GENDER REASSIGNMENT AMENDMENT BILL 2018

Second Reading

Resumed from 21 November 2018.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [2.25 pm]: I rise as the lead speaker on behalf of the Liberal opposition in respect of the Gender Reassignment Amendment Bill 2018, and I indicate at the outset that we support the bill. I have a few comments to make regarding its history and the context in which it is being presented to this place.

The purpose of the bill is quite a simple one. It is to delete current section 15(3) of the Gender Reassignment Act 2000. To put this in context, the Gender Reassignment Board was established under that act to deal with questions of gender reassignment—as one might expect from the name of that body. Under section 14 of the Gender Reassignment Act, in situations in which a person has undergone a reassignment procedure, whether before or after the commencement of the act and whether within Western Australia or elsewhere, an application may be made to the board in accordance with the act for the issue of a recognition certificate.

The provisions for the issue of a recognition certificate and the criteria for the issue of such a certificate are set out under section 15 of the act. In situations in which the application relates to an adult, the board may issue a recognition certificate if the reassignment procedure was carried out in the state; the birth of the person to whom the application relates is registered in the state; and the person to whom the application relates is a resident of the state and has been so resident for not less than 12 months. The board must be satisfied that the person believes that his or her true gender is the gender to which the person has been reassigned; has adopted the lifestyle and has the gender characteristics of a person of the gender to which the person has been reassigned; and has received proper counselling in relation to his or her gender identity.

Those are the criteria for an adult, and they more or less accord with those for a child. The board may issue a recognition certificate if the reassignment procedure was carried out in the state; the birth of the child is registered in the state; and the child is a resident of the state and has been so resident for not less than 12 months. The board must also be satisfied that it is in the best interests of the child that the certificate be issued.

All of this is predicated on a reassignment procedure, and there has been a lot of debate over the years as to the extent to which that should be necessary and the extent of medical intervention that ought to be required, but that is a debate for another day. The critical thing in this case is that there is also a prohibition, and that is relevant in the issue of a certificate. A recognition certificate cannot be issued to a person who is married, and that is the content of section 15(3) of the act. Once a recognition certificate is issued, it can be sent to the Registrar of Births, Deaths and Marriages, who then registers the receipt of that certificate and can issue a birth certificate under the reassigned gender, in accordance with the gender recognition certificate. But the prohibition under subsection (3) means that this is limited only to people who are not married. That was necessary as a restriction previous to the recognition and statutory enabling of same-sex marriages—an issue that falls under the commonwealth jurisdiction rather than the state jurisdiction.

Of course last year we had a great debate on the subject and same-sex unions formalised and recognised as marriages by law are now the law of the country. Nevertheless, a recognition certificate cannot be issued in cases in which a person having undergone a reassignment procedure and fulfilling the other criteria mentioned in section 15 of the act is married. That, of course, was to avoid the anomaly of having, say, a man and a woman who are married, and one of those people then undergoes a gender reassignment procedure and we have, in effect, a same-sex marriage. It would have been an anomaly and wrong in principle in accordance with the law at that time, but that law has changed and now we have the anomaly of requiring, in effect, a union to be dissolved by way of divorce or otherwise in order that a change of gender can be appropriately recognised for one of the members of that union. To remove that anomaly, it is only right and proper that subsection (3) be removed as a criterion that prohibits the issue of a gender recognition certificate and the matter corrected in the manner proposed by the bill. There are a couple of issues with this. One of them is, unfortunately, the time that has passed. Of course, the legislation could not have been drafted and moved until same-sex marriages were recognised. I make no criticism of the government in this regard. It is unfortunate that it is not one of those issues that could have been resolved last year.

The Gender Reassignment Amendment Bill was read into Parliament on only 15 August last year, and it was brought on for debate on 1 November and thereafter on 7, 8 and 20 November. It finally passed and received its third reading on 20 November last year, shortly before the Assembly rose for the end of the calendar year. I could say that I read the debate with interest; I did not. Much of it seemed to be irrelevant to the merits of the bill, which is unfortunate. Had it been relevant to the merits of the bill itself and the very narrow mischief that it is correcting, this could have been passed by the Assembly well before 20 November, and this house could have received it

much earlier than 21 November. Given that we had a very full legislative agenda at the end of last year and we rose on 6 December, the bill had not been brought on for debate at that time. That is not the fault of the Leader of the House; it is simply the manner in which things went down in the other place. It is unfortunate that we missed a critical date, which I think was 9 December last year—the date that the commonwealth had set to repeal any provisions in state law that required an individual to be unmarried in order to legally change their gender on their birth certificate. Had the matter been expedited by the other place, I am sure that this matter could have been dealt with before the house rose on 6 December last year and the state of Western Australia could have met the deadline that the commonwealth had set. Nevertheless, it is now being addressed, and hopefully it can be expeditiously and effectively dealt with by this place.

The only other matter that I wish to raise about the bill is the date on which it takes effect. Clause 2 of the bill deals with commencement and prescribes that sections 1 and 2 of the proposed act come into operation on the day on which the act receives the royal assent. I suspect that if the bill managed to pass through all stages of this house today, that would be done with alacrity and it would probably receive the royal assent within 24 hours—perhaps a little longer but very, very shortly. The rest of the act, of which there are only two sections and only one of them is the operative one—the sharp end, as it were—will come into operation on the twenty-eighth day after that day. I have had a query from one member of the public asking why that is the case and why this bill cannot come into effect and realise the reform that is being sought by it, especially in light of the time it has taken to deal with it, before 28 days. I understand that person has been informed that there is a need to amend forms in the regulations and forms that may be prescribed by a schedule to the act. I do not understand the "schedule to the act" bit because the first schedule to the act does not require any forms to be made. It does involve the keeping of a register, which is kept by the board. I would have thought it would require no particular effort to change the material that is recorded in that register, if there is a need for any change at all. However, there is a need to change the forms in the regulations. I can understand the need for a bit of time to do that. The current forms in schedule 1 of the regulations do have a space therein requiring certification of compliance with section 15 of the Gender Reassignment Act. Most of that will be the same before and after the passage of this bill. However, it also has a couple of tick boxes regarding whether the applicant is or is not married. It may well be that that requires some formal change. I would have thought that there is no requirement for that in a form, but perhaps the Leader of the House representing the Attorney General, whose bill this is, can assist us in that regard. If there is a way of expediting the operation of this bill in order to regularise Western Australia's approach to this issue and align us with other jurisdictions, I think that opportunity ought to be availed of.

On that particular query, I ask that the leader assist us as to whether there is any way of expediting the operation of the bill, whether by amendment of that clause or otherwise, or simply by the expedition of the preparation and gazettal of new forms. That would be of assistance and, I suspect, of some comfort to those who will be affected by this reform.

On that note, I indicate the opposition's support for this bill and commend the government for introducing it. My only regret is that it was not disposed of before 9 December last year.

HON RICK MAZZA (Agricultural) [2.38 pm]: The Gender Reassignment Amendment Bill 2018 seeks to amend the Gender Reassignment Act 2000 to allow a person to be issued with a recognition certificate of a change of gender regardless of their marital status. The act governs the process by which the individual can obtain official recognition of reassignment of gender. The act also allows for the establishment of a gender reassignment board and the power to issue such certificates. A person who has undergone a reassignment procedure may apply to the board for a recognition certificate, which is conclusive evidence that the person is of the sex and has the physical characteristics stated in the certificate. A reassignment procedure is defined as a medical or surgical procedure, or a combination of both, to change the genitals and other gender characteristics of a person. Once the reassignment of the sex of a person has been registered and the register altered, a recognition certificate can be issued that identifies the person as belonging to the sex to which they have been reassigned. The act also allows the board to authorise the Registrar of Births, Deaths and Marriages to amend the sex recorded on a person's birth certificate to reflect their assumed gender. Under section 15(3) of the act, a recognition certificate currently cannot be issued to a person who is married, because in the past, same-sex marriage was illegal in Australia.

