Speech By

Tim Nicholls

MEMBER FOR CLAYFIELD

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BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL

Mr NICHOLLS (Clayfield—LNP) (11.49 am): The LNP wants a Queensland that is free from discrimination, a place where individuals are respected and all are free to live safely within their communities. We are cognisant that many Queenslanders have not been respected for their lived identities. Their stories are powerful, and discriminatory behaviour should be called out. We approach the debate on this bill in a respectful and considered manner. It is not the type of bill that benefits from anyone being strident or shouting out across the chamber, but that does not mean an unquestionable acceptance of the propositions that are put forward, and it does not mean that there are not different views in relation to the policy behind this legislation. Indeed, in her remarks, the Attorney-General has indicated that there are strong and divergent views in society. This place, as a representative of that society, will have similar strong and divergent views. It is our hope, and our request, that they are all considered and listened to with the respect that they deserve.

We thank the many good and thoughtful organisations and individuals who took the time to lodge submissions to the committee that investigated the bill and to reach out to members of the LNP on this side, and I am sure who equally reached out to other members in this place. We acknowledge those people who shared their stories with us and with the committee. I know that there were a number of closed sessions of the committee at which a number of people also told their stories. I know many LNP members of that committee found many of those stories of families and individuals compelling and, in some cases, heartbreaking.

While our position on this bill will hearten some and no doubt disappoint others, it has been reached after a full and thorough consideration of those stories; the submissions that were made to the committee, as well as the material provided by the department in response to questions; the material otherwise provided to the committee; and the written submissions of the many groups. We are also cognisant of the differences of medical opinion across the disciplines that are particularly involved in the area of gender identification and children's health and wellbeing. I think it is important to note that debate on this bill does bring into sharp focus medical issues, as well as the legal and human rights issues that have been mentioned by the Attorney. Whilst we might like to say that this bill does not affect other areas of social policy in relation to gender identity, a bill like this one inevitably draws information and positions out across matters that it might not necessarily cover but which come to the fore when we discuss these types of issues.

We come to this debate with a willingness to listen and take action. Due to the sensitivities and impacts that some of the changes might affect, we also approach this debate with a cautious and considered position. That is why the LNP has a number of reservations about this bill in its current form. Those reservations do not undermine our belief that all Queenslanders should feel safe and respected. Rather, the LNP wants to ensure all the matters addressed in this bill, which have wideranging implications for Queenslanders, have been thoroughly considered to ensure there is safety, respect and consideration for the views that are held by very many good and caring Queenslanders.

While we accept that much of the bill deals with the desirable aims of modernising the operations of the Registry of Births, Deaths and Marriages, safeguarding registry data and accounting for social change, our reservations about the bill include the consultation time for the bill. These were concerns that were raised by people who were not subject to the early consultation that the department carried out in a focused way. There were three rounds of consultation, as were announced and recorded, but the bill in its final form was substantially different from the consultation bill. So the bill that was presented to this House for investigation was not the consultation draft that was sent out to the specially selected bodies for discussion prior to it. It is only reasonable that a bill that affects a very substantial societal change is given adequate time for consultation. I will return to that point.

A majority of submissions that were received by the Legal Affairs and Safety Committee were opposed to the bill. The majority of the submissions did not support the bill, and it is only fair and reasonable that those submitters have their views taken into account as well. Our concern is that part 5, which is the part of the bill that attracted most of the submissions and most of the support and criticisms, really cannot be excised from the bill to allow those other parts to proceed. The concern is that the current drafting of the bill may give rise to unintended consequences.

I turn to the short consultation time. The bill was introduced on 5 December 2022 and referred to the Legal Affairs and Safety Committee on the same day. Submissions were due to the committee by 11 January 2023—so let's think about that. It was introduced in the last parliamentary sitting week of the year as we head into the Christmas season. It is notoriously difficult for staff to complete activities—people are going on holidays and taking leave. There was a submissions closing time of 11 January, in a period of just over a month which took in the traditional Christmas and New Year holiday period, and the committee's report was then due by 24 February 2023.

It is not just the LNP who have concerns about the short consultation time. It was criticised by the Queensland Law Society, who in their submission made the same point, and it was criticised by a number of other organisations who otherwise support the legislation. They said that it was an insufficient time and an inadequate and inappropriate time frame to meaningfully and robustly respond to important legislation to ensure the proposed laws work as effectively and as efficiently as possible and, importantly, that they have community support and do not have unintended consequences. The Law Society said—

> The reforms proposed in the Bill are significant and will have wide-ranging implications for Queenslanders. It is in all our best interests to ensure proposed laws work as effectively and efficiently as possible, and this requires meaningful and robust consultation with stakeholders. Short consultations held during the Christmas and New Year shut down period will not yield the best legislation for the people of Queensland.

