



Michael Berkman MP

MEMBER FOR MAIWAR

Legal Affairs and Community Safety Committee
Parliament of Queensland

Dear Committee Members

Recognition and re-legalisation of same-sex marriages in 2017 was long overdue, as are the amendments within the Births, Deaths and Marriages Registration Amendment Bill 2018 that seek to reduce discrimination for transgender and intersex people and their families.

Whilst I, and the Queensland Greens are in support of these amendments, this Bill does not go far enough to actually remove discrimination and reflect the lived experiences of gay, lesbian, bisexual, transgender, intersex and queer people, and their partners or children.

Please find attached a submission detailing two minor additional amendments, which would complement the existing amendments, and better achieve the identified purposes of the Bill.

If you require any further information on this matter, please contact Alice Lethborg in my office, on 07 3737 4100 [REDACTED]

Regards,

Michael Berkman MP
Member for Maiwar

Mr Michael Berkman MP submission to the Legal Affairs and Community Safety Committee regarding the Births, Deaths and Marriages Registration Amendment Bill 2018.

Overview

On 7 March 2018, the Queensland Attorney-General, the Honourable Yvette D'Ath MP, introduced the Births, Deaths and Marriages Registration Amendment Bill 2018. The objective of this Bill is to amend the Birth, Deaths and Marriages Registration Amendment Act 2003 to remove the restriction in Section 22 on noting the reassignment of a married person's sex on the register of births or the adopted children register.

The Queensland Greens welcome changes to the *Births, Deaths and Marriages Registration Act 2003* to better reflect the lived experiences of Queensland individuals and families, and in line with changes to the *Marriage Act 1961* (Cwlth.) that finally re-legalised same sex marriage in 2017.

However, the proposed Bill does not go far enough to remove discrimination for gay, lesbian, bisexual, transgender, intersex, queer and other gender-diverse families and individuals.

In particular, further amendments are required to:

- a) *Change the definition for reassignment of sex to remove requirements for surgery, and*
- b) *Allow for both parents on a birth or adoption certificate to be identified as mother or father.*

Principles

The Queensland Greens believe that all people have the right to independence, self-determination, freedom from stigma and discrimination, including the right to be legally recognised as their lived gender. This includes the right to not specify a gender on legal documents, including birth and marriage certificates.

Intersex, transgender and gender diverse people should be able to alter their sex or gender on all official documents, consistent with how they live and identify, irrespective of their marital status, without the requirement for gender affirmation surgery or hormonal therapy.

Births, Deaths and Marriages Registration Amendment Bill 2018

This Bill seeks to amend the *Births, Deaths and Marriages Registration Act 2003* to remove restrictions in Section 22 which in effect require a married person get divorced before they were able to change their legal sex on their birth or adoption certificates.

This Amendment Bill has arisen due to legalisation of same-sex marriage under the *Marriage Act 1961* (Cwlth.); the Bill is far from ground-breaking and fails to address other areas of discrimination against lesbian, gay, bisexual, transgender, intersex and gender diverse people or their families.

The Queensland Greens believe minor amendments to the Bill could significantly reduce discrimination across Queensland legislation and better recognise different gender, sexuality and family identities.

a) *Change the scope of reassignment of sex to remove requirements for surgery.*

Part 4, Section 22 of the Act states that “the reassignment of a person’s sex after sexual reassignment surgery may be noted in the person’s entry in the register of births or adopted children register only if the person is not married”.

This Bill amends this section by removing “only if the person is not married”; the requirement for sexual reassignment surgery (defined by the Act as a surgical procedure involving the alteration of a person’s reproductive organs...) remains.

The Queensland Greens believe the threshold of surgery is unreasonable and that precedent exists for an alternative legislative scope. In particular, the Queensland Greens believe that Queensland could look to the scope of South Australia’s (SA) *Births, Deaths and Marriages Registration Act 1996*.

The SA Act Part 4A - Change of sex or gender identity, provides for a person to apply to change their registered sex or gender identity with a statement provided in support of the application by a doctor or psychologist stating that the applicant has received an appropriate amount of clinical treatment in regard to their gender or sexual identity. The Act defines clinical treatment as “clinical treatment need not involve invasive medical treatment (and may include or be constituted by counselling)”.

It should also be noted that the South Australian legislations provisions for a person to change their sex or gender identity even if married pre-dates 2017 same-sex marriage reform.

The Australian Capital Territory and Western Australia also do not specify surgery as the threshold for gender or sex reassignment in their legislation.

Furthermore, gender reassignment surgery is not funded under Medicare, although it is within the realm of evidence-based treatment, and as such remains out of reach for many transgender and intersex people. Whilst the Queensland Greens seek to ensure access is available within the public health system for transgender or intersex people to access surgical and medical treatments that enable their physical gender presentation to be more congruent with their gender identity, we believe that such interventions should not be required, and understand that funding of public health is outside of the scope of this Bill.

b) *allow for both parents on a birth or adoption certificate to be identified as a mother or father.*

Part 2, Section 10A(1)(b) of the *Births, Deaths and Marriages Registration Act 2003* states that not more than one (1) person may be registered as the child’s mother or the child’s father. The Queensland Greens believe that amendment of this section of the Act is also within the scope of the Bill as it is also an outdated requirement of the Act, is incongruent with the 2017 amendments to the *Marriage Act 1961* (Cwlth.), and would also be in conflict with the proposed amendments of this Bill.

Under amendments to the *Marriage Act 1961* (Cwlth.), prescribed forms, in the form of marriage certificates, can now list both parties to the marriage as bride, or groom (partner is also provided as a titular option). The Queensland Greens believe that by extension of this, same-sex parents should also be able to both be identified as mother or father, should they so choose, on legal documentation such as in registration of their child's birth.

Acknowledgement

The Queensland Greens would like to acknowledge Queensland's Aboriginal and Torres Strait Islander people and the Traditional Owners of the land on which they live and work, and over which sovereignty has never been ceded.