

GENDER REASSIGNMENT AMENDMENT BILL 2018

Second Reading

Resumed from an earlier stage of the sitting.

MS L.L. BAKER (Maylands — Deputy Speaker) [3.33 pm]: I rise to speak on the Gender Reassignment Amendment Bill 2018, which the Attorney General brought into this house in August 2018. This is the perfect opportunity for me to recognise some members of my community who have been working on this issue and who have been working with the reality of this issue for the term of their natural life. I start by reiterating that this bill seeks to amend the Gender Reassignment Act. It will allow a person to be issued with a recognition of gender reassignment certificate, regardless of their marital status. I put on the record that, historically, if one person in a married couple chose to have gender reassignment, they were faced with a choice of having no marriage or having their gender recognised, because they could not get a certificate while they were married. This bill will change that.

I pay tribute to the changes earlier this year that were caused by the marriage equality plebiscite. After many years of hard work by many people in the community, it was gratifying to see that change happen federally. It has opened the door to give some more equality to many members of the community and it is, I would say, currently more in line with the community that we all live and work in. This is a way of picking up some of the problems that have existed in the system historically. When the marriage equality legislation was passed, things had to change in the Gender Reassignment Act.

As I said, the current requirement forces a married person to choose between a birth certificate that reflects their reassigned gender and the maintenance of a legal relationship with their spouse, even when that relationship is an ongoing and successful relationship, and there are many of them out there.

I pay tribute at the start of my contribution to the first crew who came to talk to me about this subject when the Attorney General first put the bill on the table—that is a compliment to Andy Skinner and his team at Rainbow Labor, who continue to do an amazing job in pursuing these issues. I am very grateful for all the work they do, as all the community should be. Andy brought Jay Robertson and Jaime Page to see me and together we sat down for a couple of hours and talked through Jaime's life experiences and the challenges she has had to face as a transwoman. I will refer a bit later in my contribution to some others who have made some significant contributions to the content of my speech. When they came to see me, we talked a little bit about the definitions and the differences that might be worthwhile pointing out in this place during the debate on this bill. I want to make something clear about terminology. As we in this house all know, terminology is a movable feast. The context and interpretation of things that meant something 10 or 20 years ago change as the community changes and as cultures change. I would like to define the term "sex" as a biological concept that describes in part a person's physical features, including sexual reproductive anatomy, chromosomes, hormones and secondary physical features emerging from puberty. There is a difference between that and gender. Gender is a social concept that describes the way in which a person identifies or expresses their masculine or feminine traits and the way that they are recognised within a community. A person's gender identity may not always be exclusively male or female and may not always correspond with the sex assigned at birth.

In talking a little more about that, I think it is important to talk about a couple of other terms, one of which is "intersex". I was mildly amused but pleased that in the early stage of discussions about marriage equality, former Liberal Premier Colin Barnett asked me whether I could define this term for him. I was able to define it for him many years ago. He was a supporter of the work that we were doing on marriage equality, so I am sure that he is pleased with the changes that have happened in the past 12 months. An intersex person is born with genetic, hormonal or physical sex characteristics that are not typically male or female. Intersex people have a diversity of bodies and identities. For some intersex people these traits are apparent at birth, while for others they become apparent or emerge later in life, and often at puberty.

There are other terms I want to refer to and put definitions for and they are "transgender" and "transsexual". Those two terms are often used interchangeably. "Transgender" refers to a person who does not identify with the gender of their upbringing. The terms "male-to-female" and "female-to-male" refer to individuals who are undergoing or have undergone a process of gender affirmation. The corollary to that is the word "transsexual", who is a person who is making or intends to make or indeed has made the transition to the gender with which they identify. I wanted to put those terms on the record. For anyone who is interested, those definitions are from the Law Reform Commission of WA and the Victorian organisation that specialises in these issues. Having put those terms on record, I hope when I talk about some of the other issues, the real-life experiences of people that this bill will help, the meaning and the context they bring to this discussion will be clear.

As I have said, back in 2017 the federal government undertook a nationwide survey called the Australian marriage law postal survey to gauge community attitudes with respect to legalising same-sex marriage. The survey resulted in the legalisation of same-sex marriage at the commonwealth level. Although issues relating to sexuality and

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sexual orientation are not part of the review currently underway by the Law Reform Commission of WA, the results of that survey are very clear indicators of a very significant shift in community attitudes and understanding, reflected in challenging traditional social customs. That is just a little bit about the context of why this is such an important change. Indeed, when my colleagues Jaime and Andy came to brief me on this, they were very clear about some of the challenges that they saw coming from this change, and some of the really positive outcomes. Jaime's words to me were that there are many people in marriages who have not been able to be public about who they are. Many are probably considering changing and there might be blocks or barriers to that.