We are concerned about the time period that was allowed for consultation and for the quality of that consultation that was allowed to occur during the committee process. It is interesting to note that there is a great deal of community concern in this piece of legislation, which is not surprising given the experience in other jurisdictions and given the subject matter of the bill.

The committee received 385 submissions: 170 were supportive but 208 were not. The majority of those submissions did not support the bill—seven were unclear. Despite the very real concerns about the bill and its consequences being raised by such a large number of expert and well-informed stakeholders, the committee proceeded to recommend the bill proceed and be passed.

Although the committee accepted that the bill could have a significant impact on other legislation, rather than waiting for those impacts to be identified and clarified, the committee did recommend the bill be passed with the recommendation that an audit be undertaken to identify other legislation which might need amending. The committee was, in fact, doing its best—all members of the committee were doing their best to see that this bill could proceed—to act in a proper fashion. But, in effect, finding out what other legislation might need amending could be considered to be the equivalent of closing the stable door after the horse has bolted. This bill will be in place, without knowing its effect on other legislation.

I want to turn to part 5, which is, without doubt, the most controversial part of the bill and the part that has excited most of the comment. Of the 385 submissions that were received by the committee, some 338 commented on part 5—supporting my argument that that is the most contentious part of the bill. Of those 338 submissions, 151 were in favour of the proposed amendments and 187 were against the proposed amendments. I will discuss some of those aspects of part 5 in a little while.

The other issue I raised was unintended consequences, and I think it is important to note that the Law Society, while supporting the policy objectives of the bill, was of the view that the bill as currently drafted may give rise to those unintended consequences, and this was a view that was supported by Pride in Law in its submission, specifically in relation to the lack of clarity around concepts of sex and

gender and the implications that may flow as a result of this ambiguity. I note that this was a matter that was raised by the Attorney-General in her contribution just recently and it was a matter that was the subject of a considerable amount of debate and response by the department.

Turning to part 5 of the bill which is headed 'Acknowledgement of sex', previous consultation drafts of the bill contemplated that sex and gender would be distinct concepts with different meanings and protections. As I indicated previously, those earlier drafts had different propositions in them from the final version of the bill that was presented to the parliament. Those different meanings and protections were for where a person who registers a gender would not be deemed to have changed their biological sex for legal purposes, leaving this to a separate process—namely, amending their record in the registry. The bill in its current form brings those two concepts together contrary to the distinction recognised by a number of authorities throughout Australia and worldwide.

I note the Attorney-General's comments in relation to the common law and the strict definition of 'biological sex' and how that is implemented and also note the department's comments as reported in the committee report and also as considered in its written submission in response to the matters raised by submitters during the committee process. It is clear that it is referring to the High Court decision of AB and the state of Western Australia, which was a decision made in 2011 regarding the prospects of registering a change on a birth certificate for some people who had undergone a medical procedure and in particular the provisions of that bill and the provisions of the Western Australian act. That was indeed a decision of five justices of the High Court in favour of the applicants for that matter against the registrar in Western Australia who had refused to register the change of sex on the birth certificate.

Indeed, the comment was made that biological sex is not the sole determinant of a person's sex in that matter, but it involved a very different set of circumstances from the legislation that we are discussing here today. It involved a requirement for gender-affirming surgery to take place. It was not simply a matter of just a self-identification process, which is predominantly what we are talking about here. It involved the level of surgery that was necessary in order to meet the requirements under the Western Australian legislation in order for someone to be able to prove to the satisfaction of the registrar over there or the board over there that that person had indeed chosen to change their sex. That point, if you like, is not made in relation to any of the responses that the department has referred to.

There is a similar matter here in Queensland with the matter of Coonan, which is a QCAT decision in relation to registering a person who had changed their identity to a male but still retained the capacity to give birth. The matter of Coonan was a 2020 matter considered by Commissioner Sam Traves. There are decisions in relation to this, but I would say that the answer given by the department in relation to the questions that were raised is not a complete answer and is not an answer to the submissions that have been made in relation to the distinction between 'sex' and 'gender'. For example, the distinction between 'sex' and 'gender' is recognised by the *Australian government guidelines on the recognition of sex and gender* and by the Australian Human Rights Commission.

It is also the case that the legislation in the Northern Territory, South Australia and Tasmania differentiates between 'sex' and 'gender'. Indeed, as Pride in Law and the Queensland Law Society note in their submissions, the Tasmania Law Reform Institute—which again the Attorney referenced in her contribution here and its investigations with regard to a separate matter regarding transwomen's safety and other issues regarding safety in safe women's spaces and adopted much of that Law Reform Institute's information—has highlighted the value in maintaining a distinction between 'sex' and 'gender'. The Tasmania Law Reform Institute, which has, according to the Law Society, undertaken a significant amount of work on these issues, said—

... there is increasing acceptance that sex and gender are different concepts, and that neither concept is confined to binary classifications.

