need to ensure that existing NT provisions that relate to marriage or married persons encompass same-sex and gender diverse marriages. This bill has two purposes. The first is to make amendments to the *Births, Deaths and Marriages Registration Act* and other legislation to ensure the provisions reflect the new definition in the Commonwealth *Marriage Act 1961*.

We need to recognise and protect the rights of all Territorians and to increase the compliance of the Northern Territory with the laws of the Commonwealth *Sex Discrimination Act 1984*. This is in relation to marital status, sexual orientation, gender identity or intersex status. This leads me to the second purpose. This to make further amendments to the *Births, Deaths and Marriages Registration Act*, particularly towards the requirements for registering a change of sex.

The Commonwealth *Sex Discrimination Act* provides that it is unlawful to discriminate against a person on the basis of gender identity and intersex status. A number of amendments relating to the *Marriage Act* are interrelated to compliance with the objects and requirements of the *Sex Discrimination Act*.

This bill improves the legal recognition of sex and gender diverse people in the Territory, thereby promoting the fundamental human right of equality and the right to be protected from discrimination. These rights belong to all people irrespective of their gender identity or because they are intersex. All Territorians should be able to be able to fully participate in society by having identity documents that reflect their actual identity.

The amendments in this bill seek to ensure the Northern Territory is compliant with the *Sex Discrimination Act* and uphold the fundamental human rights of equality and freedom from discrimination. It is for these reasons that both of these purposes are dealt with together in this bill.

As I have explained to the House, the Commonwealth exemption relating to the bill will expire on 9 December 2018 which is why we are making these changes now. Do not be fooled by those opposite who have said that it is rushed. This is been on the Notice Paper for 30 days which is a routine passage of business.

I acknowledge the members who have contributed to debate here today, particularly the Members for Katherine, Namatjira, Karama, Spillett and Araluen as committee members. That committee has looked into this bill and they have provided recommendations back to the Assembly. Yesterday, I provided a copy of their proposed amendments and the government's response to that.

The Members for Katherine and Namatjira indicated their support, particularly the Member for Katherine's passionate support to this bill. As Attorney-General, I get to debate the legislation and advocate, but the Member for Katherine has advocated long and hard for changes such as this, recognising that some Territory people are discriminated against. She is a member who believes in equality for all Territorians and puts her words where her words are.

The Members for Spillett and Araluen not only contributed to the debate, but also participated in the scrutiny committee. I thank them for that.

I thank the Member for Nelson for his contribution. I note that he has expressed that the broader concepts relating to same-sex marriage and gender diversity in this bill should be debated within the Assembly. However, this bill is not introducing new concepts, but is making provisions to further strengthen inclusivity and recognition of diversity in our Territory population.

The capacity for people in the Northern Territory to register a change of sex has formed part of our law for over 20 years. The concept was debated and the amendments introduced and subsequently passed and enacted in the *Births, Deaths and Marriages Act*. This bill now recognises the gender-diverse community and allows them to have gender reflected on identification documents.

Changing details on birth certificates is not a new concept, as some members have alluded to.

I thank the Members for Wanguri, Braitling and Karama for their contributions and support of the bill. I also acknowledge the Member for Blain, who just spoke.

The Births, Deaths and Marriages Registration and other Legislation Amendment Bill 2018 was developed as a result of the commencement of two Commonwealth laws. The Marriage Amendment (Definition and Religious Freedoms) Act 2017 amended the definition of marriage and the *Marriage Act* to allow two people the freedom to marry, regardless of their sex or gender. The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* amended the *Sex Discrimination Act* to provide protections from discrimination on the grounds of gender identity and intersex status.

The commencement of these laws triggered a need to amend the Northern Territory laws so that they comply with and are consistent with the requirements of the Commonwealth acts.

The key elements of this bill are as follows:

- it will remove the requirement to be unmarried in order to register a change of sex
- it will allow for the registration of a change of sex or gender identity, rather than only a change of sex
- it will allow a person to register their sex.

I will pause on this. I am privileged to be the Northern Territory Health minister. Speaking to our hard-working clinicians, they have 60 days to help a family make a decision on someone's gender. Yes, there can be blood tests and clinical advice, but why rush that? Why not allow people, clinicians and families more time? It is all we are saying regarding the registration.

The bill will remove the requirement to have undergone sexual reassignment surgery to register a change of sex and replace this with the requirement to have received appropriate clinical treatment. There will also be a requirement that applications to register a change of sex and gender be accompanied by a statement from a registered medical practitioner or psychologist.

There will also be safeguards in relation to the applications for registering a change of sex or gender for a child. Such applications are to be made by the parents or guardian of the child and only where it is in the best interests of the child. There are also provisions relating to a child's consent.

This is a difficult issue to discuss, but it is more difficult for the families that live through this. We need to have legislation that allows them to recognise their true identity.

I have stories of people in my community and the electorate I represent and the journey they are on. The stigma that surrounds these issues in that I cannot openly share those stories in this parliament. Maybe one day, when we reflect upon these legislative changes we will be able to share those stories.

As legislators, what we can do in this House, is support this bill to support Territorians having an easier journey.

The bill will also amend a number of other laws to reflect the new definition of marriage. In some cases, the bill will replace gender-specific terminology such as, husband, wife, widow, widower, with a gender-neutral terminology such as spouse or surviving spouse.