Within all of this, we are looking at the real experiences of human beings who we share this community with, and these people have already had major barriers to face in their lives. I wanted to talk about some of those specific barriers, particularly in relation to health. We should support the Gender Reassignment Amendment Bill 2018, and I am very glad that my colleagues in this place all appear to be on the same page I am in supporting this change. I wanted to put on record the comments from two of the peak health bodies supporting this move. Again, the context is health. The World Professional Association for Transgender Health last year stated it recognises that for optimal physical and mental health persons must freely be able to express their gender identity, whether or not that identity conforms to the expectations of others. WPATH further recognises the right of all people to identity documents consistent with their gender identity, including those documents that confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others, for instance, to access accommodation, education, employment, health care, travel, to navigate everyday transitions in life, to enjoy a safe environment and, most of all, to be married and recognised for who they are. Similarly, the Australian and New Zealand Association for Transgender Health states that it recognises the right of all people to legal identity recognition and to identity documents consistent with their gender and/or sex identity. Further, for optimal physical and mental health all persons must enjoy the right to freely express their gender or sexual identity, whether or not that conforms to the expectations of others. I think those two statements point to the underlying issue in this discussion, and that is the mental health and wellbeing of people considering sex change or gender reassignment.

During the lunchbreak, I went to the very first meeting of the Parliamentary Friends of Children Group, and listened to the Commissioner for Children and Young People for WA talk about the need for us to view all the legislation that we deal with in this place in the context of its impact on children. In respect of that, I was immediately thinking there is none more relevant than this, a piece of paper that outlines the changes, albeit very small, we want to make to the Gender Reassignment Act. It has profound impact on those children who are experiencing issues around intersex or gender diverse identities. I have some information I want to go to from a survey conducted by an organisation known as the Royal Australian and New Zealand College of Psychiatrists that identified a number of considerations for the mental health policy and practice relating to people identifying as lesbian, gay, bisexual, transgender, intersex and the importance of educating the public on issues affecting intersex, trans and gender-diverse people, noting that greater awareness of intersex and gender-diverse identities in particular is urgently needed to begin to address the higher vulnerability and low mental health outcomes of these groups. That study goes on to talk specifically about the fact that health services may not be as available to LGBTI children and adolescents as they are to the general public. Many people have already reported feeling uncomfortable about accessing these services, because they might have to come out to health professionals and they might not have had that conversation yet with their families. The global statistics for mental health concerns show that 74.6 per cent of people surveyed had at some time been diagnosed with depression—these are all LGBTI community members—72.2 per cent have been diagnosed with an anxiety disorder, 79.7 per cent had self-harmed and an alarming 48 per cent, nearly half, had attempted suicide at some point in their lives. Research suggests that trans young people experience clinically significant depression syndromes at least 10 times the normal rate and anxiety disorders at 10 to 13 times the frequency of the general young Australian population. Compared with the general population, trans people over 18 are nearly 11 times more likely to attempt suicide and people with an intersex variation are nearly six times more likely to attempt suicide. It is estimated that one-third of all trans people have attempted suicide. Those are chilling facts. In the journey towards unpicking some of the problems in this community, some of the barriers, negative health consequences and outcomes for this part of our community, this is a really important step and I am very, very proud that I am part of a Labor government in WA that is able to make this change and I am very proud to be able to speak at the moment about people in my community who are welcoming this. Jaime Paige, whom I referred to earlier, thinks that there will be quite a few people lining up at the Gender Reassignment Board after the changes are passed. She also went on to comment that a small wording change has such a large and positive impact on many people's lives. They say this is a great step forward.

In relation to the health situation, just two weeks ago one of my friends and colleagues, Jane Armstrong, who was employed to work with the medical fraternity, in particular out of Royal Perth Hospital, arranged a forum. I am not sure whether members in this house are aware of a program for LGBTI-inclusive practice. It is a service accreditation called the Rainbow Tick. Jane organised a panel of speakers and an audience of mental health practitioners and other medical staff to ask questions and listen to some brief presentations. I was fortunate enough

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to be one of the members of the panel. My colleagues on the panel were Jay Robertson—he gets around a bit—Tina Ross, Nick Lawrence, Graeme Jones and Florence de Saint Olive. We were asked to take part in that panel to give our experiences of dealing with the health system as lesbian, gay, bisexual, transgender, intersex members of the community, and to explain our issues and come up with some suggestions.