We accept that. It continues—

However, there is often a lack of understanding of the breadth of ... sex characteristics and gender identity ...

It is incorrect to say that there is universal acceptance that the proposal put forward in this legislation that there is or ought be no difference when there is absolutely quite positive references by the Tasmania Law Reform Institute which investigated similar legislation in Tasmania and also the Australian government's practical guidelines that there is a difference.

The institute highlighted a range of factors determining sex, including chromosomal patterns, genital anatomy, internal reproductive organs and hormone patterns. It specifically distinguished between 'gender or gender identity' and 'sex or sex characteristics' and, while acknowledging conflicting views on maintaining that distinction, which I acknowledge as well, recommended the distinction and urged the government of Tasmania to work to eliminate discriminatory application of laws by careful and deliberate use of appropriate terms. The definitions recommended by that institute, the Tasmania

Law Reform Institute, flowed through to the recently amended Births, Deaths and Marriages Registration Act 1999 in Tasmania—one of the earlier ones. The distinction is maintained and the conflation there was of concern and the Tasmania Law Reform Institute's answer was to maintain the distinction, a distinction that is maintained in several other states and territories, although not, as the Attorney has indicated, in Victoria and South Australia. It is perfectly possible and perfectly reasonable to say that there is a difference in policy, that the legislation should consider that difference in policy and have a different position, which is what we are saying.

The World Health Organization's definition of 'sex' and 'gender' provides that 'gender' is used to describe the characteristics of women and men that are socially constructed while 'sex' refers to those that are biologically determined. Similarly, in the United Kingdom 'sex' is defined as the biological aspects of an individual as determined by their anatomy which is determined by their chromosomes, their hormones and their interactions, generally male and female, and something that is assigned at birth, and 'gender' is defined as a social construction relating to behaviours and attributes based on labels of masculinity and femininity. The government of Canada in its summary report *Modernising the government of Canada's sex and gender information practices* also distinguishes between 'sex' and 'gender' where 'sex' is taken to refer to biological characteristics such as male, female or intersex and 'gender' is taken to refer to a social identity such as a man, woman, non-binary or two-spirit.

This bill that we are debating, contrary to widespread acceptance of the distinction between the terms 'sex' and 'gender', does conflate those two concepts. It does not define the terms 'gender' or 'sex' at all and provides an ambiguous definition of the term 'sex descriptor' in schedule 2 to mean—

(a) 'male'; or

(b) 'female'; or

(c) any other descriptor of a sex.

Examples—

'agender', 'genderqueer', 'non-binary'

By contrast, the very same bill in its proposed amendments to the Anti-Discrimination Act inserts new definitions of the terms 'gender identity' and 'sex characteristics' which are consistent with the widely accepted distinctions that I have already highlighted between the concepts of 'sex' and 'gender'. Internally it also has this inconsistency and this position regarding gender identity and the conflation of the concepts of 'sex' and 'gender'. It is far from clear and it is far from accepted that the position in this bill is indeed the position that ought to be adopted and it is far from clear that the position in this bill is the appropriate position to adopt in all circumstances.

I want to also turn to the applications to alter records of sex which, again, are in part 5 of the bill. Notwithstanding the failure of the bill to distinguish between the concepts of 'sex' and 'gender' and the other examples that are put there of agender, genderqueer and non-binary as examples of any other descriptor of sex, the bill allows a person to apply to the registrar to alter the record of their sex.

That is an acceptable proposition for people who are over the age of 18 who can vote and who participate according to our laws in the full suite of social and civic life. However, greater concern arises in respect to children, in particular children under the age of 16 upon application to the Childrens Court if the child's parent or parents do not consent. Again I listened to what the Attorney-General said in relation to this bill not having an effect on medical procedures. I acknowledge that is correct. But this does affect in a very substantial way the legal rights of people under the age of 18 being able to change their gender, whether that is identifying, for example, for a passport, whether that is identifying for enrolment in an institution of some description or whatever might occur, and it does provide a greater level of autonomy for that child than would normally be the case.

Take, for example, children in the youth justice system where it is pushed forward that young children are less responsible for their actions because they do not understand the consequences of their actions and therefore the punishment and the severity of dealing with children under the age of 18 is treated very differently from those who are adults over the age of 18 when they commit offences because they fail to appreciate the full consequences of their actions. They are more driven by impulse. Yet here, on something that potentially changes a child forever and that has many consequences, we are giving greater agency to the child to make their decision in relation to it. That is a concern that has been raised by very many of the submissions to the committee and I think it is a concern that needs to be properly and widely addressed in society.

