

## HOUSE OF ASSEMBLY

WEDNESDAY 21<sup>ST</sup> SEPTEMBER 2016

### BIRTHS, DEATHS AND MARRIAGES (GENDER IDENTITY) AMENDMENT BILL

#### *Second Reading*

Adjourned debate on second reading.

(Continued from 4 August 2016.)

**Mr PEDERICK ( Hammond ) ( 17:39 ):** I rise to speak to the Births, Deaths and Marriages (Gender Identity) Amendment Bill 2016. From the outset, it will probably not come as any surprise to anyone that I will not be supporting this bill. Looking at it, I do believe it is delving into spaces that we are not legally liable for as a state parliament. I certainly believe that it is a Trojan Horse for gay marriage. I say that because people under this bill do not even have to have gender reassignment to alter their idea of where they are in regard to gender.

The Hon. P. Caica interjecting:

**The DEPUTY SPEAKER:** Order! Member for Hammond, you are speaking to me. I am listening to you.

**Mr PEDERICK:** Thank you for your protection, Madam Deputy Speaker.

**The DEPUTY SPEAKER:** I will always protect you, member for Hammond.

**Mr PEDERICK:** Thank you, Madam Deputy Speaker. I refer to the definition of a reassignment procedure from the Sexual Reassignment Act 1988, which provides:

... reassignment procedure means a medical or surgical procedure (or a combination of such procedures) to alter the genitals and other sexual characteristics of a person, identified by birth certificate as male or female, so that the person will be identified as a person of a different sex and includes, in relation to a child, any such procedure (or combination of procedures) to correct or eliminate ambiguities in the child's sexual characteristics;

What we see in the bill before us is that there does not have to be a physical reassignment of anyone's genitals. You can have a consultation with a psychologist, a doctor, and that is counted as a clinical assessment. In my mind, that is what brings me to the fact that I believe that this is a Trojan Horse for gay marriage. You may have a gay couple, whether it is two ladies or two gentlemen, and to get around the federal Marriage Act one of them decides that if they are a man they will become a woman and if they are a woman with a lesbian partner they will become a man.

As the member for Schubert also outlined, I believe that could well and truly happen under this legislation. There is nothing ruling it out at all. I will be interested in the ensuing debate to see if there is anything to rule it out. I just cannot see it in the legislation. What does bother me with the bill is the fact that children can alter their gender, but what really concerns me is the fact that it gets to the case of 16 to 18 year olds being able to make that decision. I can see this causing a lot of issues and not just legally, and that is why I do not believe the law should be passed.

Apart from the legal ramifications, I think that in a home it could create so much angst between parents and a 16-year-old child who suddenly decides that they want to change

their gender and the parents are not happy about it but they cannot do anything about it. Certainly, in Australia a child is someone under 18 years of age; that is well known. Parents are responsible for the care of their child until they become 18 years of age. Obviously, they are not in charge of court orders and things like that.

An interesting point is that males and females can consent to intercourse at the age of 17. However, it is an offence to interact sexually with someone under the age of 17, even if both individuals are under 17 and have consented. It is not legal to have sex at 16, but this bill, if it passes and becomes an act, will make it legal to identify a gender change on your birth certificate of all things. I really struggle with that. I do note that the age of 16 has been identified, as the law states, as the age at which children can make decisions about their own medical and dental treatment, but I believe this is a step far too far. An article from the University of Rochester Medical Center on 'Understanding the teen brain' states:

It doesn't matter how smart your teen is or how well he or she scored on [ the university entrance exam ]. Good judgement isn't something he or she can excel in , at least not yet. The rational part of a teen's brain isn't fully developed and won't be until he or she is 25 years old or so.

In fact, recent research has found that adult and teen brains work quite differently. Adults think with the prefrontal cortex, the brain's rational part. This is the part of the brain that responds to situations with good judgment and an awareness of long-term consequences. Teens process information with the amygdala. This is the emotional part.

In teens' brains, the connections between the emotional part of the brain and the decision-making center are still developing. That's why when teens are under overwhelming emotional input, they can't explain later what they were thinking. They weren't thinking as much as they were feeling.

In its article 'The changing brain and behaviour in teens', the National Institute of Mental Health states:

One interpretation of all these findings is that in teens, the parts of the brain involved in emotional responses are fully online , or even more active than in adults, while the parts of the brain involved in keeping emotional , impulsive responses in check are still reaching maturity. Such a changing balance might provide clues to a youthful appetite for novelty , and a tendency to act on impulse — without regard for risk.

While much is being learned about the teen brain, it is not yet possible to know to what extent a particular behaviour or ability is the result of a feature of brain structure — or a change in brain structure. Changes in the brain take place in the context of many other factors, among them , inborn traits, personal history, family, friends, community , and culture.

My concern with this bill is that on a whim someone can decide to alter their identity on their birth certificate of all things. Then it becomes illegal to publish or use any extract from the actual birth certificate. I have been told in the briefing that your initial birth certificate will be kept in storage somewhere—I guess, in the registry—but the actual certificate that the person will use will be the one that has been amended.