I will tell members a little more about the Rainbow Tick service accreditation, which consists of six standards against which services are formally accredited to demonstrate LGBTI-inclusive practice and service delivery. This very positive program was born out of the Victorian health system. Health services can include the six standards as part of their cycle of service accreditation or they can apply separately to Rainbow Tick for a standalone assessment. Jane took the initiative and thought that it would be useful to deal with this issue with the medical practitioners with whom she works. More credit to her! She is a tireless worker not just for the LGBTI community, by which she is very well acknowledged for her hard work and commitment, but also for the homeless community in Perth, in which she and her wife do some amazing outreach work.

Being part of the panel was really interesting. I was not able to give anything but positive feedback about the personal experience I had with Royal Perth Hospital as a client many years ago when my partner and I were trying to get me out of hospital after having had a major accident. The staff were absolutely brilliant and I cannot speak highly enough of them. They were completely accepting of my partner and allowed her access to the intensive care unit, which helped me through that time. They were wonderful and really supportive, with no questions asked. Nick and Tina spoke of their respective experiences as a trans male and a trans female. Nick is a transman and Tina is a transwoman. Their experiences were very different. I found it very interesting—indeed, a bit confronting—to hear what they had had to deal with. Some of their stories were humorous. Nick was particularly humorous. I am sure he would not mind me saying that in his journey through hormones and the like he found it very confronting when he went to a different doctor to get the hormones that he required for his transition. He was basically asked to prove what was going on.

[Member's time extended.]

Ms L.L. BAKER: Nick told a very humorous story about wondering whether he would have to reveal parts of his body that he perhaps did not want to in order to prove what he was going through.

Tina's experience was very different. She said that she phones health practitioners, dentists or anyone she is dealing with. She phones their place of business before she makes appointments and tells them that she is trans because she does not want to get to an appointment and find a situation that is uncomfortable, challenging or questioning. No members in this house at the moment would ever think of having to explain their sexual identity before going to a doctor or their gender preference before going to a dental appointment. I am sorry, but we just do not live with these experiences. However, that is certainly not the case for Nick, Tina, Jay and the many other people in our community who are trans.

I found the experience of working on that panel very beneficial. I hope that the connections I made there feel confident in talking to me about other issues they face in the future. Hopefully, there will not be too many. I would like to offer my personal support for them and I think I am on pretty safe ground if I say that the Labor Party supports the issues they face and will help them tackle them. The Gender Reassignment Amendment Bill 2018 is just one way that we are doing it.

A number of principles relate to how this issue is dealt with. I will refer to a fantastic action taken by our very action-oriented Attorney General. He mentioned that he had an outstanding legislative program planned for next year. I do not know how he manages it. He is outrageously busy. Our Attorney contacted the Western Australia Law Reform Commission in January 2018 and asked it to start a review into how effectively the Gender Reassignment Act and the Gender Reassignment Board is working for our community at the moment. The Western Australian Law Reform Commission is, of course, a standout agency, which does some startling work in helping some progressive social agendas that touch on the law and how it is administered in this state. The commission's approach to the review that our Attorney has asked for is informed by a number of key principles. I think they stand for all of us in this community of parliamentarians when we talk about these issues. The first is that every Western Australian should have their individuality respected. They should have their autonomy and agency empowered—including children—to the maximum extent of their competency. They should enjoy equal recognition and opportunity without discrimination and they should have access to the appropriate mechanisms to address their particular needs without undue administrative complexity. The Western Australian Law Reform Commission will bring those principles to the work they are doing to look at how to better uphold the dignity, privacy and self-determination of people who are sex and/or gender diverse. I wish them every luck with that. My community, the trans community, the LGBTI community and, indeed, the broader community of Western Australia will watch with interest for the outcome from the WA Law Reform Commission's report and the messages it might hold for some of the legislative program that the Attorney has planned for next couple of years.

I want to pay tribute to my research officer, Toya Shakespeare. She has been integral behind the scenes, gathering data, talking to people and finding the information that I needed to make what I hope has been a relevant contribution to this discussion. She is also very committed to seeing this bill go through as successfully and as quickly as possible. I think these changes will come into play federally on 9 December, so we do not have a lot of time to mess around with this. I hope it passes quickly through both houses, and then on to bigger and better things.

I finish by restating that members cannot possibly imagine what life must be like for people who have to go through a marriage or their lives having to deny either their gender, identity or love. We have already dealt with the marriage equality issue, but this is a much more endemic and personal issue. In some respects it is about how people identify as human beings at the most basic physical and cultural level. I hope this bill will have a smooth passage through both houses. I look forward to seeing it come into law as soon as possible.

