

GENDER REASSIGNMENT AMENDMENT BILL 2018

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Steve Thomas) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: Prior to the interruption of the committee to take questions without notice, I was asking the minister some questions about the Gender Reassignment Board's resourcing. The board is established under section 5 of the Gender Reassignment Act 2000, and that is the act that this bill seeks to amend. I was drawing to the minister's attention at least one error in the Gender Reassignment Board of Western Australia's annual report of 2017–18, which the minister indicated she can draw to its attention, and if there needs to be a correction, it will be dealt with in the fullness of time. At page 2 of the annual report, under the heading "Finance and Administration", it states —

The Board is an autonomous body that is wholly funded through the Department of Justice.

The Department receives all fees in respect of Board matters.

The Board does not directly employ its own staff. Staff are provided by the Department.

My question is about the resourcing implications of this legislation for the board. I understand that the minister is not in a position to indicate how many additional applications the board might expect to receive. However, I was about to ask whether the upcoming budget process will deal with how many additional resources the board will need and how many additional applications the board can expect?

Hon SUE ELLERY: I am advised that the board has not asked for any additional resources. I could not possibly comment on what is going to be considered as part of the upcoming budget process, but I can advise that we will have a watching brief, and if additional resources are required, I am sure we can deal with that in future budgets.

Hon NICK GOIRAN: The minister's response was to simply say that the government has not been asked for any additional resources by the Gender Reassignment Board. The problem with her response is that, of course, as we know from earlier questions and answers on this bill, the government has not asked the Gender Reassignment Board whether it needs any additional resources. Although what the minister said is true—the board has not asked for any additional resources—the problem is that the consultation has been so modest, concise and brief that these types of basic questions have not been put to the Gender Reassignment Board. That is troubling. Of course, now we do not know exactly what the process will be moving forward because the minister said that she cannot discuss the budgetary processes, so we will be left in the dark about the resource implications of this legislation, which is most unsatisfactory for the house of review.

As the minister is unable to assist further in that line of inquiry, I would like to ask her to indicate why the Registrar of Births, Deaths and Marriages was not consulted on this legislation. My understanding is that the registrar's office will now receive certificates from the Gender Reassignment Board that it would not ordinarily receive. It seems curious that the Registrar of Births, Deaths and Marriages has not been consulted about that, given that he or she will be required to amend the sex recorded on a person's birth certificate to reflect their assumed gender. That is the language used in the explanatory memorandum. Is there an explanation why the registrar was not consulted about this bill?

Hon SUE ELLERY: It was not deemed necessary to consult with that registrar because, in terms of the policy of the bill before us and what was required to be changed to give effect to and to move forward from the changes that were made at a commonwealth level, that technical policy matter has nothing to do with the Registrar of Births, Deaths and Marriages.

To follow the member's previous line of questioning about whether it would have been appropriate to perhaps consult the Gender Reassignment Board about resources, its budget sits within the Department of Justice's budget, so if changes were required, they could be considered in due course.

Hon NICK GOIRAN: We might follow that up during the budget process because it does not satisfy me to say only that the Department of Justice is going to handle the budget and the like, because there is such a thing as opportunity cost. If resources have to be directed to the Gender Reassignment Board to deal with more applications and to the Registrar of Births, Deaths and Marriages to deal with the receipt of additional certificates and the like, that will come at the expense of something else. That must be the case because one presumes that the people who will be doing these things and entering this information are not doing nothing during the course of their day, so to attend to these matters, they will be taken away from what they would ordinarily do. If there is one ad hoc application once in a blue moon, perhaps that can be addressed by existing resources, but the problem is that the government cannot tell me how many of these applications will be made. We do not know whether there will

be five, 10, 15, 20 or 100. As I said in my contribution to the second reading debate, we would be battling to find a more concise or straightforward bill than this. I find it baffling that something as basic as the number of applications that will result from this legislation is unable to be provided to the chamber. As members, we are very keen apparently to ensure that this legislation passes but we do not know how many applications will result because of it. We do not know how many people will apply for these certificates. I find that peculiar, to say the least.

Be that as it may, I have two further lines of inquiry for the minister. I am happy to ask them at clauses 2 or 3 but I can ask them now for the sake of expediency. The first is about the 28-day period. The minister mentioned that that is the default position taken by Parliamentary Counsel for the drafting of regulations. Has that drafting commenced?

Hon SUE ELLERY: I am advised no.

Hon NICK GOIRAN: The minister also mentioned that some forms need to be amended. Has the process of amending them commenced?

Hon SUE ELLERY: That is what needs to be amended, so it is the same issue. The answer to that is no.

Hon NICK GOIRAN: What does the current form look like? Ideally, can the minister table the form? What changes are needed to the current form that require this 28-day period?

Hon SUE ELLERY: I am happy to table the forms, which are in schedule 1 of the Gender Reassignment Regulations 2001. I can table them now if that is of some assistance.

[See paper 2387.]

Hon SUE ELLERY: The forms currently state that a recognition certificate cannot be issued to a person who is married. I am advised that Parliamentary Counsel has said that they will commence the drafting when the legislation has been completed through the Parliament.

Hon NICK GOIRAN: I would like to ask a couple more questions about these forms but I do not have them in my possession, so if we can wait a moment for the Clerk to provide them, that would be helpful.