This is a very simple bill. In fact, the operative part is a simple line that deletes section 15(3) of the act. I advise that I will be supporting this bill, which will allow married persons to apply for and receive a recognition certificate stating their new gender. Having said that, I understand that there were 17 recommendations in the Law Reform Commission of Western Australia's final report on Project 108, which was tabled last year and entitled "Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics", including a recommendation that an administrative process be put in place through the registrar and that the current board should be abolished. The report also recommended that we move away from the legal requirement of a reassignment procedure to change the applicant's physical sex characteristics to

merely a person determining for themselves that they now have a different gender. I foreshadow that I will have some difficulty supporting a number of those recommendations. I know that that is not covered by this bill, but I wanted to mention that. This bill is really just an administrative bill, which will bring us in line with the changes to the commonwealth Marriage Act. Therefore, I will be supporting it.

HON ALISON XAMON (North Metropolitan) [2.41 pm]: I rise as the lead speaker of the Greens on the Gender Reassignment Amendment Bill 2018 and indicate that we wholeheartedly support this bill. It is a very short bill, which I note will come into effect 28 days after it receives royal assent. The bill will delete section 15(3) of the Gender Reassignment Act, which states that a recognition certificate cannot be issued to a person who is married, noting that a recognition certificate is conclusive evidence that a person has undergone a reassignment procedure and is of the sex as stated in the certificate. Importantly, prior to December 2017, commonwealth law did not permit same-sex marriage, so the effect of this has been that a married person who reassigns their gender and thereby effectively makes their marriage a same-sex marriage has had to choose between their marriage and a birth certificate that shows their reassigned gender. In December 2017, a commonwealth amendment changed the law to permit same-sex marriage. That same amendment also changed commonwealth sex discrimination laws to prohibit states and territories from refusing to change the recorded sex on a person's birth certificate if the person is married. That change came into effect on 9 December 2018. Therefore, since that date, section 15(3) of the Gender Reassignment Act 2000 has been inconsistent with commonwealth law. Section 109 of the commonwealth Constitution states —

> When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Accordingly, section 15(3) is finally being deleted.

Without fail, the Greens have spoken up for the rights of all members of the LGBTIQ community. As such, we are obviously extremely supportive of this bill. I will always be pleased to speak to legislation that has the effect of removing discrimination against members of the LGBTIQ community, as this legislation does and as did the Historical Homosexual Convictions Expungement Bill, which we debated in this place last year. If I have one criticism to make of this bill, it is the time it has taken to come to the Council. We are the last state to make the necessary changes to ensure consistency with the commonwealth Marriage Act. I had hoped that this bill would make an appearance by the end of last year. I recognise that we had a lot of legislation that we were trying to get through. I would argue that some of that was not particularly time sensitive, but I acknowledge that some of it was. This is one bill that surely could and should have been introduced earlier in this place. Nevertheless, it is here now and I am very, very pleased that we are finally able to debate this piece of legislation and, I sincerely hope, see it pass. It is an important piece of legislation that is yet again being introduced to slowly work towards dismantling the legal barriers that have prevented the LGBTIQ community from being afforded the same rights as all other Western Australians.

In addition to commending the government on the bills it has introduced, I commend it for introducing two reviews that should further remove barriers and promote opportunities for LGBTIQ people. Some people have already spoken about the Law Reform Commission finalising its review on inconsistencies between WA and commonwealth law in relation to recognition of a person's sex, change of sex or intersex status. I note that this review made a number of recommendations for further amendment of the Births, Deaths and Marriages Registration Act 1998. I acknowledge the commission's extensive involvement in that review process with community-based advocacy organisations and other advocates; it was comprehensive. It is a testament to the commission that the recommendations in its report of that review are very considerate and I think they are achievable and would serve to deliver meaningful change to the LGBTIQ community. I hope that this excellent piece of work does indeed result in much-needed change.

The second review is one that the government only recently announced and will also be undertaken by the Law Reform Commission—a long overdue and comprehensive review of the Equal Opportunity Act. As I have spoken about before, the current act focuses on anti-discrimination measures rather than genuine promotion of equal opportunities, and they are two very different things. It prescribes certain actions but does not really address inequities. The review should look at how to put an onus on the provision of reasonable accommodation for people's circumstances, whether it be employment, accommodation or provision of goods and services. But however much this particular review is welcome, it does not detract from the immediate need to address some of the more concerning and hideously outdated provisions within the act. I am specifically concerned about what I think are very outdated provisions within our state act around religious exemptions, noting that other states, such as Tasmania, have not had those provisions in their acts for decades and they work perfectly fine. I remind members of my bill in this place—the Equal Opportunity (LGBTIQ Anti-Discrimination) Amendment Bill—which of course would address this. It is really important we recognise that the legal barriers that exist for LGBTIQ people are very serious and serve to seriously undermine people's human rights. The anti-discrimination bill is in line with what is being talked about more broadly within the Australian community. It is indicative of where we are at as

a community. I think most people were pretty much outraged when they discovered that religious schools are legally able to make employment and enrolment decisions based on whether staff members, students and their families identify as LGBTIQ. I note what was a bit of an own goal by the anti–marriage equality proponents when they insisted on an overall review of the issue of religious exemptions, because when that happened and people became aware that these things even existed, there was general outrage within the community. Rather than being able to push what I think is a pretty hideous agenda, which many churches and religious schools do not agree with, the proponents instead chose to highlight a terribly outdated provision that a lot of people would like to see the back of.

Last year, I was very pleased to receive a letter from the Commissioner for Children and Young People, who was very supportive of changing these provisions. I will quote briefly from the commissioner's letter —

> All LGBTI children and young people have the right to be recognised for their gender identity, sexual orientation or intersex status, and to feel safe and respected wherever they are. Despite this, many LGBTI children and young people experience issues or challenges which impact on their health, safety, wellbeing, and other areas of their life.
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> …
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> I would like to offer my support for the *Equal Opportunity (LGBTIQ Anti-Discrimination) Amendment Bill 2018* which you recently tabled in WA Parliament, and to thank you for raising awareness of this important issue.

The Commissioner for Children and Young People has also established three advisory committees of LGBTIQ young people and their peers, in Perth and at Bunbury Senior High School, to advise the commissioner's work in this space. That is an incredibly positive move. Members of the Perth committee have described a range of experiences and systemic discrimination, including in access to education, employment, health services and accommodation, as well as very distressing stories of discrimination and harassment at an individual level within the community. The committee has specifically identified the need to improve legislative protections for LGBTI children and young people through the Equal Opportunity Act, as well as the need to ensure that LGBTI children and young people are not exposed to harmful practices in Western Australia, such as gay conversion therapy. It makes sense that the government might want to consider looking at progressing some of these reforms, sooner rather than later. The sorts of reforms that are envisaged within my Equal Opportunity (LGBTIQ Anti-Discrimination) Amendment Bill 2018 would be a good start.

Returning to the specifics of the bill before us and to wrap up my comments, I would like to pay particular tribute to my friend and colleague Senator Janet Rice, and her dearly beloved spouse of 32 years, Dr Penny Whetton, both of whom I have known for a very long time. Janet and Penny have long campaigned to uphold the rights of LGBTIQ community members. Their own lives have been deeply affected by forced divorce laws. Their experience highlights just how ridiculous the current law is. When Janet first met Penny, Penny was living as a man. The two were married and, some years later, Penny transitioned to a woman. Because Penny was married when she transitioned, she was unable to change her birth certificate without first divorcing Janet. Having to choose between remaining married and truly affirming her gender was a terrible predicament to be forced into. I have always been perplexed about this requirement. One of the reasons is that I have always understood the sanctity of a legal contract of marriage to have intended primacy. If we talk about the way that the covenant of marriage has been used, for example, to protect spouses from having to give evidence against their loved ones, it has always been recognised that marriage is the legal contract with the utmost sanctity, which needs to be protected at all costs. We talk about this all the time, yet here is a piece of legislation that effectively tries to force people into getting divorced. I think that is hideous and abhorrent. If two married people do not wish to get divorced, nothing ever makes it okay for the state to attempt to intervene and force a couple who wish to be married to be divorced. I find that abhorrent and I have always found it utterly perplexing. For that reason alone, I have always wanted to change this particular provision. It is truly despicable for the state to seek to intervene and tear apart a married couple. In Penny's case, she chose to remain married and to put away her birth certificate. She did not use it as a means of identification. Penny and Janet loved each other and they wanted to be married. It is not the state's place to try to tear them apart. Janet and Penny have been very generous in sharing their experiences of living together, as both a heterosexual couple and now as a same-sex couple. They are in the rare position of knowing exactly how differently society responds to people who are in a relationship that is outside the mainstream. For example, Janet and Penny said that after Penny transitioned to a woman, they now very rarely hold hands in public, knowing that if they do so, they may be subject to abuse, or worse—violence—from strangers in the street.