Section 4 of the *Married Persons (Equality of Status) Act* provides that a husband and wife each have the right of action in court against each other as if they were not married. The purpose of the provision is to make it clear that a married woman is an independent legal personality separate from her husband. However, with the new definition of marriage a question arises as to how the provision would apply in a same sex marriage. To ensure that all married persons regardless of their sex or gender are considered to be independent legal personalities separate from their spouse, it is necessary to replace the terms 'husband' and 'wife' in this provision with the gender neutral term, 'spouse'.

In other cases, the bill will rephrase existing provisions that override historical common law principles. This is to add clarity in light of the new definition of marriage. For example, section 13(2) of the Criminal Code provides that:

*A wife may be an accessory after the fact to an offence committed by her husband.*

The purpose of this provision is to override an old common-law principle that a wife could not be an accessory after the fact to crimes committed by her husband. However, with the new definition of marriage, a question arises as to how that provision could apply in relation to a same sex marriage. To make it clear that all married persons may be an accessory after the fact to an offence committed by their spouse regardless of their sex or gender, the provision has been rephrased by providing that the rule of law that a wife cannot be an accessory after the fact to an offence committed by her husband is abolished.

These types of amendments are technical in nature, but are necessary to ensure that Northern Territory laws are clear and inclusive. The amendments also promote consistency of language that is appropriate and inclusive for all Territorians, which we talk about every day in the Chamber.

The bill will also remove outdated provisions relating to marriage and spousal maintenance; for example, 57(1)P of the *Summary Offences Act*. This relates to an offence of leaving one's wife or child liable to the public without means of support, which is now adequately covered by Commonwealth child support and family law legislation.

'Spouse', by definition in the *Interpretation Act* includes all married people. The terms, 'husband', and, 'wife', correspond with the meaning of, 'spouse'. These consequential amendments are not about excluding any person. The changes in relation to marriage in this bill do not affect a person's marriage certificate. Marriage certificates are governed by the Commonwealth *Marriage Act*. Further, these amendments do not affect the way people refer to their husband or wife on a day-to-day basis. That is up for each family or couple in the Territory.

These are technical amendments to ensure the Northern Territory legislation encompasses all marriages and all married people. Most significantly, the bill removes the requirement to be unmarried in order to register a change of sex under the *Births, Deaths and Marriages Registration Act*. It is critical that this requirement be removed as it discriminates against people on the basis of their marital status. While currently exempt from an application of the *Sex Discrimination Act*, consequential amendments made as part of the amendments to the definition of marriage will commence on 9 December 2018. This will mean that the requirement to be unmarried to register a change of sex will be unlawful.

In considering the need to remove the requirement to be unmarried in order to register a change of sex through *Births, Deaths and Marriages Registration Act*, additional amendments were identified as necessary to remove discrimination, particularly on the basis of gender identity and intersex status. The bill promotes individual choice, particularly with the removal of the requirement for individuals to undertake sex reassignment surgery prior to having their birth certificate amended to reflect their gender or sex.

This is important to ensure the safety for and protecting the dignity of those whose transition may need to rely on their birth certificates as a form of identification with government departments or their employers. Many intersex, transgender or gender-diverse people do not wish to undergo surgery. To only allow people who have undergone surgery to access accurate identity documents discriminates against transgender,

gender-diverse and intersex people who have not had or do not require surgery in order to identify as their preferred gender.

Removing the requirement for surgery and introducing a broad requirement of appropriate clinical treatment is more inclusive. I note the risk of people fraudulently registering a change of sex or gender is low. Any risk is mitigated by the requirement for independent and professional medical evidence confirming a person's affirmed sex or gender in support of the application.

The bill requires a person to undergo appropriate clinical treatment. This term is not defined in the bill. This allows for flexibility and recognises that different types of treatment are appropriate for different individuals in order to provide independent confirmation of a person's sex or gender.

Appropriate will be determined by the registered medical practitioner or psychologist, depending on the individual circumstances. This approach to treatment was determined to be more practical in the Northern Territory to require evidence from a registered medical practitioner or registered psychologist only.

Additionally it is consistent with the requirements in the ACT act and at the federal level. A requirement for a specialist's opinion may unfairly limit sex and gender diverse people's ability to register a change of sex or gender, particularly in a small jurisdiction like the Northern Territory.

Such a requirement would not align with the aim of the amendments to make the process to register a change of sex or gender more accessible and inclusive of the community who wish to register the change.

The points that I have just made—our medical professionals are exactly that. They are professionals, we want them to make decisions, they have a patient relationship, they are best placed to make those decisions. It is not here for us in this House today.

I will also touch on why there is a separate process for intersex people to register a change of sex or gender. This is because being intersex is a matter of medical fact. Intersex people have variations in sex characteristics and where their sex registration at birth does not align with their gender identity, they may seek to change their registration to reflect their identity. That identity may be male, female, non-binary or other as preferred.

This bill also enables children, in conjunction with their parents or guardians, to amend their birth certificate to reflect their gender or sex, something I spoke about before. I note that our legislation currently allows a parent to register a change of sex for their child. Sex and gender diverse children are also entitled, like adults, to be treated equally and be protected from discrimination on the basis of gender identity and intersex status.

There are safeguards in this bill regarding applications for children. An application is made by the parent or guardian of the child and the application must be in the best interests of the child, must be supported by medical evidence that the child has received appropriate clinical treatment or is intersex, and for a child to understand the meaning of the change, they must consent to the application.

Children 14 years and over are presumed to understand the meaning of the change and the requirements for children aged 14 and over to provide consent in addition to the requirement that they undertake appropriate clinical treatment and adequate safeguards.