MR J.N. CAREY (Perth — Parliamentary Secretary) [3.59 pm]: It is my pleasure to speak in the second reading debate on the Gender Reassignment Amendment Bill 2018. I echo many of the comments that the member for Maylands has made. The essence of all the social reforms we are introducing is simply that we wish to ensure that every Western Australian citizen and individual is given the respect and dignity that they deserve and that they enjoy the personal freedoms every individual deserves. I will talk about that and I will talk more broadly and go over a range of issues. I will also go through some of the commentary by members of the opposition on the same-sex surrogacy bill, because there is a broader debate here. Some members of the opposition need to be held accountable for the comments they have made in this place about same-sex surrogacy, and I will dissect some of the comments made by those members.

I will say, first, that I am proud to be part of a state Labor government that is pushing through social reform. It is only a Labor government that delivers on social reform. We will never see a Liberal state government fight for the liberties of individuals when it comes to social reform. It simply does not do it. The reason it does not do it is in part because the Liberal Party has been taken over by extreme evangelical forces that are shaping its policies and focus. That is well documented in the public arena. I have to say to the WA branch of the Liberal Party that it is out of touch. It is out of touch with younger generations who are coming forward and who believe in respecting the rights of individuals against the evangelical agenda that is taking over the Liberal Party of Western Australia.

As one of the few openly gay members of Parliament, I feel that I have an obligation, along with the member for Maylands and the Minister for Environment—all on the Labor side, maybe because we are progressive people, I do not know—to speak on these issues. As people know, I am passionate about many issues—local government reform, planning reform, densities, city renewal, and championing small business. However, as one of the few gay men, or LGBTQI individuals, in Parliament, I feel I have a moral responsibility to speak on these issues on behalf of the community. I have spoken on same-sex surrogacy. I have also spoken on the homosexual expungement bill. The accusation may be made, and I can see this, that, “John, you’re a gay MP. You’re always talking about those issues.” The only reason I am talking about these issues in Parliament is that we have an outstanding Attorney General who is progressing an incredible social reform package. That is why the same sex surrogacy bill is coming through this Parliament, working with the Minister for Health. That is why we had the homosexual expungement bill. That is also why we now have this bill. Liberals do not do it. The reason they do not do it is that they have to heed to their conservative, nasty wing, which does not respect the rights and liberties of individuals. The irony is that they are supposed to be the “liberal” party.

These reforms are simple. It is quite a simple position. It is about correcting a wrong—that is, one should not have to give up their marriage in order to get recognition of their identity. That is all this bill does. It is quite a simple proposition. We have heard from other members of Parliament about the reasons for this bill. Previously, same-sex marriage was prohibited under commonwealth law; therefore, gender recognition obviously had to abide by that commonwealth law. We are fixing that, and rightly so.

I give a call to arms to people in America right now. In America, there has been a very swift change under the Trump administration to remove the rights and liberties of transgender people. That is cruel, nasty and terrible. It is about denigrating transgender people in the United States. I note that Vanita Gupta, the president and CEO of The Leadership Conference on Civil and Human Rights, has said this about the Trump administration plans to remove federal protections for transgender people —

“This proposal is a cruel attempt to rob transgender people of their humanity. It defies the medical community, science, civil rights laws, the courts, and the dictates of human decency. The civil and human rights community is united and joins with all people of conscience to use every tool at our disposal to stop these proposals. Transgender rights are civil and human rights.”

It is not just, as President Trump declared by Twitter, that the United States government will not allow transgender to serve in any capacity in the United States military. The United States Department of Justice has also released a memo instructing the attorneys in the justice department to take the legal position that federal law does not protect

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transgender workers from discrimination. That is extraordinary. That is just two examples in a long list—a conga line—of attempts to denigrate transgender people. That is disgraceful. What a shame on the Trump administration. How cruel. How deeply nasty. How against the liberties of individuals. This is a sad day in the United States. We in this state are very lucky that we have a progressive Labor government that is pushing forward with social reforms to recognise and treat everyone with dignity and respect. As I have said before, a Liberal government does not pursue social reforms, because it is dominated by the evangelical conservative side. Only a Labor government understands and embraces the liberties of individuals.

I now come to the same-sex surrogacy debate, because this is all interlinked. Sexuality and gender are two different things. I do not think I need to state that, but I will put it on the public record just in case. We are all bound together. It is a movement of progression for the rights of gay and lesbian, transgender, bisexual and intersex people. We are bound by a movement of social change to improve the rights of individuals.