It is clear that discrimination has an insidious effect on people. Although the drivers of discrimination are, of course, very complex, it is completely unacceptable for the state to allow this sort of discrimination to be legal. Rights are rights, and they should apply to all. Although I am absolutely delighted this section of the Gender Reassignment Act will be removed, transgender people face myriad unnecessary hurdles in order to have

their gender identity officially recognised. I will be proud to continue to work alongside the LGBTIQ community on ways in which we can best address this issue. The Greens will, of course, support the Gender Reassignment Amendment Bill 2018. It is very important. I would have preferred it to happen sooner rather than later, but I am glad the amendment is now being made.

HON NICK GOIRAN (South Metropolitan) [2.57 pm]: I rise to speak on the Gender Reassignment Amendment Bill 2018. Members who are familiar with the bill will note that it is, perhaps, the most concise of bills that one could conceive of being before the chamber. I cannot recall a bill that is more concise than the bill that is before us. As is made plain in the explanatory memorandum, which itself contains more words than the bill, the purpose of the bill is to amend the primary act—the Gender Reassignment Act 2000—to allow a person to be issued with a recognition certificate of their gender, regardless of their marital status.

As was already mentioned by the opposition's lead speaker, the shadow Attorney General, it is not the opposition's intention to oppose this concise bill. However, from a personal perspective, I noted with interest that the second reading speech in both places included the following paragraph. I quote the respective ministers —

> This bill, however, is only one aspect of the government's broader lesbian, gay, bisexual, transgender, intersex, queer equality agenda especially with regard to facilitating and empowering people to reassign their correct gender as easily and with as much dignity as possible.

That remark was made in both houses by the respective ministers. Although I do not oppose this bill, which, in effect, will allow one government department to pass a piece of paper to another government department, I ask: Where are we going with all this? If the government is saying that this is merely one aspect of its agenda, where would the government like to lead us as a community in Western Australia?

All members in this place are motivated by compassion and when it comes to this issue of a person's gender, I think it is fair to say that all members would agree that if there is a problem, consideration of the difference between members' perspectives is how the problem might be addressed. In essence, there are only two alternatives. One perspective believes that the solution is a physical one—in other words, the state has a responsibility to assist and to engage at a physical level—whereas others, including me, believe that the solution should be to treat it psychologically. If there is an issue, there are two ways in which we can treat it. We can do it with either physical or psychological intervention. I have a number of concerns and queries that I will go through this afternoon.

I begin by noting that in the lead-up to the last election, the government, as the then opposition, released a manifesto in which it states, and I quote —

> WA Labor:
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> …
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> Will take steps to ensure that the Gender Reassignment process is as streamlined, efficient and expedient as possible, with a minimum of bureaucracy, expense and unnecessary complication.

This has been repeated almost verbatim in the second reading speech by the minister in this place and the other place, and I quote —

> The McGowan government aims to ensure that the gender reassignment process is as streamlined, efficient and expedient as possible, with a minimum of bureaucracy, expense and unnecessary complication.

The questions then are: What is this government doing to ensure that the gender reassignment process is as streamlined as possible? What is it doing to ensure that the gender reassignment process is as efficient as possible? What is it doing to ensure that the gender reassignment process is as expedient as possible? What is it doing to ensure that the gender reassignment process involves the minimum amount of bureaucracy as possible? What is it doing to ensure that the gender reassignment process involves the minimum amount of expense as possible? Indeed, what expense is involved in this gender reassignment process? Is it expensive? What typical expense referred to in its manifesto would the government like to reduce? Importantly, what is the government doing to ensure that the gender reassignment process has the minimum of unnecessary complications as possible? It is one thing prior to an election for an opposition to espouse commitments, manifestos and the like, but it is another thing to fulfil those commitments when in government. Prior to the election, WA Labor made quite a big deal about the fact that it was going to do these things, but all we have heard so far is that this Gender Reassignment Amendment Bill is one aspect of its broader agenda. What are the other things that the government said in its second reading speech that it intends to do? Why not itemise them? Why not set out its vision for this efficient, expedient, inexpensive, uncomplicated system? Perhaps we will be able to flesh that out during the Committee of the Whole House stage.

That takes me to the Law Reform Commission report that was tabled last year. Indeed, I note that the Leader of the House delivered a ministerial statement on 6 December 2018. I cannot recall whether that was the last day of sittings,

but to the best of my recollection it would have been the last week of sittings. In that ministerial statement by the Leader of the House, Hon Sue Ellery, this Law Reform Commission report, entitled "Project 108: Final Report: Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics" was tabled in this place by the Leader of the House on 6 December last year. In that same statement, interestingly, before anyone in this place had had an opportunity to peruse and consider the Law Reform Commission report—in fact, the copies would not even have had an opportunity to be distributed to members at that stage—on 6 December 2018, Hon Sue Ellery said this, and I quote —

> The government is yet to consider the full contents of the report, but will not be accepting recommendations 5 and 6, which are to remove and expressly prohibit the recording of sex or gender on birth certificates.

I found that fascinating at the time. As it so happens, I agree entirely with the government and Hon Sue Ellery and her counterparts in not accepting that recommendation from the Law Reform Commission. However, I find it interesting that the government takes a breath and says that it is yet to consider the full contents of the report, and by the time it finishes its breath it says that it will not be accepting recommendations 5 and 6. What was so outrageous about recommendations 5 and 6 that the government was in such a hurry to make sure that everyone knew it would not accept these recommendations of the Law Reform Commission? It would be interesting to know. I certainly have my own view. As I said, I agree with the McGowan government that the recording of a person's sex and gender on a birth certificate is important. I am therefore pleased that it has sent those Law Reform Commission recommendations on an express rocket out of the state and that it will not it be implementing them. But I would like to know why the government says that it will not be accepting those recommendations. The Law Reform Commission says recommendations 5 and 6 are very important but the McGowan government says, "No, they are not important; we will not be accepting them." However, having invested the commission's time and money in doing the report, I think the government owes it to the community to articulate why it will not accept recommendations 5 and 6.

What other recommendations will the government not accept? Remember, I said that the Leader of the House tabled this report on 6 December last year. It has been a long time since 6 December. What has the government been doing over the summer recess? It has had more than two months now to consider the Law Reform Commission's report, so what other recommendations will the government oppose and what other recommendations will it accept? It cannot take too long to think about all those things because, remember, within an instant, it was happy to say it would not accept recommendations 5 and 6. That was contemplated very speedily by the government and a point on which I have congratulated it already. Nevertheless, what is the government's position regarding the remainder of the recommendations? In particular, I note why this is so relevant to this particular debate. If members take a moment to familiarise themselves with the recommendations of the Law Reform Commission that the Leader of the House tabled on 6 December last year, they will note that recommendation 10 states —

> The *Gender Reassignment Act 2000* (WA) and *Gender Reassignment Regulations 2001* (WA) be repealed.