In relation to children under 14 years of age, the Registrar of Births, Deaths and Marriages will determine their understanding on a case by case basis. This will be based on all relevant considerations and information available. This might include information from the child or the parents of the child. This ensures that the best interests of the children are promoted and protected.

Medical documentation will still be able to establish a person's sex characteristics if required. Information regarding a person's sex at birth will be retained in the register of births as the sex of a child is required to be registered at birth. The act also allows prescribed persons, including for example police officers, to access a person's old birth certificate which would contain the person's sex prior to any registered change.

Primarily the bill removes discrimination from the *Births, Deaths and Marriages Registration Act* by allowing people to access identity documents that accurately reflect their affirmed gender and facilitating greater and fairer access to the mechanism for registering a change of sex or gender under this act, in particular by removing the requirement for sexual reassignment surgery.

In relation to identity documents, there has been some commentary that recording a person's sex is better than gender. Gender information is generally what is required by government and other organisations to identify a person and decide what their rights or what services should apply to that person.

The Australian Government guidelines also explain that the preferred Australian Government approach is to collect and use gender information and that information regarding sex is not ordinarily required. Transgender persons are also protected from discrimination on the basis of gender identity and as such are required to be treated equally and in accordance with their affirmed gender.

Not every person's gender identity aligns with the sex assigned at birth. Allowing a person's gender identity to be reflected on identity documents will enable sex and gender diverse Territorians to have accurate identity documents. This supports non-discrimination on the grounds of gender identity and better aligns our legislation with the requirements of the Commonwealth's Sex Discrimination Act.

It is also consistent with the Commonwealth requirements. For example, the Commonwealth will issue a passport to reflect a person's affirmed gender.

Overall, by reflecting the new definition of marriage in various Northern Territory laws, the bill aims to facilitate greater equality before law. It also promotes non-discrimination on the grounds of gender identity and intersex status.

The amendments to the requirements for registering a change of sex under the Births, Deaths and Marriages Registration Act also improves the legal recognition of sex and gender diverse Territorians. This promotes the right to be protected from discrimination on the basis of a person's sex or gender identity. These amendments are supported by advocacy groups representing sex and gender diverse Territorians such as Rainbow Territory who are directly affected by this legislation and step towards inclusiveness and equality before the law. I acknowledge all of those involved in this campaign to see this legislation debated before this parliament.

This bill also makes amendments to the birth, deaths and marriages regulations. In effect, the amendments will mean that regulations will contain a limited list of recognised sex or gender for the purpose of registering a change of sex or gender under the act and classify that the sex of a child at birth may be registered as male, female or unspecified.

Firstly, turning to the list of recognised sex or gender for the purposes of registering a change of sex or gender under the act. The categories propose—this is picking up on the work of the scrutiny committee—male, female, unspecified and non-binary. Unspecified is intended to be a flexible term that may be used as an alternate to intersex or by people who do not identify as any gender at all. The category unspecified will not allow a person to describe their gender identity. It is not the same as a tick box that provides 'other, please specify'.

In this sense, unspecified is not a broad category however it is necessary to have a category that is broad enough to be used by people who may not identify as either male or female, or may identify as both male and female. Unspecified can be used by those people.

Non-binary is used by many people who do not identify strictly as male or female. The category of intersex will no longer be included in the categories and I will address that through the committee stage amendments which we will debate soon.

Secondly, turning to the categories available for a child at birth being male, female or unspecified. It is important to note that at the time of the birth of a child, these changes do not allow the parents to choose which sex or gender they want their child to be. Upon the registration of a birth, there is a level of oversight of the details that are registered by parents.

The registrar of births, deaths and marriages will receive notification of the details of the birth from a responsible person. A responsible person is usually the hospital, doctor or health worker responsible for the professional care of the mother at the birth. The details provided to the registrar by the responsible person will include details of the child's sex. If a parent subsequently lodges an application to change the sex or gender identity of their child, there are further safeguards in place which I have discussed.

We are not the first jurisdiction to make changes of this nature to our legislation. The Commonwealth amended the definition of marriage in the Marriage Act 1961 to provide marriages between people. The

Commonwealth also made a consequential amendment to the Commonwealth laws to reflect the new definition of marriage.

This included, as of 9 December 2018, repealing the exemption from an application on the protection from discrimination on the basis of marital status provisions in state and territory law. This provides that a person must be unmarried to register a change of sex. This means the requirement to be unmarried to register a change of sex will be unlawful and subject to the Sex Discrimination Act after 9 December 2018.

New South Wales has made consequential amendments to a number of its laws to reflect the new definition of marriage. The amendments include replacing terms such as husband and wife with gender neutral terms such as spouse. New South Wales have also removed the requirement to be unmarried in order to register a change of sex.

Victoria has removed the requirement to be unmarried in order to register a change of sex under their Justice Legislation Amendment (Access to Justice) Act 2018. Tasmania recently introduced the Justice and Related Legislation Marriage Amendments Bill 2018, which made various amendments as a consequence of marriage equality. This includes replacing terms such as 'husband' and 'wife' with 'gender-neutral spouse'.

The Tasmanian bill will remove the requirement to be unmarried in order to register a change of sex. While the bill as introduced retains the requirement for surgery, amendments were proposed by Labor and the Greens to remove this requirement as well as to provide the registration of gender on birth certificates as optional.

The bill has passed the lower house with the amendments as proposed, and is before the upper house in that state for consideration.

Queensland has removed the requirement to be unmarried in order to register a change of sex. Queensland retains the requirement for sexual reassignment surgery, however the Queensland Department of Justice is currently reviewing this requirement.