I first want to start on a good point. I want to acknowledge three members of Parliament who during the same-sex surrogacy debate showed great courage and conviction—the members for Dawesville, Kalgoorlie and Central Wheatbelt. I have personally spoken to all those members, and I want to congratulate them for having the courage of their convictions, despite some of the individuals around them, to advance the rights and liberties of individuals. In that case, it was the right for same-sex male parents to access altruistic same-sex surrogacy. The tenet of my argument is that it is ultimately about providing a caring and loving environment for children. There are already many same-sex couple families in Western Australia who day in, day out are bringing up beautiful children in safe and loving environments. The access for same-sex male couples should be the same. Those three members deserve public praise. I know that in the world of partisan politics, it is not always the case that one would do that. However, I want to thank those three members. Of course, there were other members in this chamber who said things that were disgraceful and patronising to not only me, but also all members of the LGBTIQ community. I sometimes have trouble spitting that out; I think they need something that is smaller and easier to say! I will go through them. I want them on the public record because I am tired of being patronised by some members of the opposition, an opposition which, when in it was in government, did not pursue the rights and liberties of individuals even though it is the Liberal Party. The first is the member for Hillarys. I love this; it is a classic. He said —

I have friends in male same-sex relationships and friends in female same-sex relationships who are bringing up children.

Oh, well, congratulations! Here is the member for Hillarys' certificate for knowing them. We have always heard this, have we not? "I'm friends with gay people, I'm friends with black people, I'm friends with Jewish people" but then we get to the discrimination part. In the member for Hillarys' discrimination part, he said —

At the end of the day, the reason that I will not support this legislation is that I think there are inadequate protections around checking the criminal history of applicants.

Do members not love that one? "I'm friends with same-sex couples, but, hey, I think they need a security check before they have children." What shameful comments by the member for Hillarys. Those comments are patronising and disgusting and are not acceptable. I will call them out because they deserve to be called out. The member for Darling Range said —

I do not support enabling same-sex couples and single men access to surrogacy ...

This one is even better for this reason, and I will read these comments —

Also, my personal beliefs and the fact that I do not believe that we are actually meeting a demand in the community mean that I do not support the legislation. I do not believe that this legislation reflects any demand. There is no overwhelming outcry for this legislation and there are more far better things that this government could focus on.

Let us think about her message: because it affects only a minority of people, we should not bother about it. Do not worry about the rights and liberties of individuals. Stuff it! Do not worry about it. Imagine if we conducted all legislation and policy that way. We would never worry about the minority at all and would focus only on the needs of the majority. That was incredible. I suspect the member for Darling Range said that because she is trying to make sure she keeps favour with Nick Goiran, who is a member of the Liberal Party and the evangelical right. It is an extraordinary proposition to say that because the legislation does not affect enough people, why should we bother about the rights and liberties of individuals? That is shameful. That is not the way to do policy.

The third comment I will refer to came from the member for Carine. This one really got me because it is another classic argument and position. I will read it into the public record. He said —

The reason for me, and again maybe the minister can clarify this for me, is if, for example, a single male convicted paedophile decides to go through surrogacy to have a child and there are no criminal or

background checks. If the process is that they tick a box to get to the end and they have a child, that is a real concern to me.

That is a disgraceful comment in this chamber. It is incredible and it is a classic comment by someone who, when we are talking about same-sex surrogacy, wishes to spite the debate by bringing paedophilia into it. That is outrageous. I am deeply angered for the gay and lesbian community. That is the type of homophobia that we see, and I will call it out for what it is. To ask, “What about paedophiles adopting children or getting children through same-sex surrogacy?” is also a complete lack of understanding of the process of surrogacy and its checks and balances. It is not a supermarket. It is not “grab a child from an aisle”. That shows a complete lack of understanding by the member for Carine.

[Quorum formed.]

Mr J.N. CAREY: As I said, it was disgraceful for the member for Carine to raise paedophilia in the debate about same-sex surrogacy. It was disgraceful and patronising. It is the classic right-wing, tabloid approach that, when raising issues about the rights and liberties of individuals, they somehow get distorted into a deviant and sick argument that paedophiles could access children through surrogacy. That is an extraordinary statement. Afterwards, the member for Carine came up to me. I think he thought it was a bit funny. I did not want to speak to him because, as an openly gay man, I found it horrific that he raised that in this chamber. It was so patronising to all members of the gay and lesbian community. He failed to understand it. That is an indictment on the member for Carine.

[Member’s time extended.]

Mr J.N. CAREY: I raised those issues because I wanted to show the best and worst of this chamber, to recognise—I will say it again—the members for Dawesville, Kalgoorlie and Central Wheatbelt, who stood by their convictions to protect the rights and liberties of individuals versus many of their colleagues, and those who stooped so low and did not respect and understand the humanity of individuals. It is unfortunate. Why do I raise the same-sex surrogacy debate? Because when elected officials in this chamber demonstrate views that are so abhorrent, terribly patronising and disrespectful to members of the gay and lesbian community, it demonstrates how far we have yet to go. We have so many fights to continue. Of course, Pride month starts on Saturday. On Pride Fairday, I have the very important role of judging the gay dog show, as one does. The dogs are not gay, their owners are!

