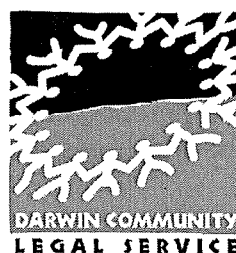


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**BIRTHS, DEATHS AND MARRIAGES REGISTRATION AND OTHER LEGISLATION AMENDMENT
BILL 2018**

Darwin Community Legal Service

Submission to Social Policy Scrutiny Committee

14 November 2018

Introduction

Darwin Community Legal Service (“DCLS”) is a free, confidential service. We assist disadvantaged members of the community to protect their legal rights. We work towards a community where everyone has access to legal advice and support. We seek to challenge unjust laws and procedures, and to ensure that people are aware of their legal rights.

DCLS is aware that the 2016 Census of Population and Housing has made it possible for all Australians to report their sex in a way that is no longer limited to either 'male' or 'female.'

DCLS believes the decision, that followed from the Australian Attorney General's Department to update the Australian Government Guidelines on the Recognition of Sex and Gender, was an important step towards much needed law reform in this jurisdiction; the Northern Territory.

DCLS supports the Australian Attorney General's Department initiative in updating the *Australian Government Guidelines on the Recognition of Sex and Gender*.¹ The Guidelines assist Australian government departments and agencies to progressively align their existing and future business practices to the Guidelines.

DCLS submits the *Births, Deaths and Marriages Registration and Other Legislation Amendment Act 2018* is a vital step towards Northern Territory individuals being able to report their “sex” in a safe and protective environment and in a way ' that more accurately reflects their identity. that is not limited to 'male' or 'female,

DCLS contributes to the momentum in this submission and suggests amendments in certain provisions to eliminate ambiguity and provide greater clarity around the intent of the Bill.

Rationale for submissions

We have considered the *Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018* and agree that the Bill provides more certainty for individuals who choose to change their sex or who are not born or identify simply as male or female.

Further, we have considered:

- a) whether the Assembly should pass the Bill;
- b) whether the Assembly should amend the Bill;
- c) whether the Bill has sufficient regards to the rights and the liberties of individuals; and
- d) whether the Bill has sufficient regard to the institution of Parliament.

With consideration towards the implementation of the Bill and the long-term impact on individuals who change their sex or are affected personally by these provisions, DCLS submits that it supports the Bill.

It does so with certain amendments to ensure the interpretation of the Bill is compatible with human rights and the protection of individuals and the balance to provide individuals who change their sex with access to appropriate support and protection.

¹ Australian Government Guidelines on the Recognition of Sex and Gender, July 2013, updated November 2015.

DCLS supports the secondary purpose of the Bill which appropriately balances the need to support individual choice about sex change with the need to regulate the procedure for the safety of the individual who chooses to undergo a sex change and adequately capture data for official records.

Submissions

DCLS endorses the changes in terminology throughout the Bill to reflect more gender-neutral language:

- husband and wife to 'spouse',
- brother and sister to sibling, and
- the insertion of 'or gender identity' after the word 'sex.'

DCLS suggest amendments to selected clauses as follows:

New regulation 4A

DCLS suggests that the **new regulation 4A** of the Act that expands recognised sex or gender identities to 'female', 'male,' 'non-binary', 'intersex' and 'unspecified' requires further interpretation. There is a risk that individuals choosing 'non-binary', 'intersex' and 'unspecified' in institutions and systems without this terminology, may do so without a wider community understanding (or acceptance) of their sex or gender position, leading to discrimination. Community education and training for institutional workers administering public/official records is essential to this.

Section 28DA

DCLS is concerned that the discretion given to the Registrar to limit the number of an individual's sex change applications and to be published as "the Registrar sees fit," places an unfair burden on them. What criteria or guidelines would the Registrar seek to rely upon in order to determine applications? It would appear more appropriate that the Registrar has the discretion to assess and limit an individual's sex change applications on a case by case basis, in order to eliminate a 'tick box' approach in accordance with relevant guidelines/criteria. This would also provide for more accurate data collection that does not mask the real numbers of sex change applications received. and balances this with the needs of the individual.

Therefore, DCLS does not support the intent to "publish" the limit and refer to our previous comments regarding this. The Registrar should apply a case by case approach to a request in light of all the circumstances and guided by medical or other evidence as required.

Clause 29- Amendment to section 5 of Amendment of Married Persons (Equality of Status) Act-

This provision requires amendment to provide greater clarity to enable interpretation and understanding of the intent of the amendment to section 5 regarding Spouse as Agent, where husband and wife, spouse and agent and the unknown term, 'necessaries' occurs in a dense 97 worded sentence.

Clause 33- Amending regulation 3 regarding the registration of a birth

DCLS recognises that not all children are born simply as male or female² where they may hold characteristics of both sex and either a medical determination or procedure is required to determine their sex for the purpose of registration. By providing as an option for more time to register a birth in such circumstances. A child who may continue to live with dual characteristics, or alternatively to 'male' or 'female' such as 'intersex' or 'unspecified' demonstrates the real situation, provides more accurate records, and importantly recognises the individual.³ We need to defer to and consult the affected community about the intent and impact of these amendments.

DCLS highlights the importance of guidelines to ensure there is an awareness and understanding in the wider community and to avoid the risk of discrimination of the individual registered under alternative descriptions.

Conclusion

DCLS looks forward to the reforms to the laws governing births, deaths and marriages. It supports this momentum towards greater recognition and accommodation of our diverse population. This move fosters better understanding, inclusion and acceptance of our diversity and an individual's choice to register a sex change in a safe environment.

Further, the Bill bridges the limitations inherent in outdated and discriminatory terminology, provides consistency in data collection and supports and respects diverse members of our community.



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² The Guardian 'We don't know if your baby's a boy or a girl': growing up intersex', 16 July 2016 (<https://www.theguardian.com/world/2016/jul/02/male-and-female-what-is-it-like-to-be-intersex>) and BBC article- "Male or female? Babies born on the sliding scale," 11 October 2011 (<https://www.bbc.com/news/health-14459843>).

³ Australian Human Rights Commission, *Sex files, the Legal Recognition of Sex in Documents and Government Records*, 2009 The Sex and gender diversity project.