



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

---

Record of Proceedings, 17 May 2018

## **BIRTHS, DEATHS AND MARRIAGES REGISTRATION AMENDMENT BILL**

### **Second Reading**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (5.43 pm): I move—  
That the bill be now read a second time.

The Births, Deaths and Marriages Registration Amendment Bill 2018 was introduced into the parliament on 7 March 2018. The bill was referred to the Legal Affairs and Community Safety Committee for consideration. I thank the committee for its consideration of the bill. The committee tabled its report on the bill on 23 April 2018. I note that the committee unanimously recommended the bill be passed and I thank the committee for its unanimous recommendation. In its report the committee also recognised that this amendment will have a significant positive impact for members of the LGBTIQ community. The committee noted the unanimous support of the parties that made submissions to the committee.

It is fitting that I stand here today delivering my second reading speech on what is International Day Against Homophobia, Biphobia and Transphobia—a worldwide celebration of sexual and gender diversities. This year's focus of the worldwide celebration is creating alliances for solidarity. The day is a recognition that strengthening alliances within the LGBTIQ community and with LGBTIQ stakeholders will harness the LGBTIQ community's energy and, in turn, bring about further change for the better. I wish everyone a happy International Day Against Homophobia, Biphobia and Transphobia.

On the topic of solidarity and coming together, I would like to warmly thank and congratulate the individuals and organisations who made submissions and appeared before the committee. These submissions, and in particular the personal accounts of the impact of the current law on individuals in the transgender community, articulate so very clearly and emotionally the need for change.

The purpose of the bill is to amend section 22 of the Births, Deaths and Marriages Registration Act 2003 to remove the restriction that a person be not married before the person's sex reassignment is noted in the register of births or the adopted children register. The Palaszczuk government acted quickly to bring legislation before this House to remove this restriction that discriminates against the transgender community.

The bill itself is quite simple. It removes seven words from section 22. The seven words to be removed are 'only if the person is not married'. Whilst in size the bill itself is not significant, the Palaszczuk government completely understands how very important the removal of those seven words are to the gender-diverse community. At a purely legal level, the amendments in the bill are necessary to respond to the impending removal of an exemption in the Commonwealth Sex Discrimination Act 1984 on 9 December 2018. Currently, section 40(5) of the Sex Discrimination Act provides an exemption from unlawful discrimination under the act for a refusal to make, issue or alter an official record of a person's sex if a law of a state or territory requires the refusal because the person is married.

In practice, the SDA exemption means that, where a Registry of Births, Deaths and Marriages officer refuses to alter a person's sex on an official record where this is in accordance with the law of that jurisdiction, this action does not constitute unlawful discrimination against a person under the SDA.

From 9 December 2018, the Marriage Amendment (Definition and Religious Freedoms) Act 2017, which introduced marriage equality, will repeal this exemption. The effect of the removal of the Sex Discrimination Act exemption will be that, from 9 December 2018, where a registry officer refuses to note the reassignment of a person's sex on the basis that the person is married, this action may become the subject of a discrimination complaint under the SDA. However, more importantly, at a more human level, the amendments are necessary to remove a form of unjust and painful discrimination facing members of Queensland's transgender community.

The effect of the current law is that a married person seeking legal recognition of the reassignment of their sex must divorce their partner. This is not a cost or a consequence that any law of this state should impose on any members of our community. Further, as noted in submissions to the committee, divorce will only be an option if the requirements for divorce under the Family Law Act 1975 are met, which may not always be the case—bearing in mind the requirements for a divorce are that the marriage has broken down and there is no reasonable prospect of reconciliation and that the married couple have been separated for at least 12 months and one day. The law as it currently stands leaves a married transgendered individual with two equally distressing options: either satisfy the requirements of divorce and go through the divorce process—this is obviously not an option for those living in a happy marriage—or, alternatively, stay married and live with the pain of not being able to change their birth certificate to properly reflect who they are.

A further unacceptable and humiliating impact of the current marriage restriction is that, where a person remains married following sexual reassignment surgery, the person's former gender may be revealed when they are required to prove their identity because their birth certificate—a primary identity document—would not be updated to reflect their true gender. This has the potential to cause repeated and significant stress and anguish and risks exposing the person to stigma, which is still an unfortunate reality for members of our transgender community and the LGBTIQ community. I say 'our' transgender community because transgender people are part of our greater community, and the Palaszczuk government hopes this reform goes some way to helping the transgender community to live their lives openly and without judgement.

This Palaszczuk government is absolutely committed to ensuring our laws support the rights and dignity of all Queenslanders equally. Today is another example of our commitment. We will do this by building upon our existing achievements of: reintroducing civil partnerships after the Newman government abolished them; expunging historical homosexual offences; removing gay panic as a defence; standardising the age of consent; providing funding for the LGBTI Community Legal Service for the first time ever; and allowing same-sex adoption.

In conclusion, the Human Rights Law Centre's comments to the committee's public hearing sums up so well what this bill delivers at its core for transgender Queenslanders. They stated—

It is a small but significant change that will mean transgender people can be free to be who they are while maintaining their commitment to the person they fell in love with.

This bill is only possible due to the federal parliament legalising same-sex marriage late last year, and we have seen so many happy couples now wed. To that end, can I congratulate two very dear friends Shane Newcombe and Ethan Tyler from Redcliffe, who married last Saturday. I thank them for letting me share that very special day with them. I very proudly commend the bill to the House.