The minister has kindly tabled for us the forms, which are found in schedule 1 of the Gender Reassignment Regulations 2001. I understand there are two forms, which total some nine pages. Form 1 is the “Application for Recognition Certificate for an Adult” and form 2 is the “Application for Recognition Certificate for a Child”. Given that we are opening the door for these recognition certificates to be provided to a person who is married, is it only form 1 that needs addressing and not form 2?

Hon Sue Ellery: Form 2 refers to page 8. If the member wants to look at that —

The DEPUTY CHAIR: Sorry, minister, if you are responding—I apologise, but I will give you the call.

Hon SUE ELLERY: Thank you.

The DEPUTY CHAIR: Someone has to be on their feet.

Hon SUE ELLERY: Do they?

On my document, form 2 is on page 8 and at the bottom of that table, there is a reference to —

The child is married.

The child is not married.

Because a person under 18 could be married.

Hon NICK GOIRAN: When I look at the two forms, I see a similar provision in form 1, where it states —

I am married.

I am not married.

Tick the appropriate box.

A recognition certificate cannot be issued to a person who is married.

Is it not the case that all that needs to be done is to delete “I am married”, “I am not married”, the two tick boxes, the words “Tick the appropriate box” and “A recognition certificate cannot be issued to a person who is married”? Does it really take 28 days to do that twice?

Hon SUE ELLERY: All references to “married” have to be taken out. Although I appreciate the point the member is making, the advice from Parliamentary Counsel is that the drafting will start once the legislation is through the parliamentary process. I can appreciate the member’s keenness to see the legislation enacted and in place, but that is the advice from Parliamentary Counsel.

Hon NICK GOIRAN: That is an excellent segue to my final round of questions, because when the minister says that I am so keen to see the legislation enacted, I am. However, I am troubled that the Law Reform Commission, which has been commissioned by the government to do a task, says that we should repeal the Gender Reassignment Act. Although she and I might be keen to see this happen, I am not helped by the government's inability or unwillingness to indicate its position about recommendation 10 of the Law Reform Commission. She made some remarks in reply indicating that it is currently before the government for consideration. Surely the government must know whether or not it will repeal this very legislation we are discussing today. It is not clear to me why the government needed two months over the summer recess to decide that what we are doing right now is a complete waste of time. There must be some indication by government to say that there is a general lack of enthusiasm for recommendation 10 or there is a general enthusiasm for it but we want to consider it a bit further. It sounds implausible that there could be no position whatsoever, unless nobody has looked at it at this point.

Hon SUE ELLERY: I appreciate that the honourable member might think it is implausible but, in fact, as I said in my second reading reply, government is still considering the matters within Project 108. When we have given due consideration to all those recommendations, except recommendations 5 and 6 but including recommendation 10, we will make a statement to that effect. I would be speculating and I do not want to do that. I do not think that is helpful to anyone. I am not going to speculate. I cannot tell the member any more than I told him in my second reading reply, which is that the matter is still being considered by government.

Hon NICK GOIRAN: Have there been any meetings within government to consider recommendation 10 since Parliament last sat?

Hon SUE ELLERY: I appreciate the member's interest in this matter. I do not have the answer to that question. I do not know how it gets us any further in dealing with the detail of the bill before us. The government is still considering the recommendations of Project 108. When that process is completed, the government will in due course make a statement.

Hon NICK GOIRAN: Perhaps I can help the minister. Just to clarify, the reason this is important is that it indicates whether this is a waste of time. The minister is the Leader of the House. She decided to make the Gender Reassignment Amendment Bill the number one priority on our first day back for 2019. There is a massive amount of legislation on the notice paper, but because she is the most senior member opposite in government, she decided that this would be the number one priority. She is quite entitled to do that. I do not have a problem with that. The opposition is not opposing the bill.

Hon Sue Ellery: It's supporting the bill.

Hon NICK GOIRAN: There you go.

Hon Sue Ellery: It's more than not opposing it.

Hon NICK GOIRAN: The problem is: are we doing all this for no particular purpose if the government is going to proceed with recommendation 10 and obliterate the legislation anyway by repealing it? That is what the Law Reform Commission has said. According to this government, the Law Reform Commission has already got a couple of things wrong, because the minister has said that recommendations 5 and 6 are not worthy of support. As it happens, I agree with her. I want to know where recommendation 10 sits in that; otherwise, all this exercise today has been for nothing. The minister has indicated that she cannot tell us what is going on there; she does not know how many meetings have happened, so we are not able to make any further progress on that.

I once again underscore the problems with a bill of this simplicity. I would battle to find a more simple bill than this. We cannot be told by government what are the resource implications. In fact, it has not even asked the people who will have the resourcing problem. We cannot be told whether it is the government's intention to repeal the very legislation that we are going to pass presumably in a few moments. That makes a mockery of the Legislative Council. Why make this legislation the number one priority? That is for the government to explain; it is not for the rest of the members. We can deal only with the matters on the agenda that are brought before us. The minister has decided that this is the top priority. I hope that it is not a complete waste of everyone's time, but we will not know that until such time as a ministerial statement is made, which the minister tells us will be in the fullness of time when the government has finished its consideration of Project 108. It is odd that something this simple could be dealt with in this fashion, but that is where we are at. The minister will be pleased to know that I have no further questions.

Clause put and passed.

Clauses 2 to 4 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.