The Law Reform Commission says that the act that the government wants us to amend should be repealed. The question is: why are we doing this? The government cannot have it both ways. Either it thinks that the Gender Reassignment Act is an important piece of legislation for the Western Australian community and therefore we need to amend it—we just heard Hon Alison Xamon's passionate speech about the importance of changing this piece of legislation—or it thinks that it should be repealed. The Law Reform Commission says that the whole thing should be repealed, but, interestingly, that was not one of the recommendations that the government speedily ruled out on 6 December last year. It was silent on recommendation 10. It was very speedy about recommendations 5 and 6; it said that that would not happen on its watch. But we still do not know what the government's position is on recommendation 10. I would like the Leader of the House, when replying to the second reading debate or in Committee of the Whole House, to explain to us the government's position on recommendation 10. Does it agree with the Law Reform Commission that the Gender Reassignment Act 2000 and the Gender Reassignment Regulations 2001 should be repealed, because if it does, why are we dealing with this bill today? Why is this the number one priority for 2019? Why is this the first bill that the government has decided to bring on if, in the end, it is going to repeal the legislation anyway? Is this just another incredible waste of time, as we had on multiple occasions last year? I look forward to the government's response about its view on recommendation 10 of the Law Reform Commission. Is the very legislation that we are about to amend going to be made redundant very shortly by the government?

I also draw to members' attention recommendation 7 of the Law Reform Commission. This recommendation of the Law Reform Commission, which can be found on page 7 of the report, states —

> The *Births, Deaths and Marriages Registration Act 1998* (WA) be amended to provide an application process for a person born in Western Australia to apply for a Gender Identity Certificate.

Not all members might be familiar with this, but at present in Western Australia there is no such thing as a gender identity certificate. This is something that the Law Reform Commission is suggesting that we implement and it has recommended to the government that the Births, Deaths and Marriages Registration Act be amended to provide a process for a person born in our state to apply for such a certificate. I am keen to know the government's view on this recommendation because, as members will remember, earlier I referred to WA Labor's manifesto prior to the election. The manifesto said that WA Labor will take steps to ensure that the gender reassignment process is as streamlined, efficient and expedient as possible, with a minimum of bureaucracy, expense and unnecessary complication. Contrast WA Labor's manifesto prior to the election with what the Law Reform Commission has just said. It would like us to establish an additional process. It would like us to have a new process under the Births, Deaths and Marriages Registration Act to allow people to apply for a gender identity certificate. Forgive me, Mr Deputy President, but that seems to me to be the complete opposite of an efficient, streamlined system if people are going to apply to multiple systems. But that is for the government to sort out. That is another recommendation that it has not, as of late last year, speedily ruled out, so presumably it is under active consideration. I would like the government to let us know what is a gender identity certificate, because it seems that there is a competing agenda between WA Labor's manifesto and the recommendations of the Law Reform Commission. I fail to see how a two-tiered system will be more efficient.

I turn to a very interesting publication that I came across during the summer recess. It is a fairly new book by Pat Byrne entitled *Transgender: one shade of grey*. I will read a couple of useful quotes from this publication that has just been put out. For those members who might have access to the publication, I am looking at chapter 3.5 and the heading "Sex Defines Rights, Responsibilities, Privileges, Protections and Access to Services" on page 38, where the following commentary is made —

> Sex, binary male and female, is the foundation of the biological world view of the human person.
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> This has been so obvious that most people take for granted laws, regulations, codes, and economic and cultural frameworks, that define an extensive array of rights, responsibilities, privileges, services and benefits, depending on whether a person is male or female.
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> Theodore Bennett (2014), who broadly supports the transgender world view of the human person, says that the state nevertheless has a major "interest in having children registered as either biological male or female at the time of birth and continuing to identify them through these sex categories for the rest of their lives".
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> Bennett says that a person's sex identification "is still extremely important" for numerous reasons. These include: determining which school a child attends; accessing sex-specific sports, bathrooms, toilets, change rooms, homeless shelters, and school and university dormitories; insurance; employment and placement in sectors such as the military. Sex is important for determining who can enter safe spaces, particularly safe spaces for women against rape; for affirmative action and to counter forms of discrimination based on sex; for national security; for protection against fraud; for medical research; for government planning and provision of services; for accurate monitoring of the sexes in public activities. Identification of biological sex is important for promoting procreation, particularly in relation to marriage.

Earlier in that same publication at chapter 3.4, under the heading "The State's Interest in Sex, Marriage and Family", the following comment is made —

> State and territory births, deaths and marriages registration laws require that all newborn children be issued an accurate birth certificate. It is a legal identity document that forms part of a chain of documents that a person will use over the course of their life to establish their identity, relationships, rights and responsibilities.

It identifies a child's sex, and parental and sibling relationships. This protects a child's right to know their biological identity. It also records their country of origin and confers their citizenship. It protects their right to be raised by their parents, wherever possible. It determines their inheritance rights and is a primary source for knowing family lineage and medical history. Hence, a birth certificate is a cardinal identifier of the human person.

As I said earlier, those quotes are found in a book by Pat Byrne entitled *Transgender: one shade of grey*, for those members who are interested in picking up that publication.

I move now to a couple of other concerns I have. Members will recall me saying earlier that all members will be motivated by compassion to the extent that there is a common view amongst members that there is a problem; and, when there is a divergence of views, how does that problem get addressed? It gets dealt with either by physical interventions—surgeries and the like—or psychological interventions. They are the two options, and people have a different view about which is appropriate. The question that I ask and have wanted to get some more information on is whether there are any risks with one approach over the other. I came across an article from 10 July 2018 entitled "New study finds life-threatening risk in transgender hormone therapy". It concerned me to know that academic research had been done in recent times noting that there were risks with the physical intervention

approach. I heard Hon Alison Xamon decry the alternative approach, which is a view she is quite entitled to hold. However, it is not just a case of people holding different views; one would think it is important that the scientifically, academically and rigorously considered risks be known by members before they signed up to one regime over the other.

The other interesting thing that came across my desk during the summer recess was some statistics provided by the Perth Children's Hospital gender diversity service. These statistics were obtained under freedom of information—interestingly, not by me, but by a member of Parliament in another jurisdiction. The Perth Children's Hospital gender diversity service was founded in July 2015, so less than four years ago. I understand from the statistics that prior to the service being founded in July 2015, some 51 patients were known to the unfunded service in some way and were offered assessment or treatment. Of these, three adolescents were on stage 1 puberty suppression treatment. That was in 2014, prior to the service being founded in July 2015. It is interesting how the numbers have radically escalated over the last few years. In the first proper year of service there was one person receiving puberty blockers. That is known as stage 1. In 2016 that jumped to 14 people, in 2017 it jumped to 28 and in 2018 it jumped to 35. Last year, 35 adolescents were receiving puberty blockers stage 1 through the Perth Children's Hospital gender diversity service. Stage 2 is receiving gender affirming hormone treatment, and there were 36 of them receiving it last year. The numbers have increased. There was one person in 2015, three in 2016, six in 2017 and then the number escalated remarkably to 36 in 2018.

The total number of people receiving treatment last year was 71, which was more than double that of the previous year. Every year since the service has been in place the total number of adolescents receiving treatment has more than doubled. What concerns me is that this is a contested area. As I say, people with goodwill can hold two different views on whether physical or psychological intervention is the appropriate approach, but either way members need to be mindful that industries are being created. It is in the interests of some within the industry to continue to promote these services, but is it in the best interests of the adolescents concerned when we look at the research, the consequences and the risks? The questions I have for the government are: Why has there been such a growth in the numbers of children and adolescent undergoing treatment? What procedures and practices are being used by Perth Children's Hospital gender diversity service to attract, engage with and assess children and adolescents? What information is being provided by Perth Children's Hospital gender diversity service to would-be candidates to programs and their parents? Is an independent, long-term assessment being done of those individuals who undertake these programs?

I have a couple of other areas to cover as I conclude. The opposition, and I, as a private member, do not oppose this legislation, which, in effect, allows one piece of paper to be passed from one government department to the other; that is all it effectively achieves. It seems pointless to oppose that. I remain concerned about the ongoing agenda, given that the government in its own second reading speech said that this is just the beginning. The beginning of what? Where are we going?