Ms L.L. Baker: How do you know?

Mr J.N. CAREY: Hey, freedom and respect of the rights and liberties of individuals! I am proud.

I mentioned the United States where draconian changes under the Trump administration are taking the LGBTQI movement backwards. It is under our Attorney General and a state Labor government—not the evangelical-controlled conservative Liberal Party of WA—that significant social reform is being progressed to advance the rights and liberties of individuals. I hope that the Gender Reassignment Amendment Bill does not get blocked, watered down or moved off in the upper house; but given some of the individuals in the Legislative Council and their prehistoric views, who knows. I hope that this bill will be another part of breaking down discrimination and barriers, because it is needed.

MRS L.M. O'MALLEY (Bicton) [4.18 pm]: I rise to add to the debate on the Gender Reassignment Amendment Bill 2018. I thank the members who have spoken before me. It will be quite difficult to follow on with that level of passion, understanding and lived experience.

Imagine people having to out themselves as transgender every time they have to show a birth certificate at every school and job and every time they encounter bureaucracy. That is the situation for many people around Australia who live in a no-man’s—or no person’s land, rather—between their gender presentation and the law. Once passed, the Gender Reassignment Amendment Bill 2018 will redress that situation in Western Australia.

This bill was brought about by the changes to the commonwealth Marriage Act. The Gender Reassignment Amendment Bill 2018 will amend the Gender Reassignment Act 2000 to allow a person to be issued with a recognition certificate, regardless of their marital status. The Attorney General’s second reading speech stated —

The Gender Reassignment Act 2000 governs the process by which a person can obtain official recognition of a change of gender. A person may apply to the Gender Reassignment Board to be granted a recognition certificate that identifies the person as belonging to the sex to which they have been reassigned and authorises the Registrar of Births, Deaths and Marriages to amend the sex recorded on the person’s birth certificate to reflect their assumed gender.

A recognition certificate cannot currently be issued to a married person. The original intention of this provision was to prevent an inconsistency arising if two people of the same sex married, which was not permitted under the Marriage Act prior to the commencement of the Marriage Amendment (Definition and Religious Freedoms) Act. The provision was perfectly consistent with the law of the time. We all know that the situation changed with the

historic passing in the commonwealth Parliament of the marriage amendment act that permits marriage between people of the same sex. Importantly, consequential amendments were made to the Sex Discrimination Act that removed state and territory governments' ability to refuse to issue or alter a person's birth record of sex on the basis they that are married. With the passing of the marriage amendment act, there now exists an inconsistency between commonwealth and state legislation that this bill will remove, ensuring consistency with national same-sex marriage laws, by removing the requirement for a person to be unmarried to obtain a recognition certificate that authorises the registrar, on application, to alter the record of their sex on their birth certificate.

The passing of this bill will mean that a married couple in this situation will no longer have to choose between a birth certificate that reflects their reassigned gender and their marriage. This extraordinarily unfair and cruel situation existed for far too long. The previous marriage and gender reassignment laws failed to reflect the diversity and reasonable expectation of the inclusion of all members of our society. For married transgender couples, this failure resulted in them being faced with a decision that a legally married couple should never be forced into making. To illustrate the impact of the current situation across Australia, I would like to relate a story that featured in an online publication on 10 January 2018, titled "Now That Same-Sex Marriage Is Legal, States Must Abolish Transgender 'Forced Divorce' Laws". The article reads —

In January 2006, a transgender woman in New South Wales, known as G, applied to change the sex on her birth certificate to female.

She had been on hormone therapy for six years, changed her name on all identity documents, and been issued a passport with her sex marked female. In 2005 she had also gotten married, to a woman.

Under NSW law, transgender people must meet four criteria to change their legal sex: be over 18; have their birth registered in the state; have undergone gender affirmation surgery; and be unmarried.

G met the first three, but not the last, and her application was rejected by the NSW Births, Deaths and Marriages Registry. Further attempts in 2008 and 2010 yielded the same result.

The reason for this unusual law was ostensibly to prevent same-sex marriages. If G changed her birth certificate, her marriage would be a legal one between two women — something that was not allowed under Australian federal law prior to December 9, 2017.

But now that same-sex marriage is legal, Australian states and territories must, within twelve months, abolish the "forced divorce" laws barring married transgender people like G from changing their legal sex.