WA has removed the requirement to be unmarried in order to register a change of sex, and the WA Law Reform Commission is currently conducting a broader review of WA legislation regarding the recognition of a person's change of sex.

South Australia has removed the requirement to be unmarried in order to register a change of sex. South Australia has also removed the requirement for sexual reassignment surgery and replaced it with a requirement for appropriate clinical treatment.

This bill was referred to the Social Policy Scrutiny Committee, who tabled their report in this Chamber. I thank the committee and the Chair, the Member for Karama, for their consideration of the report.

The committee made the following recommendations, that:

1. the bill be passed with amendments
2. the government give consideration to deleting the word 'identity' from reference to sex or gender identity
3. section 28(a) be amended to incorporate a definition of the term gender or gender identity
4. proposed regulations 234(a) be amended by deleting 'intersex' as a category of sex or gender identity
5. in consultation with the transgender diversity and intersex community, consider making additional categories of sex and gender identity available, and amend the regulations accordingly
6. consultation occur before the second tranche of amendments
7. written notification of the reasons for adverse decisions made by the registrar be provided to the person concerned
8. proposed section 28(d)(a) is deleted.

I will address most of the recommendations during the committee stage. There will be two recommendations I will not be progressing. I provided the opposition with our position on the recommendations.

Recommendation 3, which recommends providing a definition for gender or gender identity, is not being progressed. A definition of gender or gender identity was considered during the drafting of the bill, and it was determined it was not necessary as the term gender is widely understood and the dictionary meaning is sufficient without providing a legal definition. Further, the categories of gender will be provided in the regulations.

The second recommendation not being progressed is recommendation 7, which recommends the registrar provide written reasons for adverse decisions. I note the concerns raised by the Member for Spillett in relation to this recommendation. A person aggrieved by a decision already has a general right in respect of written notification of decisions. This right is contained in the *Northern Territory Civil and Administrative Tribunal Act 2014*, and applies to the registrar of births, deaths and marriages.

Once a written notice of decision is provided to a person, a request can be made by that person for a written reason from the registrar, and this does not involve an application to NTCAT. We therefore believe it is not necessary to make this recommended amendment to the bill, as the process is already provided for.

There have been comments about the consultation. We are putting in place the measures voted on by Australians last year. In developing the bill, there has also been a great deal of information drawn on by the department, provided by various community groups who have advocated for these changes to be made urgently.

There has been consultation with the Northern Territory Anti-discrimination Commissioner, and we have looked at legislation in other jurisdictions, in particular the ACT and South Australia which have already removed the requirement for surgery in order to register a change of sex.

And we drew on the guidelines and laws in place at the federal level. Further, stakeholders have written to me urging for these amendments to be made, and we have had advocacy from members within government representing their communities.

Following the committee's recommendations, there will be consultation relating to gender categories in the regulations during the second tranche of amendments. The bill will commence on the day after the Administrator gives assent. It is expected that the bill will commence in the near future, particularly given the need to remove the requirement to be unmarried in order to register a change of sex by 9 December 2018.

A targeted communications plan will ensure key stakeholders in the legal profession and community groups will be notified by the commencement of these changes. In relation to implementation, the Registrar of Births, Deaths and Marriages is responsible for administering the *Births, Deaths and Marriages Act*. The Registrar has been consulted throughout the development of this bill, and that office is prepared for commencement of the new provisions.

This bill is a progressive step forward to recognise all people in our community. I sincerely thank the hardworking staff of the Department of the Attorney-General and Justice as well as the staff in my office and the Office of the Parliamentary Counsel.

Let bananas be bananas, and let Territorians finally be who they want to be.

I commend the bill to the house.

Motion agreed to; bill read a second time.

### **Consideration in Detail**

Clauses 1 to 3, by leave, taken together and agreed to.

Clause 4:

**Ms FYLES:** Madam Acting Deputy Speaker, I move amendment 1 to clause 4, which amends section 3 of the *Births, Deaths and Marriages Registration Act*, to omit 'identity' from the term 'gender identity'.

The Social Policy Scrutiny Committee recommended the government consider deleting word 'identity' from references to 'gender identity' in this bill. This recommendation was made on the basis by the Human Rights

Law Centre that the use of the word 'identity' in this context is confusing, and the term gender is a more accurate description of the information being recorded.

This amendment addresses this concern and will reflect that the act will allow for the registration of a change of sex or gender.

**Mr WOOD:** For clarification there—are we not adding something to section 4? There are two things happening here. One is that you were originally going to add 'gender identity' to section 3 of the act, and then you were going to remove the word 'identity'. Do the two things happen here?

**Ms FYLES:** This is just removing the word 'identity'.

**Mr WOOD:** But you also have to talk to insertion of the word 'gender' into this section. This is one of the amendments.

**Ms FYLES:** It currently says 'gender identity' and we are just removing 'identity'.

**Mr WOOD:** That is right, but I did not know whether it had to be two things. One is to remove the word 'identity' and the second is to insert the word 'gender'.

This is the bit that confuses me. The original act referred to registration of change of name and sex, and you referred to that in your summary. Under the Australian Guidelines:

*... sex refers to the chromosomal ... and anatomical characteristics associated with biological sex.*

One of the issues in this debate is the mixing-up of the two terms. If sex cannot be changed because it is chromosomal, should it still be in the objects of the act?

**Ms FYLES:** It is not what this amendment is about.

**Mr WOOD:** There is the complication through this bill of the words 'sex' and 'gender' being used side by side. In the beginning of the act, the objects of the act, it states that one of the objects is to enable people to change their name and sex, and now we are adding gender. If you read the definition under the Australian guidelines of what sex is, it refers to the chromosomal and anatomical characteristics associated with biological sex.