This type of thing has consequences in prisons. It is all very good for everyone to straightaway jump on the bandwagon and say that they want to support reassignment, but it starts to have consequences for government when managing these things in prisons. I will go as far back to 2010. I found a very interesting story that I think will interest members. I will quote an article entitled "Sex change killer Maddison Hall to be free as a bird". The article says —

> In Adelaide, Marrion Saunders was waiting for her son Lyn, 28, to come home for the holidays. His car had broken down and he was having to hitchhike from NSW.
>
> Sleep wouldn't come and she was on the phone to a friend at 1am, standing at the open front door for relief from the heat, when the police came. They told her that she had to ring detectives at Broken Hill. It was about her son.
>
> Lyn, the "baby" of the family of three children, had been shot in the back. When that didn't kill him, the shortened shotgun was put in his mouth and the back of his head blown off.
>
> He had been killed only about an hour before the man exercising his horses found his body …
>
> It was 18 months before police would arrest Lyn's killer when the murder featured on the TV show *Australia's Most Wanted.*
>
> An anonymous woman called in to name Noel Crompton Hall, then 26 and living with his wife Sharon in Campbelltown.
>
> Hall, who had given Lyn Saunders a lift before killing him after a row, was jailed for life.
>
> Justice Kep Enderby said there were "no mitigating circumstances."

It was at this point that the focus of the story changed. Noel Crompton Hall decided he was really a female trapped in a male body.

He wanted to become a woman. It was no longer about Lyn Saunders, murder victim, but Maddison Hall's "gender identity disorder".

"The courts stopped treating him like a murderer but as a medical case," Ms Saunders said with disgust.

Remember, Ms Saunders is the mother of the murdered victim —

Hall claimed he belonged in a female jail. In August 1999, the Serious Offenders Management Committee recommended he be moved to the all-woman Mulawa prison.

Although still a man, Hall was on hormone treatment but it did nothing to curb his behaviour as a sexual predator. He was charged with raping his cellmate. Other inmates reported Hall had sexually assaulted them.

Hall was moved back among the men, at Junee jail within three months. Courts have been told he prostituted himself for drugs.

In January 2000, the prison rape charge was dropped because the victim had been released and moved home to New Zealand.

Prisons boss Ron Woodham tried to keep Hall in a male jail but it was only the first of a series of fights that not even the notoriously tough Woodham could win as Hall exploited his legal rights as a prisoner, backed by the publicly-funded Prisoners Legal Service.

He sued the Department of Corrective Services claiming psychological trauma and won a $25,000 out-of-court settlement.

Hall has since sued the prisons department twice claiming discrimination.

When Hall returned to the Supreme Court in November 2001 to have his life sentence redetermined under Truth in Sentencing laws, he appeared as a beefy man, bulked up by pumping iron in prison gyms. His muscles bulged against his regulation green sweatshirt, his face covered by a five o'clock shadow.

The court was told Hall was polite. He had taken up craft work, using recycled materials.

Remember that Marrion Saunders is the mother of the murdered victim —

Marrion Saunders was disgusted and distressed at the psychiatric reports which focused on Hall's female side. Hall claimed to have first seen a doctor about gender problems in 1985 and was given "treatment" — two years before Lyn Saunders was killed.

"Ms Hall's only psychiatric diagnosis is gender identity disorder, trans-sexual type," one forensic psychiatrist wrote. "The successful adoption of female identity and the continuation of treatment with hormones may well reduce her aggressiveness."

Ms Saunders, a physical education teacher, had been seeing a psychiatrist herself. "He taught me how to survive," she said.

Her psychiatrist told her: "Your son's killer was a violent and brutal man. He will continue to be a violent and brutal woman."

Hall's life sentence was cut to 22 years with 16 years and six months non-parole.

He became the poster child for gender reassignment with support from the Department of Community Services-funded Gender Centre. In 2003, Hall had full sex change surgery, funded by the $25,000 payout, which she described 21 days later on the Gender Centre's website.

"While I didn't wake up as Elle McPherson (sic), I did wake up with a feeling of completeness that was lacking in my life previously. I woke up as me, Maddison."

Hall applied for parole as soon as her minimum sentence ran out in January 2006 and the State Parole Authority was about to grant it, despite Hall having been in strict segregation since 2004 due to serious assaults on other prisoners—until Ms Saunders stepped in.

Hall, who appeared via videolink with a blonde bouffant hairdo, had no work or accommodation to go to. Parole was revoked.

> As a registered victim, Ms Saunders was informed about parole hearings and invited to make submissions. Yet, she believes that when she started criticising the authority, attitudes changed. Instead of automatically receiving transcripts of Hall's hearings, she was told they cost $10 a page.
>
> She hasn't opposed parole—just wanted to ensure Hall was properly supervised outside prison walls.
>
> "Hall did a terrible crime and if dreadful criminals' behaviour could be assuaged by the addition of oestrogen, I'm sure it would be prescribed," Ms Saunders said.
>
> She was relieved, when the SPA this week granted Hall parole from April 15, that it was under some of the strictest conditions including 24-hour surveillance via an electronic bracelet.

I ask members to keep in mind that the person concerned here, Noel Crompton Hall, at the time of the murder was 26 years of age and was living with his wife Sharon in Campbelltown. To make it absolutely clear, I am not suggesting for a moment that every person who might be interested in gender reassignment surgery and is married might be the same as this person. That is not the point of the speech and that is the not the point of reading the article. The point is that these types of policy changes by government create consequences and, in this instance, it creates a consequence for the government to manage this prisoner in jail. If the prisoner says that they are now identifying as a female, the government now suddenly has to engage in that and sort out that person's problem in the female or male jail. That is exactly what happened in this instance. This legislation is not going to change that. That is already the case in Western Australia with gender reassignment surgery. That is already a problem for government. My point is that prior to the election, WA Labor said that this is just the beginning, and that this is part of an ongoing agenda. I keep asking the question: where are we going with this?

In my final few minutes, I want to talk about the impact of all this in schools. During the summer recess, an editorial in *The Sunday Times* called on the government to "Stick to respect message". The context of this is that there has been some suggestion that the government is pressing ahead with its so-called Respectful Relationships program in schools and that part of the curriculum is to coach or to teach students that gender is fluid. This is gender theory, which is a highly contested area. That provoked a response by *The Sunday Times*. Its editorial says, amongst other things —

> The Sunday Times firmly believes schools have a role to play in giving children the skills, knowledge and attitudes to engage in respectful relationships.
>
> It's also important for teachers to be equipped to help children who tell them they are exposed to violence at home. And we're all for teaching kids about the dangers of pornography. We believe all of this can happen without politicising classrooms and muddling young brains with gender theory.

Again, government has to make a decision. If it supports gender reassignment and physical intervention, it needs to make that known to the community. If we have a gender theory worldview that says that gender is a spectrum and there are 51 types of gender and so forth, we would support physical intervention. However, if we do not hold that worldview, like *The Sunday Times* does not, we would say, "Hang on a second; where are we going with this gender theory agenda?" If we are like *The Sunday Times*, we say that classrooms are not the appropriate place for it and the government needs to reconsider its Respectful Relationships program in its curriculum. Again, I ask the question: where is the government going? Remember that in the second reading speech of this bill the Leader of the House and the minister in the other place said —

> This bill, however, is only one aspect of the government's broader lesbian, gay, bisexual, transgender, intersex, queer equality agenda, especially with regard to facilitating and empowering people to reassign their correct gender as easily and with as much dignity as possible.

