

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

**Bill introduced on motion by Mr Alex Greenwich, read a first time and printed.**

### **Second Reading**

**Mr ALEX GREENWICH** (Sydney) [10.20 a.m.]: I move:

That this bill be now read a second time.

The Births, Deaths and Marriages Registration Amendment (Change of Sex) Bill 2014 would allow married persons who have undergone sex affirmation surgery to update their birth certificates to correctly reflect their sex without divorcing. It is vital that the Births, Deaths and Marriages register is accurate. The State should hold correct personal documentation of its citizens and all citizens should be able to access an accurate birth certificate. Birth certificates are used by employers for police checks and they are used to access services and benefits. Negative consequences result from having a birth certificate that does not correctly reflect one's sex.

The Births, Deaths and Marriages Registration Act 1995 only allows a person to change his or her sex on the Births, Deaths and Marriages Register following gender transitional surgery if that person is not married. This forces trans\* people who have had sex affirmation surgery to choose between having a correct birth certificate and staying married to their lifelong partner who has supported them through their transition. This is untenable; it poses a challenging and unfair decision for married couples. An incorrect birth certificate means disclosing one's former gender when applying for a job and having difficulty accessing medical services. Trans\* people often experience discrimination and stigma and it should be their choice who they inform about the deeply personal matter of their transition.

The trans\* community is a minority group with alarmingly high attempted suicide rates. An incorrect birth certificate will only contribute to feelings of isolation and social rejection. But divorce is also an undesirable option. Why should a couple divorce when they are in a loving and supportive relationship? Marriage exists to protect and support relationships that provide stability and belonging for the people involved, which is vital to a person who is undergoing gender transition. Divorce involves massive financial and emotional burdens on a couple. Divorce is not free. It must be justified to the courts and the process involves extensive amounts of paperwork. We should not force a couple in a loving and supportive relationship to choose between divorce and an accurate birth certificate. This bill would remove this choice and allow a married person who has undergone sex affirmation surgery to change his or her sex on the Births, Deaths and Marriages Register.

Some members will be concerned that this bill will allow for same-sex marriage; it does not. The bill is constitutional. The Marriage Act 1961 deals with the solemnisation of marriages in Australia, which only permits the marriage between a man and a woman. This bill will have no impact on this. The Marriage Act is not concerned with what happens between a couple after solemnisation. Furthermore, where a married person has undergone a transition his or

her marriage is a same-sex marriage irrespective of what is reflected on the register. It is up to State law to ensure that the register is correct. This bill will not affect a large number of people but it is crucial to those it does.

On 1 March the *Sydney Morning Herald* reported the case of Elisabeth White and her wife Lisa. They married 22 years ago and have children together. Elisabeth began her transition in 2010 and wants to update her birth certificate. They do not want to divorce but this would mean Elisabeth will have to reveal her personal, medical and emotional history to future employers. That is unfair. The *Sydney Morning Herald* also published a *Washington Post* article on 20 August about Leslie and Deborah who married 23 years ago when Deborah was called David. The decision for David to transition to Deborah was made as a couple and the two remain together. Many couples stay together after one person transitions and the law should protect the vital emotional support that comes from this union. Forcing divorce upon these couples shows no respect for the sanctity of marriage.

I recently met with JoAnna Ferrari, who joins us in the gallery today, who shared with me the different journeys people transitioning gender go through. Of the 200 people she has interviewed, around 80 per cent stay attracted to the same gender they were attracted to before transitioning. For every person the journey is different and the law should not interfere in this cruel way. Australian Human Rights Commissioner Tim Wilson, speaking to the *Star Observer*, said:

Forced divorce is one of the worst and most egregious ways government can impose itself inside people's relationships.

Gary D Bouma, AM, Associate Priest of St Johns Anglican Parish in Victoria and Professor of Sociology at Monash University, in a letter to the Premier stated:

I know of several loving couples who have made this journey together and whose love and commitment to each other is exemplary. This is not a decision that is made lightly or for frivolous reasons and for the relationship to survive and thrive through such a trial is deep testimony to precisely the commitment honoured in their original marriage and which should be continued to be honoured as marriage as they go forward together in life.

Kelly Glanney from Carmen Roupe Memorial Trust, who also joins us in the gallery today, told me:

No civilised society should require any human being to make this kind of deeply distressing choice—let alone members of a highly marginalised, historically persecuted minority which still experiences unacceptably high rates of self-harm, social exclusion and mental illness.

Kelly has also stressed to me the need for future trans\* law reform. She has drawn my attention to the World Health Organization interagency statement titled "Eliminating forced, coercive and otherwise involuntary sterilisation". We need to fully protect trans\* people under State antidiscrimination law. There is an immediate need to reform State gender identity laws and allow all transgender people to change their birth certificates to recognise the gender they identify with without being compelled to undergo expensive, invasive surgery, as is now the case in the Australian Capital Territory.

Many trans\* people neither want nor require surgery to alter their bodies. Surgical status does not define transgender people. Some people transition through hormone therapy. Some people were born with both male and female attributes and may dispute the sex assigned to them by doctors when they are in adulthood. In fact, advocates tell me that intersex infants can be subject to uncomfortable and invasive tests to determine a sex for their birth certificate because it cannot be changed later in life. The law's restriction on who can change the sex on their birth certificate to those who have had surgery fails to include the vast array of transitions that occur. I call on a future Parliament to amend this anomaly; something I am committed to working towards.

The need for this bill and future trans\* law reform is clearly demonstrated by one of my constituents, Brianna, who also joins us in the gallery. Brianna has partial androgen insensitivity syndrome and her body is naturally converting testosterone to oestrogen, transitioning her from male to female. Brianna, previously Brian, has never been attracted to men and still is not. Brianna is happily married to her wife. For Brianna's identity documents to reflect the gender that she has now accepted, the law requires her to have unnecessary and invasive surgery and then divorce her partner. Couples like Brianna and her wife are the reason why this and further trans\* law reform is so important.

Marriage provides many journeys and where love persists we should protect those marriages. This bill will remove forced divorce provisions from our laws so that married transgender people can update their details on the Births, Deaths and Marriages Register without having to divorce their lifelong partner. The bill also has the support of the Inner City Legal Centre, the Gender Centre, the Carmen Roupe Memorial Trust, Australian Marriage Equality, the Gay and Lesbian Rights Lobby and Transgender Victoria. In closing, I thank Dr Mehreen Faruqi, MLC, from The Greens. We have worked closely together on this bill and this morning she has introduced an identical bill in the other place. We are both committed to trans\* law reform and will continue to work on this together in the future. I commend the bill to the House.

**Debate adjourned on motion by Mr Gareth Ward and set down as an order of the day for a future day.**

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