Can you have a situation of changing that, which is what it says you can do?

**Ms FYLES:** Just to clarify, it says 'name, sex or gender identity'. We are not defining the gender, we are simply removing the word 'identity'.

**Mr WOOD:** This section of the act says you can register the change of name and sex, and now we are adding gender. How can you register change of sex if you use the definition the government says? Because it is not changeable.

I understand how you can change gender, but I am not sure how you can change sex.

**Ms FYLES:** I believe I have addressed the point. The member is going to the purpose of the bill. It is not specifically to this point. I have clarified the amendment we have proposed.

**Mr WOOD:** It is a perfectly reasonable question, because we are adding an extra word to the objects of the act. I thought you would remove the word sex and have 'changes of name and gender', which can be changed. To leave sex in there, which you cannot change, means the objects of the act do not make any sense.

Amendment agreed to.

Clause 4, by leave, agreed to.

Clause 5:

**Mr WOOD:** This section removes the need not to place an advertisement in the newspaper. There is no reason given in the first reading or explanatory notes as to why that has been changed. I am referring the



need for someone to advertise a change of name. The answer given by the government advisers was the intention behind the proposed amendment was to remove the risk that a person will be discriminated against in circumstances where they registered a change of name subsequent to an application to register a change of sexual identity.

Is this the case? There was no explanation of this in the bill or explanatory notes. This is the problem with rushing legislation through. I do not know if people like the police, real estate people or medical people need to have this information. I do not understand where it has come from, why it is a requirement or what it has to do with the *Marriage Act* in this case.

**Ms FYLES:** Our police were consulted in relation to removing this requirement and indicated they had no concerns with this proposal. It is a fact of the times. The requirement to advertise in the newspaper is seen as obsolete in today's digital age. Apologies to the *NT News*; we love you.

**Mr WOOD:** I am wondering what the digital age has to do with it. The reason for this was to put an ad in the newspaper to say your name has been changed. People do it for all sorts of reasons. If you do it digitally, who will see it? Obviously, the newspaper is public.

I do not know why there was not a far better explanation.

Clause 5 agreed to.

Clause 6:

**Ms FYLES:** I move amendment 2 that the definition of recognition certificate in the proposed section 28A of Clause 6 of the bill be amended to omit the word 'identity' from all references to the term gender identity. This amendment is made on the same basis as amendment 1. The amendment addresses the concern of the Social Policy Scrutiny Committee which will ensure consistency with the rest of the act which will allow for registration of a change of sex or gender.

**Mrs FINOCCHIARO:** Minister, I know in your summation of the second reading you mentioned recommendation 7 by the committee but I just wanted to delve into that a little further. If a person's application is rejected by the registrar, the person will not understand why. I understand that then pursuant to the NTCAT act, a person can go to NTCAT and seek that NTCAT ask the registrar to provide that person with reasons for a written decision.

I cannot understand why you would not streamline the process and give certainty to applicants and not require the registrar, if they reject an application, to at that point provide reasons for decisions.

**Ms FYLES:** This is probably better dealt with a little bit further on. I am happy to address it here or address it further on. It is up to the member, I do not mind.

**Mrs FINOCCHIARO:** It is Clause 6. If you are happy to address it now, we can deal with it now.

**Ms FYLES:** As I explained in my closing statement, it is unnecessary. The NTCAT already has that provision. We felt that it was dealt with through that process and it would be unnecessary to place it here.

**Mrs FINOCCHIARO:** But it is quite different. It requires a person to then take themselves off to NTCAT. Can you confirm that before NTCAT ...

**Ms FYLES:** No they do not. That is what I said in my speech. They do not have to go to NTCAT, they can just ask.

**Mrs FINOCCHIARO:** So they can just ask the registrar within 28 days of receiving the rejection.

**Ms FYLES:** Yes, so I am not sure what page it was on in my speech but it was quite clear that they did not have to go to NTCAT; they could just simply ask for it.

**Mrs FINOCCHIARO:** So a person has to, within 28 days of receipt of the rejection, make a request to the registrar in writing for a statement of reasons of decision.

**Ms FYLES:** Yes, correct. I am just trying to find it in my speech to read it to you. But yes, that is absolutely correct.

**Mrs FINOCCHIARO:** Will that be mentioned in the regulations? I am just trying to think of practically for a person how will they be aware of that opportunity?

**Ms FYLES:** It does not need to be in the act or the regulations. The information about this will be in that type of material but it is automatic if the registrar—they can get the reason for the decision without having to lodge an NTCAT application.

**Mrs FINOCCHIARO:** If an applicant who was rejected does not realise for whatever reason that they only had 28 days in which to seek written reasons for decision, what opportunities does that person then have after that 28 day period has elapsed.

**Ms FYLES:** All of that information is given in the notice so they should have that. This is a process the registrar already works under. I am sure there is very detailed information but also options post the 28 days if for some reason they threw it in the bin or misplaced it.

**Mrs FINOCCHIARO:** If a person does seek reasons for written decision with 28 days and they are provided the reasons, they are able to then ask for a review by the registrar internally?

**Ms FYLES:** It is the review by NTCAT.

**Mrs FINOCCHIARO:** The only way to review the decision is by lodging an application with NTCAT?

**Ms FYLES:** That is way the registrar's process works right now and this is just adding another scope to that, I guess is the best way to explain it. So they already have those processes in place for their existing functions. This is giving them another scope of their function. It is using the same processes. That is why it is unnecessary to have anything in this piece of legislation. It is already catered for.