We already know that the statistics from the gender service for adolescents are skyrocketing. Every year it doubles in number. The government wants to promote its so-called Respectful Relationships in schools. We would like to see the curriculum for that. Does it include a gender theory? Really, it is the responsibility of the government to satisfy the community about that. It has remained very tight-lipped. I think it is a secret curriculum. Where are we going with that issue? If the government is saying that this is only one aspect of its broader agenda, why does it not reveal its agenda? The opposition has been consistent over the last 24 months in saying that the government needs to adhere to its so-called gold standard in transparency. If it is saying that this is one aspect of its agenda, it should reveal its agenda. I see no reason, given that it was important enough for the minister to mention it in the second reading speech, that the agenda cannot be released in reply. If it is too long—because the government wishes to promote a massive agenda—and the government has other priorities to deal with, it should table the list of things that it says it wants to do as part of its broader agenda to facilitate and empower people "to reassign their correct gender as easily and with as much dignity as possible". While it is doing that, the government should let us know what it thinks about the Law Reform Commission's recommendations; it has had the summer recess to consider them. Furthermore, the government should explain to us why the numbers are escalating so high in the

adolescent service, as I mentioned earlier. These are the questions that I think the government needs to answer. Although this is a concise bill, the government has said that it is part of a broader agenda, so it needs to answer questions about those matters.

Finally, I am interested to follow on from the line of questioning commenced by Hon Michael Mischin in his contribution to the second reading debate. I note that the government has said that it would like the operative provisions of the Gender Reassignment Amendment Bill 2018 to commence 28 days after it receives royal assent. I wonder what the science is behind 28 days; why not 27, 21 or 14 days? What is so special about 28 days? In the briefing I attended sometime last year, there was talk about the need to allow for regulations to be prepared and for changes to be made to forms, so perhaps some draft regulations or forms might even have been prepared that could be tabled—those types of things. Maybe the government could also give us an update on whether 28 days are still required. Perhaps everything is in order and it could be done after seven days. I do not really much mind whether it is seven, 21 or 28 days or longer, but I think the government needs to explain why it was so specific in choosing 28 days and no other period, and whether it has prepared the forms and regulations that were mentioned in the briefing given last year.

Apart from that, I reiterate that I do not oppose the bill. Following on from the comments made by the shadow Attorney General, it has already been outlined that the opposition will not oppose the legislation, and I look forward to hearing from the Leader of the House some answers to the various questions I have posed.

HON MARTIN ALDRIDGE (Agricultural) [3.41 pm]: I rise as the lead speaker for the Nationals WA to make a brief contribution to debate on the Gender Reassignment Amendment Bill 2018, and to indicate from the outset that my parliamentary colleagues and I will support its passage.

In late 2018, I was one of the co-hosts of Pride in Parliament, along with, from this chamber, Hon Alison Xamon, Hon Stephen Dawson and Hon Michael Mischin. I think I have captured everyone from this house who was a co-host, but I apologise if I have missed anyone. I spoke with many of the guests there that night and they were obviously still celebrating victory in respect of the passage of the same-sex marriage legislation at the federal level, and the vote that preceded the passage of those laws. One thing they reinforced with me that night was that there were still other things that needed to be done, and they raised with me—for the first time, from my perspective—the so-called "forced to divorce" laws, or as some other people described them, the "divorce to marry" laws on the Western Australian statutes book. Of course, those conversations related directly to the bill before us this afternoon.

The bill is very brief but obviously very important to the people within our community upon whom it will impact. The substantive amendment is to delete section 15(3) of the Gender Reassignment Act 2000. For the benefit of members, section 15(3) states —

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

I understand that this subsection was created to avoid conflict between state law and the federal Marriage Act 1961, which, until recently, prohibited same-sex marriage in Australia. Section 15(3) was intended to avoid a situation in which a partner in a heterosexual marriage sought gender reassignment under state law. This, if granted, would have resulted in two people of the same sex being married, which, until recently, was not permissible under federal law.

The minister's second reading speech outlined the dilemma faced by people in these circumstances: whether to end their marriage in order to legally change their gender, or to maintain their marriage without legal recognition of their reassigned gender. That situation was well outlined in the second reading speech and led to the law's characterisation as the "forced to divorce" law.

In preparation for speaking to this bill today, I had a look at the Gender Reassignment Board of Western Australia's annual report for 2016–17. I have never before had cause to have a look at that annual report. It is very brief—some three pages long—but it outlines some key statistics for applications. In 2016–17, some 33 applications were lodged with the Gender Reassignment Board, and three were carried over from 2015–16. It therefore could be argued that there were 36 applications either received or dealt with in 2016–17. Of those, 29 were approved without appeal and seven were pending, so we are not talking about a great number who are affected, but we should keep in mind that those people who had made the decision to maintain their marriage and therefore not seek gender reassignment, would not appear in these statistics.

It was interesting to read a section, at the bottom of page 3 of the report, about legislative change. It states —

> During the previous two reporting periods draft amendments to the *Gender Reassignment Act 2000* were before Parliament. The impact of these amendments if proclaimed will be to abolish the Board and have

> all matters under the Act dealt with by the State Administrative Tribunal in its original jurisdiction. The draft amendments remain before Parliament at the time of preparing this report.

That was something that the Gender Reassignment Board reported on in both its 2015–16 and 2016–17 annual reports.

I went back to have a look at the introduction of bills in the last Parliament and, indeed, the Gender Reassignment Amendment Bill 2015 was introduced into the Legislative Council on 18 March 2015, but did not progress before the cessation of that term of Parliament. In effect, that bill was to amend the Gender Reassignment Act 2000 to abolish the Gender Reassignment Board of Western Australia and confer on the State Administrative Tribunal jurisdiction to make recognition orders and to amend the Constitution Acts Amendment Act 1899 and the Equal Opportunity Act 1984 as a consequence.

I read the second reading speech for the 2015 bill, which, I reiterate, did not pass both houses of Parliament before the 2017 election. I refer to the rationale behind the proposal that was outlined in the second reading speech. It states —

> First, one of the principal aims in establishing the State Administrative Tribunal was to reduce the number of administrative decision-making bodies in Western Australia. It would therefore make sense that decisions associated with gender reassignment also be determined by this tribunal. Second, the determination of gender reassignment applications would sit comfortably within the human rights work undertaken by the State Administrative Tribunal. Third, the number of jurisdictions dealing with gender reassignment matters through reviews and appeals would reduce, thereby simplifying the process and reducing the cost to the community. Fourth, as the board utilises the facilities and resources of the State Administrative Tribunal, this move would have a negligible impact upon applicants and current operations. Fifth, the board has a very low caseload making it difficult to justify its existence as a stand-alone entity.

As I said, the 2015 vintage bill did not progress before the 2017 general election. It is interesting that it is somewhat related to the act that we are amending through the Gender Reassignment Amendment Bill 2018. I would be interested if the Leader of the House, in her reply, could offer anything about why the government did not pursue a similar approach to that taken by the former government on the Gender Reassignment Board. Is it something that the new government did not agree with, did not consider or perhaps will consider as part of another process down the track?

Some comments were made during today's second reading debate—it was also mentioned in the second reading speech delivered by the Leader of the House—about the referral made to the Law Reform Commission by the Attorney General, which resulted in the report on Project 108, which was provided to the government in November 2018. That report further examined inconsistencies between state and federal law relating to the recognition of a person's change of sex or intersex status. Obviously, some members referred to that Law Reform Commission report in their contributions, as it relates to the matter before us today. I have not had the opportunity to fully consider that report, but I understand that the government will consider it and perhaps bring further legislative reforms to the Parliament in due course.

Although the bill is relatively brief in nature, I am sure that the substance in its few short clauses will have a positive impact on the lives of many in our community who are faced with either having to divorce to change their gender and then remarrying, or maintaining their marriage whilst being unable to amend their gender under the Gender Reassignment Act.

With those few words, I reiterate that the Nationals support the bill. I look forward to the response of the Leader of the House.

