



Full Day Hansard Transcript (Legislative Council, 16 October 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Thursday, 16 October 2014 (Proof).

BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT (CHANGE OF SEX) BILL 2014

Bill introduced, and read a first time and ordered to be printed on motion by Dr Mehreen Faruqi.

Second Reading

Dr MEHREEN FARUQI [9.46 a.m.]: I move:

That this bill be now read a second time.

The "unmarried" requirement within the Births, Deaths and Marriages Registration Act 1995 forces married people who have undergone a sex affirmation procedure who are wishing to have their sex registered or to alter a record of their sex, to choose between divorcing their partner or living with an incorrect sex on their most important personal identity document—their birth certificate. The provision primarily affects married transgender people who have undergone procedures to change their sex to align with their gender identity. It also further adds to the societal stigmatisation experienced by trans people and unnecessarily complicates the already enormous and often traumatic process of transition from one sex to another.

The Greens bill would allow the continuation of a person's marriage during and after applying to alter the record of their sex or register a change of sex, and to allow the registrar to make changes to the register accordingly. The bill would amend sections 32B, 32D, 32DA and 32DC of the Act to omit the relevant requirements that persons registering a change of sex or altering a record of their sex are to be unmarried. The bill's introduction has the support of groups and individuals such as the Gender Centre, the New South Wales Gay and Lesbian Rights Lobby, the Carmen Rupe Memorial Trust, Transgender Victoria, Australian Marriage Equality, and the Human Rights Commissioner Tim Wilson. I thank them for their endorsement and support.

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Many trans people living in New South Wales, whether they have undergone surgery or not, are in loving marriages. They just have not changed their documents to reflect their new sex because the law does not allow them to do so. Australian couples who have written or spoken to me about their direct experience of the current unmarried requirement of the Births, Deaths and Marriages Registration Act all share disbelief at the current state of the law. As one couple, Marti and Kate Winkworth, said in August to the *Star Observer* in a piece relating to this reform:

You always hear the politicians trying to keep the family together. Well, we are staying together and they're not doing anything to support us. We should be supported rather than ostracised.

Another couple noted that the current laws around divorce require them to state that their relationship has suffered an irreconcilable difference. Of course, their relationship has suffered no such difference, and they do not wish to lie, so they have remained married while tolerating living with incorrect records, which can complicate things like background checks for employment, proof of identity, and access to social services. Moreover, the current law affects people who have not yet entered into marriages. I was at the Australian Young Greens conference last week and a young trans woman, in her mid-twenties, who was speaking on a panel with me, lamented that marriage was very difficult for her to imagine due to the possibility that she would wish to legally transition in the future. I also note that the current state of affairs may impact intersex people whose sex may be indeterminate or may vary over time.

People in this Chamber might ask: why is this important? This seems like a rather technical and minor issue for a very small part of the community, so why are the Greens and Alex Greenwich focused on making this amendment? In response, I will share some survey statistics with the Chamber: 49 per cent of surveyed Australian transgender people have been diagnosed with depression in the past and 87 per cent of surveyed Australian transgender people have experienced at least one form of discrimination or stigma on the basis of their gender. A large American study found that 41 per cent, almost half, of transgender or gender-nonconforming people have attempted suicide. Trans people face disproportionately high levels of homelessness, poverty, unemployment, and sickness.

It should go without saying that we need to talk about trans law reform. While awareness of trans issues has

thankfully increased in recent years, it is fair to say that the stigma, shame, and day-to-day challenges of being trans are still very real for this community. While concrete numbers are notoriously difficult to pin down, estimates have suggested that as many as one in 200 people may identify as transgender. The spectrum is broad and may include anyone who has ever experienced gender dysphoria, and goes to post-op transsexuals. The relative absence of trans people from public, political, and business life can be explained by the discrimination and prejudice that they face in their day-to-day lives. Simple tasks such as getting to work, going to the doctor, or attending university can be an enormous emotional, physical and psychological struggle. Of course, there are many trans people who live good, successful and happy lives, but struggle is a common experience. This is not helped by the lack of trans role models and public figures for young people.

Thankfully, only very recently we have started to see real trans icons emerge in Australian society: top military official Group Captain Cate McGregor, who I believe was the first ever trans panellist on the ABC's Q&A last Monday, comes to mind. Internationally, in the worlds of media and the arts, we have leading advocates and figures such as Janet Mock, Laura Jane Grace, Chaz Bono, Paris Lees and Laverne Cox, who earlier this year became the first trans woman to grace the cover of *Time*. *Time's* cover showed Cox in a stunning blue dress and the words, "The Transgender Tipping Point: America's Next Civil Rights Frontier". It is my hope that this is also one of Australia's next civil rights frontiers. Let us not mince words: the law, as it stands, says to one of the most vulnerable sections of the community that we do not care about your relationships, and we do not believe you are deserving of dignity and respect. This must change; it has to change.

With regard to the bill's consistency with the Federal Marriage Act, let us be clear that this bill is not about introducing same-sex marriage by stealth. Importantly, the object of the Births, Deaths and Marriages Registration Act is to ensure New South Wales has correct and up-to-date records, including of changes of sex. People can and do change their sex if they are married, and indeed because of this there are already a small but significant number of same-sex couples who are married in New South Wales. The Births, Deaths and Marriages Registration Act should enable government records to correctly reflect changes of sex. It is not the role of the Act to interfere with marriage.

I am very proud of the fact that some of my Greens colleagues in parliaments around the country—Tammy Franks MLC in South Australia and Nick McKim in Tasmania—have this week spoken to their bills that also seek to remove the relevant unmarried requirements in their State legislation. I want to reiterate that The Greens will always advocate for the human rights of lesbian, gay, bisexual, trans/transgender and intersex people [LGBTI] people. However, we must view this bill as just the start of a broader conversation about trans law reform, including legislating for important reforms such as removing surgical requirements for legal transition. In her interview for *Time* magazine in May this year, Laverne Cox was clear:

There's not just one trans story. There's not just one trans experience. And I think what they need to understand is that not everybody who is born feels that their gender identity is in alignment with what they're assigned at birth, based on their genitalia. If someone needs to express their gender in a way that is different, that is OK, and they should not be denied healthcare. They should not be bullied. They don't deserve to be victims of violence ...

No-one should be forced to choose between divorcing the person they love, and living with identity records that do not reflect who they are. One of the main reasons I joined The Greens and got involved in politics was so I could advocate for changes in law that would move us towards a more equal society. I believe many of us here in the Chamber have similar aspirations. It is a real privilege for us to be members of Parliament. So I urge members to use this privilege and support this bill which will help alleviate discrimination, trauma and devastation from the lives of marginalised people across our State. I commend the bill to the House.