**Mr WOOD:** Under section 6 it mentions recognition certificates. Women Speak Tasmania said in its submission that individuals who have adopted a social identity incongruent with their biological sex should have the opportunity to apply for a recognition certificate.

Intersex persons who have a social identity incongruent with their biological sex registered and their name at birth should have the same opportunity. A recognition certificate is not a substitute for a birth certificate, but an acknowledgement of social identity for those who require it. Did the government give any consideration to having a separate certificate to cover the areas of gender identity?

**Ms FYLES:** Thank you, Member for Nelson. Our act already allows for changes to birth certificates to reflect a person's new sex. That is nothing new. We also heard from the human rights law centre and the Anti-Discrimination Commission during the scrutiny committee process that it is very important to sex and gender-diverse people to have one identity document that accurately reflects who they are. Birth certificates remain as the primary identification document.

**Mr WOOD:** I will go on to section 28B. The application to register change of sex or gender identity. There is mentioned the 'appropriate clinical treatment'. Why is there no definition of 'appropriate clinical treatment' in the definitions in the act?

**Ms FYLES:** Again, I referenced that during debate. It is to allow medical professionals to make that decision.

**Mr WOOD:** There is no guidance for anyone reading this act as to what that would mean.

**Madam ACTING DEPUTY SPEAKER:** Member for Nelson, are you speaking in regards to section 28A?

**Mr WOOD:** Clause 6.

**Ms FYLES:** I have answered the question. I answered it in my speech.

**Mrs FINOCCHIARO:** Not to labour a point, but I want to be clear. I fundamentally believe in being provided reasons for decisions. Minister, you mentioned that it is just following the same process as what the registrar already does. Are you referencing, for example, the process to change your name—as in if an application for a change of name is rejected?

**Ms FYLES:** Correct.

**Mrs FINOCCHIARO:** That is the same process?

**Ms FYLES:** Absolutely the same.

**Mrs FINOCCHIARO:** So there is no opportunity for an internal review on the merits of the decision? I am thinking that there is a distinction because once it gets to NTCAT that can only be at an administrative review.

**Ms FYLES:** It is not a subjective decision. We are putting in place the legislation and the act. They have to fulfil that function. Those processes are already in place. We are just giving them another scope of what they already do.

**Mr WOOD:** Just moving on from that 28B(2) which is regarding that parents of a child may apply to ...

**Madam ACTING DEPUTY SPEAKER:** Member for Nelson, we are still on amendment two to clause six

Amendment agreed to.

**Ms FYLES:** I move amendment three of the bill heading of the proposed section 28B in clause 6 of the bill which currently refers to an application to register change of sex or gender identity be amended to omit the word, 'identity', from the term, 'gender identity'. This amendment is made on the same basis as amendment one. As I have clearly explained to the House, this is a scrutiny committee recommendation.

**Mr WOOD:** Section 2, which says that parents of a child may apply

**Ms FYLES:** Scrutiny Committee recommendation.

**Madam ACTING DEPUTY SPEAKER:** Are there any further speakers to the clause?

**Mr WOOD:** Which, 28(b)?

**Madam ACTING DEPUTY SPEAKER:** This is amendment 3, clause 6, proposed section 28(b). Member for Nelson.

**Mr WOOD:** Section two, which says the parents of a child may apply to the registrar, in a form approved by the registrar, to register a change to the child's sex if, and it goes on. I do not believe this is a good part of the Act. It needs a lot more discussion.

I was reading a feminist legal article for trans activism on the human rights of women and girls and it spoke about things I do not know much about, and because of the lack of time—to some extent—I would like to have received a lot more professional information on such things as the complex area of medical and surgical intervention, puberty blockers and gender dysphoria.

I have read articles and read young people's concerns about it, and I feel uncomfortable with this section of the Act. In one other state, the child has to be at least 16 years old. I ask the government if this section of the Act has anything to do with the changes to the *Marriage Act*. If you are still going to pass it, why shouldn't a person be at the age of 18 before they consider reassignment?

**Ms FYLES:** There are two parts to your question. Parents can already make that change, but it is through sexual reassignment surgery. This is allowing them to do that without surgery.

The second part of your question, it would be strange to do it for adults and not for minors.

**Madam ACTING DEPUTY SPEAKER:** Are there any other speakers?

Amendment agreed to.

**Ms FYLES:** Thank you, Madam Chair. I move amendment 4, that all references to identity are omitted from the term gender identity in proposed subsections 1, 2, 3, 4 and 5 of the proposed section 28(b) in clause 6 of the bill, which relate to an application to register a change of sex or gender under the Act.

This is the scrutiny committee's recommendation. It is just identifying this in another part of the bill.

**Madam ACTING DEPUTY SPEAKER:** Are there any further speakers?

**Mr WOOD:** What section was that?

**Madam ACTING DEPUTY SPEAKER:** This is amendment 4, clause 6, proposed section 28(b), 1, 2, 3, 4 and subsection 5.

Amendment agreed to.

**Ms FYLES:** I move amendment 5 to clause 6, that proposed section 28(c)(1)(a)(i) and (2)(b)(i) in clause 6 of the bill, which relate to the information that must accompany an application to register a change of sex or gender under the Act be amended to omit all references to identity from the term, gender identity. For the same reason as previously provided.