HON SUE ELLERY (South Metropolitan — Leader of the House) [3.52 pm] — in reply: I thank members for their contribution to the debate on the Gender Reassignment Amendment Bill 2018. Hon Michael Mischin indicated the Liberal Party's support for this legislation. I thank him for that. He raised a question, which was also raised by Hon Nick Goiran, about the commencement date and the reference to 28 days in particular. The reason the amending act will commence operation 28 days after receiving royal assent is, as I think was referred to by both members, to allow time for the government to amend application forms 1 and 2 in schedule 1 of the Gender Reassignment Regulations. These forms currently state that a recognition certificate cannot be issued to a person who is married. The approach was taken to ensure that the act and the regulations come into operation at the same time, without the need for separate proclamation. Twenty-eight days is considered a reasonable amount of time for the administrative processes involved to effect gazettal. I think Hon Nick Goiran asked why the time period was set at 28 days and not 27 or 47. I am advised that 28 days is the default position adopted by parliamentary counsel when drafting legislation.

I thank other members who indicated their support for the legislation and who raised a range of issues, some of which are generally related as they fall within the same policy area but are not directly related to the detail of the bill that is before us. With respect to the comments made by Hon Nick Goiran, in essence—I am paraphrasing him—his prime question was: where are we going with all of this and what are the next steps that will be taken by the government? When I tabled the Law Reform Commission report on Project 108, which has been referred to a couple of times, I think I advised the house that the government was still considering the bulk of that report. That remains the case. We made it clear that we would not be adopting recommendations 5 and 6 of that report. I will explain why in a moment, to answer one of the other questions asked by Hon Nick Goiran. Although I appreciate his particular interest in this area, I am not in a position to provide further advice on the next steps, if any, that the government will take, because those matters are still being considered by government. The direction and policy agenda that we take next is not yet determined, so I am not in a position to provide the house with any more information.

Hon Nick Goiran referred to recommendations 7 and 10. I reiterate that the whole of the rest of the report, except for recommendations 5 and 6, is still before government and under consideration, so I am not able to add any further information to that.

The honourable member also asked a question about schools and respectful relationships, referring to an article in *The Sunday Times*. I am happy to advise the member that no curriculum changes have been made. Victoria adopted a particular model when it came to respectful relationships. Western Australia is not adopting the Victorian model. We are not changing the curriculum. We will develop a respectful relationships program that meets Western Australia's needs. The path that we have chosen to take—we have already announced that we will be doing it as a pilot program—involves training teachers. We will engage highly respected non-government organisations to develop a training program for teachers on how to incorporate discussions about family and domestic violence within the existing curriculum. We are not adopting the Victorian model, which was a mandated curriculum across all of its schools. We do not follow everything that Victoria does; we want to develop what is appropriate for Western Australia.

Hon Martin Aldridge asked whether the government was intending to act on the policy shift that was reflected in the 2015 bills that were not proceeded with. Again, I can advise that the consideration of whether to repeal this particular act is included in the report on Project 108. That is still before government. We have not made any decision about that. I was going to give him a bit more information about why the government did not accept recommendations 5 and 6. I remind the house that the Law Reform Commission's proposed model in recommendation 5 removes the "sex" field from the birth and death certificates and, in recommendation 6, expressly prohibits the recording of sex or gender on birth certificates under the Births, Deaths and Marriages Registration Act 1998 and the relevant regulations. The language in the report was that the recommendation to remove sex from birth certificates is intended to —

> … reduce the likelihood of trans people being accidentally 'outed' and it should reduce the pressure on the parents of intersex children to assign a sex to their child at a time when there can be no medical certainty that the assignment is correct.

The government did not want to go down that path. The final report does not estimate how common such privacy breaches are or contain any specific examples of a person being outed after submitting their birth certificate to a government or private organisation. The commission appears to have based its recommendation to remove sex from birth certificates on the premise that the move would have no impact on the wider community, stating —

> … that the law should not restrict the actions of an individual where such actions do not impact on the broader community.

We took the view as a government that some parents—indeed, most—place great importance on recording the sex of their baby on their birth certificate and, in the government's view, for these reasons Western Australia should retain the ability to identify sex on birth certificates.

With those few comments, again, I thank everyone across the chamber who has indicated their support for the legislation before us and I commend the bill to the house.

Division

Question put and a division taken, the Acting President (Hon Adele Farina) casting her vote with the ayes, with the following result —

Ayes (27)

Hon Martin Aldridge	Hon Peter Collier	Hon Colin Holt	Hon Matthew Swinbourn
Hon Ken Baston	Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Dr Sally Talbot
Hon Jacqui Boydell	Hon Sue Ellery	Hon Rick Mazza	Hon Dr Steve Thomas
Hon Robin Chapple	Hon Diane Evers	Hon Michael Mischin	Hon Darren West
Hon Jim Chown	Hon Donna Faragher	Hon Simon O'Brien	Hon Alison Xamon
Hon Tim Clifford	Hon Adele Farina	Hon Martin Pritchard	Hon Pierre Yang *(Teller)*
Hon Alanna Clohesy	Hon Laurie Graham	Hon Samantha Rowe	

Noes (3)

Hon Robin Scott	Hon Charles Smith	Hon Colin Tincknell *(Teller)*

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: From the briefing I attended on this matter, I understood that Western Australia had received an exemption by the commonwealth, which was to expire on 9 December 2018. Could the minister clarify the nature of that exemption and what has been the case since 9 December, if that is the correct date?

Hon SUE ELLERY: The consequential amendments that were made to the commonwealth Sex Discrimination Act by the Marriage Amendment (Definition and Religious Freedoms) Act 2017 removed the statutory exemption in section 40(5) of that act to expressly permit states and territories to refuse to issue or alter a person's birth record of sex on the basis that they are married. The effective date for the removal of that exemption was 9 December 2018. Section 40(5) of the Sex Discrimination Act has been repealed. It is likely that section 15(3) of the Gender Reassignment Act is, therefore, inconsistent with the Sex Discrimination Act and, to the extent of any inconsistency, is invalid as per section 109 of the Constitution. The Attorney General introduced the bill that is before the house to cure any potential inconsistencies.

Hon NICK GOIRAN: The minister mentioned that it is "likely" that section 15(3) of our legislation is inconsistent. Is it not definite that it is inconsistent; is it merely likely?

Hon SUE ELLERY: The member would understand how these things work. We have had discussions before in this place about the relationship between state and commonwealth legislation as a consequence of the Constitution. The advice to use the word "likely" was because, based on history, we expect that it is likely but, of course, the matter has not been tested before a court. We expect, if it were tested, that it would be found wanting, but a court has not determined that.

Hon NICK GOIRAN: Upon whose advice did the government decide that it is likely that the legislation is inconsistent?

Hon SUE ELLERY: The State Solicitor.

Hon NICK GOIRAN: The State Solicitor provided that advice. Was that the State Solicitor or someone from the State Solicitor's Office?

Hon SUE ELLERY: The State Solicitor's Office.

Hon NICK GOIRAN: The minister may not have this information at her disposal, but does she know who in the State Solicitor's Office provided the advice?

Hon SUE ELLERY: No, I do not. I am not sure I would reveal that in any event because the person is a public servant, but it comes from the office on behalf of the office.

Hon NICK GOIRAN: I am interested whenever the State Solicitor's Office says something is inconsistent. The minister might remember that once upon a time when she was on this side of the chamber, there was a piece of legislation to deal with Bell Resources and the government was also told at the time, "No, it will be fine, there will be no inconsistencies", and lo and behold there was a challenge in the High Court. I therefore get a little nervous when I hear that the State Solicitor's Office is telling us there may be some inconsistency. I wonder whether the minister is in a position to table the advice, a precis of the advice or any briefing notes that the government might have obtained that set out a summary of the issues that the State Solicitor's Office considered in determining that it is likely to be inconsistent.

Hon SUE ELLERY: No, I am not. That is not—dare I use the word—inconsistent with the position generally taken by government.

Hon NICK GOIRAN: I know why the government does not as a matter of course table legal advice. It is because, of course, it would not want to reveal its cards on the gambling table before the High Court in the event of a challenge. But this situation is a little different because there will be no challenge because the government is changing the legislation to ensure that there can be no challenge. This situation might be a little different and the advice may be released. I appreciate that this is not the minister's immediate portfolio. Is this something she could have a conversation with the Attorney General about to see whether we can have the advice tabled, given he has taken the steps to obliterate the possibility of a challenge?

