



Feminist Legal Clinic Inc.

Benledi House, 186 Glebe Point Road, Glebe NSW 2037
PO Box 273, Summer Hill NSW 2130
Mobile: 0402 467 476
www.feministlegal.org
ABN: 17 360 484 300

Secretary,
Social Policy Scrutiny Committee,
GPO Box 3721,
DARWIN NT 0801

By email: SPSC@nt.gov.au

Wednesday 14 October 2018

Submission in relation to the Births, Deaths & Marriages Registration and other Legislation Amendment Bill 2018

Feminist Legal Clinic Incorporated is a community legal service based in Sydney that works to advance the human rights of Australian women and girls through a combination of targeted casework, community legal education and law reform work. We welcome the opportunity to make a submission in relation to this very important inquiry into Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018.

We would like to the question of whether the Bill has sufficient regard to the rights and liberties of individuals. We strongly suggest that it does not and that the Assembly should not pass this as legislation. In particular, we submit that the proposed changes are likely to adversely affect the rights and liberties of women and children.

The accurate recording of biological sex is essential for many legal, medical and administrative purposes. If legal recognition of sex is made possible based on self-identification this will have a damaging impact on the ability to provide services, spaces and opportunities that cater exclusively to women and which take account of their real physiological differences and requirements, including their need for safety and privacy from men.

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. We attach a paper prepared by our office last year which discusses some of these issues in greater detail.

Since we wrote this paper there have since been many more examples of the negative impact of legal recognition of sex upon self-identification. Details of relevant news reports can be accessed through Feminist Legal Clinic's website at <https://feministlegal.org/category/transgenderism/>.

Commonwealth Guidelines clearly distinguish between gender which "*is part of a person's personal and social identity*" and sex which "*refers to the chromosomal, gonadal and anatomical characteristics associated with biological sex*". We would submit that this is a crucial distinction that must be observed in any legislation or policy as confusion of these concepts has been impacting negatively on the human rights of women and girls.

The current Australian Government Guidelines give the options in relation to sex of 'M (male), F (female) or X (indeterminate/intersex/unspecified)'. This last option provides for any person who defies binary classification or where there are strong ideological reservations in relation to having their sex recorded. This last option is preferable to recording an inaccurate or misleading response.

Since gender is a personal and social construct as defined by the Commonwealth Government Guidelines and may therefore be subject to frequent change, there is no useful purpose recording it on official documentation. In contrast sex is a biological reality and should be recorded for official purposes as it may be relevant for medical or legal identification purposes as well as demographic records. "Reassignment surgery" does not alter a person's biological sex and there is no need for a change to therefore be recorded.

Biological sex is not subject to change and official records should only be corrected in the rare cases where there is clear medical evidence (such as a DNA profile) that an inaccurate entry has been made. This is most likely to arise in cases of intersex individuals. Compelling medical evidence should be required to alter an inaccurate designation of sex, or in cases where there is room for doubt as to the appropriate designation the individual should be offered the simpler option of being recorded as "indeterminate/intersex/unspecified".

A child's sex should not be altered on their birth records without compelling medical evidence that the original entry was an inaccurate recording of their biological sex. This should not be an issue of consent by parents or the child, but rather based on factual evidence of inaccuracy. Where there is any dispute or uncertainty as to the child's actual biological sex, the record should instead be altered to "indeterminate/intersex/unspecified". This is far preferable to retaining or recording an inaccurate entry for the child's sex.

Legal recognition of a person's sex should not be confused with issues relating to gender identity. Feminists have long opposed gender stereotypes that impose unnecessary constraints on what is considered socially acceptable appearance and behaviour for men and women. We are strongly opposed to violence, harassment or unfair treatment of anyone because they depart from social norms in this regard. We are also opposed to the increasing social pressure on non-conforming adults and children to undergo medical interventions to align with stereotypical conceptions of what it is to be a man or a woman. Instead we believe society should truly embrace diversity and learn to accept people as they are and cherish variations from our falsely

conceived notions of physical and societal norms. The option to specify sex as “indeterminate/intersex/unspecified” facilitates this acceptance of diversity.

Section 5B of the *Sex Discrimination Act* 1984 prohibits discrimination on the grounds of gender identity. However, we also note that these provisions are subject to the provision for “special measures” set out in section 7D of the *Sex Discrimination Act* 1984. Organisations, services and opportunities established specifically to achieve substantive equality for women do constitute special measures and must necessarily take account of biological sex in respect to their operations. However, 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.

Thank you for the opportunity to make this short submission. We do hope that the Northern Territory Legislative Assembly takes account of the impact on the human rights of women and girls and does not pass this legislation. We would be very happy to provide more detail and expand on our concerns in any of these areas if required.

Yours faithfully



Anna Kerr
Principal Solicitor.