**Madam ACTING DEPUTY SPEAKER:** Are there any other speakers?

**Mr WOOD:** What was that number again?

**Madam ACTING DEPUTY SPEAKER:** Amendment 5 to clause 6, 28(c)(1)(a)(i) and (2)(b)(i).

**Mr WOOD:** We are not up to 28(c)(a)?

**Madam ACTING DEPUTY SPEAKER:** This is it. 28(c)(1)(a)(i) and (2)(b)(i). Page 4.

Amendment agreed to.

**Ms FYLES:** Madam Chair, I move amendment 6 of the heading of the proposed section 28(c)(a) in clause of the bill, which currently refers to child's consent to change of sex or gender identity be amended to omit the word identity from the term gender identity. This is made on the same basis as previous amendments.

Amendment agreed to.

**Ms FYLES:** I move amendment 7 to clause 6, to the proposed sections 28CA(1) and (2) which relate to a child's consent to register a change of sex or gender under the act be amended by omitting all references to 'identity' from the term 'gender identity'. This amendment is made of the same basis as amendment 1.

**Mr WOOD:** I am not speaking to that, but to proposed section 28CA. What does this section mean in practice? If parents allowed their child to have a change of sex or gender identity, when they get to 14—does it say that child has the right to reverse that gender identity?

**Ms FYLES:** The requirements for a child who is over 14—I went through this in my speech—is to provide consent in addition to the requirement. So it acknowledges that a child of 14 can make a statement as well. If they are under 14, the Registrar makes a decision whether they are of an ability to make a statement to be included as well. This is in addition to the medical decision.

**Mr WOOD:** But does it mean a child can apply to change their identity ...

**Ms FYLES:** No, anyone under 18 needs the permission of their parents or guardian.

Amendment agreed to.

**Ms FYLES:** I move amendment 8 to clause 6, that the heading of the proposed section 28D which currently refers to registration of change sex or gender identity be amended to omit the word 'identity'. This amendment is made on the same basis as amendment 1 and the previous amendments.

Amendment agreed to

**Ms FYLES:** I move amendment 9 to clause 6 that the proposed section 28DA omitted. This provision provides that the Registrar may limit the number of applications that may be made under the act in relation to a change of sex or gender.

The Social Policy Scrutiny Committee recommended that provision be removed, as the breadth of the provision was not justifiable given the life-changing nature of a person's decision to change their sex or

gender and the fact that applications must be accompanied by appropriate clinical treatment, the fees attached to the application process and the size of the Territory's population.

Removing the proposed section 28DA addresses the concerns of the Social Policy Scrutiny Committee and the form of the provision may be given further consideration by the Department of the Attorney-General and Justice as part of a second tranche of amendments.

**Mrs LAMBLEY:** Given that the government has changed from its original position—now deciding to admit this. What were the reasons for wanting to admit this?

**Ms FYLES:** As I explained, the Department of the Attorney-General and Justice will give this further consideration as part of a further tranche of amendments.

**Mrs LAMBLEY:** Could you explain how that will happen and in what context?

**Ms FYLES:** The Registrar does not need it immediately. We can consider that with a second tranche of amendments.

**Mrs LAMBLEY:** Does that mean the government is not sure of whether or not they want to place a limit?

**Ms FYLES:** Not necessarily. It is not needed right now so we are happy to look at it in a second tranche of amendments.

Amendment agreed to.

Clause 6, as amended, agreed to.

Clause 7 to 10, by leave, taken together and agreed to.

Clause 11:

**Mr WOOD:** I am moving that section 128(4) that after the word 'wife'—and you have to refer to the original document naturally—insert the word 'spouse.' The term husband and wife under the clause that the government is putting forward are to be removed because it was said at the lawyers at the hearing that it ensures inclusivity by referring to spouse rather than husband or wife.

It also excludes me from my right to be called what I am, according to the traditions of western society and many cultures and according to the definition a man married in a heterosexual relationship or traditional marriage. People who do not wish to use husband or wife can use 'spouse' if they so desire. They are not being excluded.

The lawyers might say you can still use the term in normal speech but once you start to remove the titles from legal speech, the titles will erode and fade away. Look what they did to the adoption laws. No more mum and dad, just parent. It seems we are being told now how to speak. Whose idea was to change these terms and why can I not say that in this piece of legislation, I want the choice.

Language is important and from the book, the Death of Truth, it says language is to humans—the writer James Carroll once observed—what water is to fish. We swim in language, we think in language, we live in language. That is why George Orwell wrote that political chaos is connected with the decay of language. I think he is right there.

I believe that we are not excluding other people from using terms. Our society needs to hang onto its traditions. That does not mean it does not move with the times. Moving with the times does not mean that you then wipe out other terms that have been used historically and have been used in recent times. There is no discrimination against any other group. It just says that we should be entitled to use terms that suit who we are.

By removing those, we are starting to erode our language and our rights to retain what are titles that a lot of people—and I have spoken to a lot of people and said, do you know that in legal language that the word husband and wife is being taken away and just replaced with spouse—believe that is not right and that they actually enjoy being referred to under those titles.

People might say it is not changing the language you can speak every day. My argument is that once you start to remove it from public and legal documents, it will disappear. Those legal documents will be used in courts and other areas and slowly the traditions of language, which I think are important, just for my very being language is very much a part of me, I think it will be diminished. I think we really should have the right to have the choice.

These changes in here and this is only one example, because there are other examples of brother and sister and widow and widower, these are taking away our rights to be called by names that we are happy to be given to us but it definitely does not take away the rights of other people to be called something else, in this case spouse.

**Mrs LAMBLEY:** I would like to concur with the Member for Nelson and I would like to ask the minister, was there any consideration given to not omitting husband and wife in this case but just inserting spouse to make it more inclusive?