Hon SUE ELLERY: I am happy to have a conversation. Because I would not want to mislead the member, I am fairly confident what the outcome of that conversation will be, and I suspect his response would be, "No; as is the government's wont, we will not release it." But I am happy to raise it with him.

Hon MICHAEL MISCHIN: On that point, I get a little confused about when the Attorney General sees fit to table advice. One of the bills we are yet to deal with on today's notice paper is the Corruption, Crime and Misconduct Amendment Bill 2017. In respect of that, the Attorney General was quite happy to table legal advice from the Solicitor-General to reinforce his submission that the legislation he had drafted would preserve parliamentary prerogatives and privileges. He was content to table that in the other place and have it inform the basis of a second reading speech on that bill. On other occasions, he has been quite happy to come out in front of the media and rubbish ideas put forward by the opposition on the basis he has received legal advice one way or another. However, in this case, when a potential problem has been identified and this legislation will fix the problem, whether it exists or not, it seems that he does not want to table the advice. It would be helpful if it was not merely arbitrary and whimsical or politically advantageous, but was truly a principle of the Attorney General to be transparent, open and cooperative to assist Parliament and at least tell us what criteria he uses in deciding these things. I accept that each one has to be dealt with on a case-by-case basis but, surely, he must adopt some touchstone in making these decisions. It would be helpful if in conversation he is prepared to reveal it to the minister and hence to the house so we know what to expect. There have been a number of cases in which a number of quite important issues could have been resolved if the propositions put forward by the Attorney General and the government could have been supported by legal opinion, legal advice or some other corroboration of that point of view. It seems to me that he likes to hide behind legal professional privilege from time to time more generally, but then is prepared to trot things out when it suits his political purposes. If the minister would be good enough, as part of that conversation, to have him identify just how his mind works on these areas and if it does—I presume it does—in a rational way, it would be helpful to know so we can predict when it is worthwhile our asking these questions or not.

[Interruption from the gallery.]

Hon SUE ELLERY: I think there were fairies at the bottom of the garden or something!

In my conversation with the Attorney General, I am happy to draw to his attention the comments the member has made.

Hon NICK GOIRAN: We know that the government has consulted with the State Solicitor's Office on this legislation. Did it consult with anyone else; and, if so, who was it?

Hon SUE ELLERY: The Equal Opportunity Commission, the Gender Reassignment Board and the State Solicitor's Office.

Hon NICK GOIRAN: Was the consultation with the Equal Opportunity Commission or the Gender Reassignment Board in writing; and, if so, can that consultation be tabled?

Hon SUE ELLERY: I have the responses of the Equal Opportunity Commission and the Gender Reassignment Board, but they are in a thread of emails that encompass other matters that are before government, so I am not prepared to table the whole thread. I can advise the member that on 18 May 2018 Magistrate Patrick Hogan, president of the Gender Reassignment Board, sent an email to Kathleen Halden, who is at the State Administrative Tribunal and oversees the Gender Reassignment Board, and advised in the following terms —

> Hello Kathy
>
> Yes, I am supportive, and the Board is supportive, of the changes to the Regulations and the Bill
>
> Thanks
>
> Patrick

In respect of the Equal Opportunity Commission, I can refer to an email sent on 9 May 2018 by Allan Macdonald, senior legal officer at the Equal Opportunity Commission, to Daniel Goncalves, who happens to be sitting next to me. That email includes the following —

> Regarding the GRA amendment Bill and proposed changes to the regulations, the A/Commissioner supports the amendments.

> Regards
>
> **Allan Macdonald**

Hon NICK GOIRAN: We note that the government has consulted with the State Solicitor's Office, and the minister is going to talk to the Attorney General about that. We know that the government has consulted with the Equal Opportunity Commission and the Gender Reassignment Board, and she has indicated why she cannot table the documents but she has read out the pertinent information. Interestingly, she revealed that the State Administrative Tribunal had been involved in some fashion. Was the State Administrative Tribunal also consulted?

Hon SUE ELLERY: I will explain the relationship. The Gender Reassignment Board is independent of SAT. SAT provides administrative support, not policy support. The response was in the name of the president of the board. It came through SAT as part of the administrative arrangements.

Hon NICK GOIRAN: In effect, in this instance, SAT was like the postman.

Hon Sue Ellery: Correct—or post-person.

Hon NICK GOIRAN: Post-person; sorry. Speaking of the Gender Reassignment Board, which the government has consulted through the post-person, can the minister tell me whether the government asked the Gender Reassignment Board how many more applications it would expect to receive now that the criteria of individuals who can make applications will be broadened? We are giving the Gender Reassignment Board some extra work to do. How much extra work do we expect it to have?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: No—the government did not ask?

Hon Sue Ellery: Correct. Did you think I was saying, "No, I would not answer the question"?

Hon NICK GOIRAN: No; I did not know what that was about. The Gender Reassignment Board will have more work to do. It seems odd that there would be no consultation with it about resources. Perhaps the minister could indicate to the chamber how many applications the board expects to receive on an annual basis—maybe for the current calendar year or financial year.

Hon SUE ELLERY: Some information is published in the annual report. The annual reports for 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18 show that 109 certificates were issued in the last five years. I am also advised that the annual report indicates that for the five-year period between 2013 and the year ending June 2018, the board refused two gender reassignment applications. If two is added to 109, that is the best information I am able to provide the member, and that is published in the respective annual reports.

Hon NICK GOIRAN: I have a copy of the Gender Reassignment Board's 2017–18 annual report, which I hope the minister also has, or someone might be able to bring it to her attention. At page 3 of that report, it states —

> From 1 July 2017 to 30 June 2018 —

That is the most recent financial year —

> the Board received 34 new applications, carried 7 applications over from the previous reporting period and issued 32 recognition certificates, (of which 6 certificates were issued on applications received in the previous reporting period).

Interestingly, if someone has that report and is having a look at it—no-one has it?

Hon Sue Ellery: No, we do not.

Hon NICK GOIRAN: That is unfortunate, because if the minister had it, she would see that there is an error. It says that 34 applications were lodged in 2016–17, but of course that should refer to applications lodged in 2017–18, not the previous year. Maybe somebody—a post-person or other administrative officer—can assist the Gender Reassignment Board by correcting the annual report that was tabled in Parliament last year.

That is not really the most important point at this particular juncture. Right at the bottom of that page is a paragraph headed "Legislative change". I seek the minister's clarification about this for the chamber. It reads —

> During the previous three reporting periods draft amendments to the *Gender Reassignment Act 2000* were before Parliament. The impact of these amendments if proclaimed will be to abolish the Board and have all matters under the Act dealt with by the State Administrative Tribunal in its original jurisdiction. The draft amendments remain before Parliament at the time of preparing this report.

This report was prepared last year, it was signed off by Patrick Hogan, the president of the board, on 11 August 2018, and it is addressed to Hon John Quigley, MLA, in his capacity as the Attorney General. What is

the piece of legislation that the board has referred to in its annual report that, if proclaimed, will abolish the board? It is not apparent to me that it is this legislation before us, so what is this legislation that has been referred to?

Hon SUE ELLERY: I suspect it is that 2015 legislation, but I cannot tell the member that. I do not have the annual report here with me and it does not really go to the heart of the legislation before us now. However, the member may have discovered an error in the annual report and I am happy to raise it and see whether it needs to be addressed.

Hon NICK GOIRAN: To be clear, this bill does not abolish the board, so the board will continue to deal with applications and it will not be the State Administrative Tribunal dealing with these applications in its original jurisdiction, notwithstanding what might be in the annual report. The board will receive more applications now as a result of this process but we do not know how many as it is yet to be specified. Will that become apparent through the budget process because the board might need additional staffing? I notice that in the same annual report under "Finance and Administration", it says —

> The board is an autonomous body that is wholly funded …

Committee interrupted, pursuant to standing orders.

[Continued on page 28.]