These laws, which exist in all jurisdictions except South Australia and the Australian Capital Territory, have long been criticised by transgender advocates as cruel and a source of great stress on marriages and families.

In mid-2017, the laws came under fire from the United Nations Human Rights Committee, after G submitted a complaint about her situation.

The committee found in G's favour, rejecting the argument that the divorce requirement was necessary to uphold Australia's ban on same-sex marriage, and saying the laws violated international human rights.

Now, advocates from Transgender Health Australia have written to state and territory leaders, attorneys-general and opposition leaders, urging them to act quickly to repeal forced divorce laws in the wake of same-sex marriage being legalised.

Zoey Campbell, one of the signatories to the letter [said]: "When I transitioned, I was initially wanting to change my birth certificate to recognise my gender; I was happily married at that time.

"I didn't want to be faced with the decision to choose between being married or choose something that was equally important to me in a sense — being recognised as my true self."

The same-sex marriage legislation that passed the parliament last year repealed a subsection of the Sex Discrimination Act ... that expressly allowed states to have laws banning married transgender people from changing their birth certificate.

But this part of the new marriage law does not come into force until December 9, 2018, giving state and territory governments a year to write and pass legislation. After this date, it will become unlawful to refuse to record a change of sex based on marital status, and transgender people will be able to bring complaints about such laws against any state or territory that fails to repeal them.

Campbell said she "fears the changes may be left by the wayside in some jurisdictions".

The highest profile couple affected by the laws is federal Greens Senator Janet Rice and her wife, Penny Whetton, who is transgender. Whetton was unable to change the sex on her birth certificate under Victorian law unless she

and Rice divorced. Rice has said that transgender people and their partners have “been through enough” and that the laws should have been repealed as soon as possible. She said she looks forward to being able to affirm her gender, and for her and Penny to stay married. Rice also called for states and territories to repeal laws requiring transgender people to have gender affirmation surgery before they can change their birth certificate. Fortunately, this is not the case in WA, but that this requirement exists in other states and territories is an illustration of the unfair and inequitable situation that still exists across Australia. Rice went on to say —

The best outcome is for this to occur at the same time as the trans forced divorce change.

Zoe Campbell agreed, saying that for several reasons transgender people may not want, or be able, to undergo surgery, with some people unable to afford surgery, but that that did not change the way they identified as a woman or a man. It is in reflection of this environment of arbitrary delay on the issue in other jurisdictions that I congratulate the Attorney General for bringing this important and necessary amendment to this house, bringing Western Australia’s gender reassignment legislation into alignment with the commonwealth marriage amendment act 2017 and removing the archaic imposition of forced divorce on married transgender couples, while empowering transgender people to reassign to their correct gender as easily and with as much dignity as possible. It is important to recognise that this bill is only one aspect of the McGowan Labor government’s broader LGBTIQ equality agenda, which in part aims to ensure the gender reassignment process is as streamlined, efficient and expedient as possible, with a minimum of bureaucracy, expense and unnecessary complication. This will include a review of the inconsistencies between Western Australian and commonwealth legislation, including the recognition of a person’s change of sex or intersex status, as well as criteria for determining a change of gender or intersex status and the evidence required to establish the criteria, change of gender requirements relating to children and any other related matter.

The discussion on transgender children often leads to strong emotion and stridently held opinions. Whatever the opinions on that particular transgender issue, one thing is certain: every parent wants their child to be happy, healthy and okay with who they are. As difficult and confronting as it may be, it is critical that we deal with the change of gender requirements as they relate to children as part of a broader review.

The statistics around mental ill health of young people are not good. When we look at the mental health of young LGBTIQ people, the statistics are even more alarming. According to ReachOut Australia, more than 40 per cent of young LGBTIQ people seeking help are at high risk of suicide—almost double the rate of their heterosexual peers. In a longitudinal study of 2 000 young Australians aged 16 to 25 who used ReachOut, nearly half of all LGBTIQ young people surveyed—42.7 per cent—were at high risk of suicide, compared with 23.1 per cent of those who identified as heterosexual. The top three reasons young LGBTIQ people visit ReachOut is for help with depression, anxiety and suicide. Suicide did not factor in the top three for young heterosexual people. Young LGBTIQ people were more likely to come to ReachOut for help with sexuality issues and being at risk of harm, including self-harm, abuse and violence. ReachOut is Australia’s leading online mental health organisation for young people and their parents, and is accessed by 132 000 people in Australia every month.