**Ms FYLES:** I said in the debate, and it falls within the *Interpretation Act*; it refers to spouse.

**Mr WOOD:** It does, but it does not exclude the use in these acts to retain the name. It is purely interpretation where it needs to be interpreted but is thing to say that just because it is in the *Interpretation Act* it has to be excluded from these. People will not look at the *Interpretation Act*, they will look at this act. That is what it is.

I will not be picking up the *Interpretation Act* to see what 'spouse' means. That is why I think it should stay where it is at present.

Amendment not agreed to.

Clause 11 agreed to.

Clauses 12 to 32, by leave, taken together and agreed to.

Clause 33:

**Ms FYLES:** I move amendment 10, which proposes that regulation 2(2) of Births, Deaths and Marriages Registration Regulations in clause 33(2) of the bill be amended to omit 'intersex'. This regulation relates to the particulars that are required for the purposes of notifying the registrar of Births, Deaths and Marriages at birth.

The Social Policy Scrutiny Committee recommended that 'intersex' be removed as a recognised category of sex or gender, both at the time of birth and following a subsequent registration of change of sex or gender. The recommendation was made on the basis of submissions by the Human Rights Law Centre and Intersex Human Rights Australia that a category of 'intersex' could imply that intersex people are a third sex. This amendment will remove intersex as a category of sex or gender for the purposes of notifying the registrar of a birth, which will address the concern.

Amendment agreed to.

Clause 33, as amended, agreed to.

Clause 34:

**Ms FYLES:** I move amendment 11 that proposed regulation 3(2) of the Births, Deaths and Marriages Registration Regulations in clause 34(2) of the bill be amended to omit 'intersex'. This regulation relates to the information that is required upon the registration of a birth. This amendment is made on the same basis as amendment 10.

Amendment agreed to.

**Ms FYLES:** I move amendment 12 that clause 34(3) of the bill, which amends regulation 3M of Births, Deaths and Marriages Registration Regulations be amended to omit 'identity' from 'gender identity'. This amendment is made on the same basis as the previous amendment, being that the use of 'identity' is confusing and 'gender' is a more accurate description of the information being recorded.

The amendment will address this concern and reflect that the act will allow for the registration of a change of sex or gender.

Amendment agreed to.

Clause 34, as amended, agreed to.

Clause 35:

**Ms FYLES:** I move amendment 13 that the heading of the proposed regulation 4A of the Births, Deaths and Marriages Registration Regulations in clause 35 of the bill, which currently refers to recognise sex or gender identity be amended to omit, 'identity', from 'gender identity'. This amendment is made on the same basis as amendment one. The amendment addresses the concerns of the Social Policy Scrutiny Committee.

Amendment agreed to.

**Ms FYLES:** I move amendment 14, that proposed regulation 4A of the Births, Deaths and Marriages Registration Regulations in clause 35 of the bill be amended to omit 'identity' from 'gender identity'. This amendment reflects the recommendations of the Social Policy Scrutiny Committee, which I previously described.

Amendment agreed to.

**Ms FYLES:** I move amendment 15 to clause 35 that the proposed regulations 4A(d) and (e) which form part of a list of recognised sex or gender categories for the purposes of section 28B(5) of the *Births, Deaths and Marriages Registration Act* be amended by omitting these proposed paragraphs and inserting a new paragraph (d) for the category 'unspecified' instead.

This amendment is made on the same basis as amendment 10 in relation to the category 'intersex'. This amendment will remove intersex as a category of sex or gender for the purpose of registering a change of sex or gender under the act. This will address this concern.

**Mr WOOD:** Is there a definition of what unspecified means?

**Ms FYLES:** It was in my speech—you clearly did not listen to me. Unspecified is intended to be a flexible term that may be used as an alternative to intersex or by people who do not identify as any gender at all. It is male, female, unspecified or non-binary.

Amendment agreed to.

Clause 35, as amended, agreed to.

Schedule 1:

**Ms FYLES:** Madam Acting Deputy Speaker, I move amendment to schedule 1 of the bill, which relates to further amendments to the *Births, Deaths and Marriages Registration Act*, by omitting all references to 'identity' where the words 'gender identity' appear in schedule 1 of the bill. This gives effect to the recommendation of the scrutiny committee.

Amendment agreed to.

**Ms FYLES:** Madam Acting Deputy Speaker, I move amendment 17 to schedule 1 of the bill that omits all bold font references to 'identity' where the words 'gender identity' appears. This gives effect to the recommendation of the Social Policy Scrutiny Committee.

Amendment agreed to.

Schedule 1, as amended, agreed to.

Schedule 2:

**Ms FYLES:** Madam Acting Deputy Speaker, I move amendment 18 to schedule 2 of the bill which relates to further amendments to the Births, Deaths and Marriages Registration Regulations by omitting all bold font

references to 'identity' where the words 'gender identity' appear in schedule 2. This gives effect to the recommendation of the Social Policy Scrutiny Committee.

Amendment agreed to.

**Ms FYLES:** Madam Acting Deputy Speaker, I move amendment 19 to schedule 2 of the bill be further amended by omitting all references to 'identity' where the words 'gender identity' appear in schedule 2. This gives effect to the recommendation of the Social Policy Scrutiny Committee, for which I have provided explanation.

Amendment agreed to.

Schedule 2, as amended, agreed to.

Remainder of the bill, by leave, taken as a whole and agreed to.

**Ms FYLES:** Madam Acting Deputy Speaker, I move that the bill be now read a third time.

Motion agreed to; bill read a third time.

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