

[REDACTED]

From: [REDACTED] <womenspeaktasmania@gmail.com>
Sent: Monday, 22 July 2019 9:41 PM
To: SARC
Cc: Neale Burgess; Sarah Connolly; Mark Gepp; Sonya Kilkenny; bev.arthur@parliament.vic.gov.au; Fiona Patten; Nina Taylor
Subject: Births Deaths and Marriages Registration Amendment Bill 2019

To: Members of the Scrutiny of Acts and Regulations Committee, Parliament of Victoria

We have been informed the Committee intends to discuss the Births, Deaths and Marriages Registration Amendment Bill 2019 at your next meeting on 12 August 2019.

The following is a submission in respect of the Bill.

We note that, pursuant to section 17 of the Parliamentary Committees Act 2003 (Vic), the Committee must consider, inter alia, whether the Bill 'trespasses unduly on rights or freedoms' (subsection 17(a)(i)) or 'is incompatible with the human rights set out in the Charter of Human Rights and Responsibilities' (subsection 17(a)(viii)).

The Bill provides for a change of registered sex with a self-identifying statutory declaration and supporting statement, and defines the 'sex descriptors' that may be registered as 'male; or female; or any other sex'. These amendments to the Principal Act mean that natal males can become legally female (or any other sex they choose) and thereby legally access spaces, services, facilities and activities protected as female only by the Equal Opportunity Act 2010 (Vic).

This constitutes a 'trespass' on the rights and freedoms of female people.

Further, the Bill is incompatible with subsection 8(2) of the Charter of Human Rights and Responsibilities Act 2006 (Vic), which provides that '(e)very person has the right to enjoy his or her human rights without discrimination'. The addition of a third category of 'sex' is entirely at odds with the human male/female sex binary upon which the Charter is based (see further discussion below).

Change of registered sex with self-identifying statutory declaration and supporting statement

The primary intention of the Bill, as acknowledged by the Honourable Jill Hennessey, Attorney-General, is to allow individuals to change their registered sex without the need for sex-affirmation surgery. Parents and/or guardians will be able to apply to change the

registered sex of a minor child without the need for surgery, although there will be modestly stricter requirements to be satisfied.

Much has been written about the issues associated with legislating for sex self-identification, particularly the effective elimination of all rights and protections afforded female people.

If a male person can identify as female and be legally registered as such by a means of a simple administrative process, all manner of female-only spaces, services and facilities could be adversely impacted.

For example, the intrusion of female-identifying transgender males into female sport, especially at the elite level, is currently inspiring many in the sports community to speak out against their involvement. If such males are legally registered females, they will be entitled to avail themselves of all opportunities and protections available to natal females in the sporting arena.

Given the well-documented physical superiority of male persons over females, this legal entitlement could result in a patently unfair disadvantage for those born female.

Is the Bill compatible with the rights and protections afforded those of the female sex by the Equal Opportunity Act 2010 (Vic), the Charter of Human Rights and Responsibilities Act 2006 (Vic) and the Sex Discrimination Act 1984 (Cth)?

The definition of 'sex descriptor' in the Bill

The Bill provides for a change of registered sex, as noted above, and requires that applicants specify a 'sex descriptor' for notation on the Register and on their birth certificate.

The term 'sex descriptor' is defined as follows –

'sex descriptor includes –

- (a) male; or
- (b) female; or
- (c) any other sex;'

The alternative descriptor 'any other sex' is problematic. While the intention of the bill is to allow any person 'to describe their sex in a way that reflects their identity' (Second Reading

Speech, Hon. Jill Hennessey, Attorney-General, 19 June 2019), the ordinary meaning of the word 'sex' is 'the state of being either male or female' (Merriam-Webster Online Dictionary).

A thorough perusal of several dictionaries - online and hard copy, general and specialist medical – indicates that the accepted meaning of 'sex' is a reference to the binary nature of most organisms, evidenced by primary and secondary sex characteristics and differing reproductive functions.

I can find no reference anywhere to any 'other' sex.

In fact, other Victorian legislation explicitly recognises the binary nature of 'sex'. For example, the definition of 'gender identity' in section 4 of the Equal Opportunity Act 2010 (Vic) reads as follows –

"gender identity" means—

(a) the identification on a bona fide basis by a person of **one sex as a member of the other sex** (whether or not the person is recognised as such)—

This definition clearly assumes that there are two 'sexes' – 'one sex' and 'the other sex'.

Section 68 of the EOA provides that –

Exception—single sex clubs

(1) A club, or a member of the committee of management or other governing body of a club, may exclude from membership a person on the basis of that person's sex if membership of the club is available only to persons of **the opposite sex**.

The phrase 'the opposite sex' also implies there are only two 'sexes'.

Section 8 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) provides that -

Recognition and equality before the law

(1) Every person has the right to recognition as a person before the law.

(2) Every person has the right to enjoy **his or her** human rights without discrimination.

The phrase 'his or her' indicates the Act intends to assure the rights of two distinct categories of humans – males and females.

Similarly, section 15 – Freedom of expression – subsection (2) of the Charter refers to ‘any other medium chosen by **him or her**’, which again recognises the binary division of humans by sex.

No doubt there are numerous other instances in legislation of terminology that recognises the fact that humans are divided into the distinct categories of male and female. And recognising this fact is perfectly sensible.

The argument often put forward by supporters of transgender law reform – that ‘sex’ in humans exists on a ‘spectrum’ – is scientific nonsense. Around 99.98 per cent of infants are born unquestionably male or female. In terms of predictive ability, the statement that a newborn will be either male or female is about as close to 100 per cent accuracy as is scientifically possible. Far more accurate, for example, than predicting other human traits like eye or hair colour. The very tiny percentage of infants born with genetic or phenotypic anomalies do not justify assertions of a sex ‘spectrum’. They are, quite literally, the exceptions that prove the rule.

It is astonishing, therefore, that the Victorian parliament intends to write into law the notion that there are ‘other’ sexes apart from male and female. What are they?

This proposition not only undermines the rights and protections of those born female, it totally defies everything we know to be true about human biology. And, from an operational perspective, it will require that all other extant legislation be amended to account for the possibility of those ‘other sexes’.

The rights of transgender persons and female people could, with appropriate and careful consideration of all possible issues, be reconciled at law. Placing the rights of the trans community above those of females, and ascribing to a thoroughly unscientific concept of ‘sex’ is not the best way to achieve that end.

Kind regards

Women Speak Tasmania

Isla MacGregor

Joanna Pinkiewicz

Bronwyn Williams