The effect of the alteration of a child's sex in the relevant child register is that the child becomes a person of the sex as altered for the purposes of a law of Queensland. We have significant and genuine reservations about permitting a child to alter their sex descriptor. Children under the age of 16 are often

ill-equipped psychologically to make such a large and life changing alteration to their sexual identity and we should go down this path, as I said in my very early introduction, with caution and consideration. Young people suffering gender dysphoria often have complex emotional issues. It has been clearly commented on that they often fail to appreciate the long-term consequences of their actions and decisions. We have only recently seen a series of articles in national media that have highlighted the very serious concerns of parents about the effect it has on children in relation to being able to make that decision at a young age without careful thought. That is not to say—and I do not say—that people make this decision either flippantly or quickly, but there does need to be a serious amount of consideration in relation to allowing it to go ahead, particularly without parental consent for children 16 and under, because it is well documented that the brains of young people do not fully develop until they are well into their twenties.

Government members interjected.

Mr DEPUTY SPEAKER (Mr Kelly): Pause the clock. The member on his feet is giving a thoughtful, well-researched and reasoned contribution. In the spirit of the tone of this debate, I would ask members to listen to that contribution in silence.

Mr NICHOLLS: Children are often heavily influenced, as we know, by social media and peer pressure and can be reactionary towards parents and authority figures. Anyone who has children knows that to be the case; science and research show that to be the case. The experience of numerous clinicians at the Gender Identity Development Service at Tavistock in the United Kingdom was that many of the children accessing that service were vulnerable and distressed and that rushed assessments of their needs led to woefully inadequate care and inappropriate treatment. They found that many of these children were dealing with a multitude of other issues, including anxiety, depression, traumatic backgrounds, a high incidence of autism—and in any research of the material, concerns in relation to the high incidence of children with autism seeking to change their gender comes through—homophobic bullying—equally disgraceful—and sometimes very chaotic living conditions.

Further, the clinicians could not agree on what they were treating: were they treating children distressed because they were trans, or were they children who identified as trans because they were distressed, or a combination of both? Many of these children needed psychotherapy, but GIDS is not funded to provide that treatment. Consequently, if they met the diagnostic criteria for gender dysphoria, which they invariably did simply by self-identifying as trans, they would proceed down the medical pathway—that is to say, they were referred for medical intervention involving puberty blockers before, in some cases, proceeding to irreversible treatment.

Again I say this bill does not deal with that aspect of the medical procedure for people who are questioning their gender identity, but it raises these issues in the minds of people who are considering the impact of this bill and it raises very clearly the significance of the provisions outlined in part 5 allowing children under 18, particularly those under 16, to go down the path of changing their identity based on a self-affirmation model.

In the United States lawsuits are now being launched by detransitioners. The *Economist* reports that in California a person, Chloe Cole, is suing a large medical provider, Kaiser Permanente, for medical negligence. Ms Cole decided at the age of 12 that she was a boy. She was put on blockers and testosterone at the age of 13 and underwent a double mastectomy at the age of 15. At the age of 16 she changed her mind and began detransitioning. Her complaint alleges that the medical provider subjected a vulnerable young girl to a 'mutilating, mimicry sex change experiment'. We can put that through the filter of the way the US legal system works and how their claims are made, but the claim is basically that they went down that medical process instead of focusing on her complex mental health needs. Ms Cole, who meets the criteria for autism spectrum disorder, says she is concerned about her fertility and pain and has been permanently disfigured for profit. It is not suggested that this bill promotes a process for medical intervention in the cases of young people wishing to change their sex, however, what the circumstances I have referred to do highlight is that young people who are confused about these issues can often have complex mental health issues and an application to change their sex descriptor must involve a more rigorous process than proposed by the bill.

The pathways to changing a sex descriptor are outlined in clauses 39 and 40. There are administrative pathways and a court pathway which allows a child between the age of 12 to 16 to apply to the court. There are also other issues in relation to safety. Other speakers will raise those issues. I completely endorse the findings that there is no evidence whatsoever that transwomen are any more likely to commit offences than other women and the studies all show that to be the case. There is no reason for fear of those things. The issue in relation to men seeking to take advantage of the laws I think is equally, while of concern to many groups, not supported by the evidence in any significant amount. There is a celebrated case in the United Kingdom in relation to a prisoner. That prisoner was

relocated from a women's prison to a male prison. Others will speak about that. While the LNP desires a Queensland where people can feel safe and free from discrimination, regrettably we cannot support this bill in its current form. I believe I have highlighted why our concerns are so great in relation to those particular provisions which I have outlined.