I would like to conclude with the words of a mother who speaks of the experience of the transgender journey of her child. It is all the more powerful when delivered in the first person. She states —

There is always a before and after. Even if something seems unaffected, change happens; that’s how time works. That is how transition works, too. By definition, that is what transition means: change. But when it comes to gender identity, the concept of before and after means something different for everyone involved.

Before May 9, 2016 we had a daughter and two sons. After that date, in a small but very significant span of a day, male pronouns switched to female pronouns, and one of our sons became a second daughter.

Our child did not decide to become transgender in the time it takes for the sun to rise and set, nor did we force a label on her because we didn’t have anything else on the calendar for that day. Rather, that was the day we finally embraced the change we knew was coming.

I can’t speak to all of the inner workings of my daughter’s mind, but in the four years she has been alive, she has never verbally identified as the boy the obstetrician told us we were having or as the male gender marker given to both her and her twin brother at birth.

It’s important to note here that, because it is most relevant to our family, I am using phrases that define gender as binary, meaning one is either a boy or a girl. However, that is not the case. Gender is fluid and, for some individuals, gender is not defined by simply being male or female. Since she gained the ability to speak, Ryan has always told us she’s a girl.

Yet, when her pediatrician encouraged us to give her the freedom to live as a girl by switching from male to female pronouns, we all called it a social transition. It was as if we were introducing the world to a new and changed Ryan, a female version of our child, when in truth she didn’t change on May 9. We did.

Extract from Hansard

[ASSEMBLY — Thursday, 1 November 2018]

p7744a-7752a

Ms Lisa Baker; Mr John Carey; Mrs Lisa O'Malley; Mr David Templeman

Some people think that children are confused about their gender when they stray from what is considered to be normal attire, behavior, and language for boys and girls. But the truth is that kids' gender identity is locked in by age three or four. If allowed to truly express the gender they identity with, there is little doubt. The confusion happens when parents and society challenge and deny the feelings of kids who don't feel their biological sex matches their gender identity. Most of us are cisgender, meaning our sex (physical characteristics) matches our gender. For transgender individuals, this is not the case.

It is also important to note that kids who are gender nonconforming (boys who wear dresses or girls who prefer dump trucks, for example) are not necessarily, and are usually not, transgender. They are just badass little kids who know what they like and have the support of parents and teachers to explore any and all things that make them happy. There is not a guide on how to be a boy or girl, but every person has an internal compass that leads them home.

My child's true north turned out to be female, even though she was assigned male at birth ... Looking back, it is easy to see that it always has been. In fact, it's almost impossible now to see her as a boy. But during the time when my partner and I searched for answers on how to best acknowledge and validate Ryan's feelings, it felt hard. Even though we knew better, we wondered if she was too young. Maybe she just wanted to be like her big sister. Maybe she thought she had to be a girl to wear the dresses she loved. We certainly wanted to do the right thing for our child, and we knew we would always allow her to live and express her true identity. But when was the right time? We always thought there were too many maybes.

I still don't know when the right time should have been, but on the day we finally validated our child, the timing was not wrong.

After my partner and I left our appointment with Ryan's pediatrician on that day in early May, we knew that Ryan being transgender was no longer something to just talk about privately with each other and close family members and friends. Ryan had been very clear with us for a long time. And because she was also showing clear signs of being unhappy when recognized as a boy, we knew it was time to change.

We needed to become parents who had two daughters instead of one. We needed to accept both the negative and positive reactions of being the parents of a transgender child. We needed to be the open advocates and fearless protectors of a child whose only real transition was in her happiness.

Later that evening, after Ryan confirmed she wanted us and everyone else to call her a girl, we transitioned. We began to use the correct pronouns when speaking to and about Ryan. With time and practice, her siblings, friends and family members did, too. Our anxiety increased as we scrambled to figure out how to enroll her in preschool and extracurricular activities as a gender that didn't match her birth certificate. Our worries increased as we did everything in our power to make sure the outer layers of our life were as welcoming and supportive as the inner circles.

We stumbled sometimes when we saw people who asked how the boys were doing. We hesitated when strangers commented on how nice it was that we had a boy/girl set of twins. We gradually became more confident that the world was seeing Ryan as the girl she has always been. Strangers had actually been assuming Ryan was a girl before we switched pronouns. Her barrettes, skirts, and sparkles were staples before and after we thought we had a son.

Because of her age and our early acceptance of the clothing she preferred and her desire for long hair, Ryan didn't go through a lengthy or noticeable transition when she began to live life as the girl she knew herself to be. As a parent, I have felt the changes of transition, though. I still worry about the way the world will treat her, and I know we will face new challenges and big decisions as she gets older, but love works a lot like time. It changes us. Ryan is my compass. And where her happiness leads, I will follow.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.