I believe that if people want to go through this process, there should be another way of recording the change. That would be a far better way because I think we need to respect and acknowledge how a child's birth is recorded at birth. As the deputy leader and the member for Schubert have said, it is to be noted that there has not been a single case where there was indeterminate sex at the birth of a child in South Australia. Certainly, in the 10½ years I have been in this place, I have had no-one come to me about this issue we are debating today.

What I will say is people come to their local MP, and it does not really matter what the MP's thoughts are about the world on many issues, from a neighbour's fence being put in

the wrong place right through to cases of child abuse, which are terrible stories to hear, and everything in between. Every MP in this place will have those issues. I certainly understand that, with every issue that comes before me, there are at least two sides to a story and sometimes at least three sides, so you need to be reasonably wise in how you react to some of the issues that come in your front door, that come down the email line or that people bring into you.

In regard to passports, they can be issued to sex and gender diverse applicants. You can be male, you can be female or you can be X: indeterminate, intersex or unspecified. I note that, if you are applying for a passport in a sex different from that recorded on your birth certificate or your previous Australian passport, you need to fill out and complete a full passport application form and provide original documents as evidence of your identity, citizenship and preferred sex. If you are also changing your name at that time, you will need to present a change of name certificate issued by an Australian registry of births, deaths and marriages or a legalised foreign equivalent.

As I said, there are issues throughout this bill that I find confronting. I know there are members who will support this bill, but I look at the definition of 'clinical treatment' which states, 'clinical treatment need not involve invasive medical treatment (and may include or be constituted by counselling)'. That is certainly a part that I am really concerned with. It essentially is a massive change from the Sexual Reassignment Act 1988.

The bill goes through the change of sex or gender identity for applicants born in South Australia, and it contains provisions, as I mentioned earlier, about changing a child's sex or gender identity. You have to have material supporting the applications. There is special provision relating to access to the register, and I note the clauses around use of old birth certificate to deceive. Basically, it makes your original birth certificate an illegal document. There are other clauses around South Australian residents who are born outside the country and on the issue of identity acknowledgement certificates.

The South Australian Law Reform Institute and the Legislative Review Committee have had a look at this, and I note that, as the act now stands with births, deaths and marriages, it provides a statutory basis for the registration of births in South Australia. The Registrar of Births, Deaths and Marriages must be notified of all births in South Australia, and the notification must include an indication of the child's sex as either male or female. This must take place within seven days and is usually undertaken by the hospital at which the child is born.

The birth must also be formally registered on the Births, Deaths and Marriages register, again in the prescribed form that requires an indication of the child's sex as either male or female. This must occur within 60 days, and the registrar has the discretion to register a birth even where these details are incomplete. There is an understanding that this discretion has only been exercised with respect to stillborn children. It has not been used to avoid recording the sex and/or gender of an intersex child.

The Births, Deaths and Marriages Registration Act does not prescribe a process for changing a person's sex on the register. However, the South Australian Sexual Reassignment Act 1998 contains a process for obtaining a recognition certificate that can then be presented to the registrar who must then make the required change to the register, but only within the categories of male and female.

It is interesting to note that in different jurisdictions throughout the world, in some places legislative change has taken place, but it certainly has not here in this country. That is why we are debating this bill now. The ACT has a process that is in place, Victoria has a process, and New South Wales has a process. Western Australia only has regulation around specific regulation of sexual reassignment procedures. The Northern

Territory has a process, Tasmania has a process, and Queensland has a process. There are also some international jurisdictions that have a process. That does not mean we need to follow them.

I am a firm believer in people exercising their conscience, and I disagree with the member for Colton, who says we are always voting with our conscience on this side of the house. We do have party room positions. We are not absolutely locked in like the Labor Party and the comrades—

An honourable member interjecting:

**Mr PEDERICK:** Not on this bill. There is a conscience vote now, but generally on other legislation coming through the place the Labor Party must conform.

**The DEPUTY SPEAKER:** Order!

**Mr PEDERICK:** But we have the right to disagree on other general legislation. It is absolutely correct that this is a conscience matter, as I understand it, for the Labor Party and, obviously, for our party.

I follow the debate with interest. I think people really have to have a good think, and the member for Schubert outlined what it is that we are trying to fix here. What mischief is there? I do not think, certainly in the case of worrying about a child's sex at birth, that there is any mischief to change. I believe there is a whole range of issues about people just being able to go to a counsellor and decide that they are going to change their gender without any physical change. I am sure I will get some correspondence, and that is fine, but people need to respect that we all have different views in this place. I will certainly be interested in how the debate goes through this place and, potentially, the other place.

I do have some major concerns, as I indicated right at the start of my contribution, that this is a Trojan Horse for gay marriage, which we do not even legislate on at a state level. We have the plebiscite that was promised by the Turnbull Liberal government as an election issue, and they are going down that path, but I have major concerns with 16 and 17-year-old children making these decisions of gender reassessment on how they feel about themselves, and I have a major concern that people can flip-flop. For five years they might decide they are a man and the next five they might decide they are a woman. From what I can see in the legislation, there is no reason why they cannot do that, so I do have some major reservations going forward.

Debate adjourned on motion of Hon. T.R. Kenyon .