

Your Ref:
Our Ref: 787

29 November 2018

To: The Honourable Members of the Legislative Council

Re: Justice and Related Legislation (Marriage Amendments) Bill 2018

I am writing to contribute to consideration of the Justice and Related Legislation (Marriage Amendments) Bill 2018 (the Bill). Consistent with my functions as Commissioner for Children and Young People, my focus is on the potential impact of the Bill's provisions on the rights and wellbeing of children and young people in Tasmania.

Despite the relevance of this Bill to children and young people in Tasmania, I note that neither I nor former Interim Commissioner Clements have been briefed or asked to comment on the Government Bill or the Bill as amended.

Background

The office of Commissioner for Children and Young People is established under the *Commissioner for Children and Young People Act 2016* (CCYP Act). The Commissioner's functions, which are set out in section 8 of the CCYP Act, include:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally; and
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives.

In performing these and other functions under the CCYP Act, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and



- observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (UNCRC).¹

Further, I must give special regard to the needs of children and young people who are vulnerable or disadvantaged.²

Comments on amendments to the *Births, Deaths and Marriages Registration Act 1999*

The Bill outlines a framework for amendments to the *Births, Deaths and Marriages Registration Act 1999* (BDMR Act) in relation to notification and registration of birth, change of name, entry onto or change or removal of sex or gender from the Register, and to the type of information considered to be registrable information.

Amendments agreed in the House of Assembly aim to remove discrimination against persons of diverse sexual orientations and gender identities, and better promote their rights, including their rights to equality before the law, privacy and non-discrimination. These amendments apply to children and young people in Tasmania.

As is outlined in the **attached** copy of former Commissioner Morrissey's April 2016 submission to Equal Opportunity Tasmania's Options Paper regarding amendments to the BDMR Act, children and young people have the same human rights as adults but require additional protections because of their vulnerability due to their age and stage of development.

The proposed amendments engage a number of rights including the right of children and young people to be registered at birth, to equality before the law, to non-discrimination, freedom of expression, and the right to survival and development. The amendments also seek to acknowledge the fundamental importance of children and young people being provided with the opportunity to express a view on matters affecting them and for those views to be respected.

Whilst I'm generally supportive of the intent of this Bill which aims to promote and protect the enjoyment by children and young people in Tasmania of these and other fundamental human rights and freedoms, I am raising questions about the practical operability of the Bill and the subsequent impacts on children and young people.

Proposals for improvements to our laws should not be unnecessarily complex or result in unintended adverse consequences for children and young people in Tasmania. With this premise in mind, in my opinion, the following areas of the Bill require clarification:

- a) The Bill includes provisions which introduce the concept of "gender information". It would appear that, following the commencement of the amendments, gender information will not be recorded on the Register although this information may be included in a separate record (section 50 of the BDMR Act), but only if its

¹ Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas)

² Section 3(2)(b) of the *Commissioner for Children and Young People Act 2016* (Tas)



inclusion is done in accordance with the new section 28A. The inter-relationship between this provision and other provisions which appear to contemplate inclusion of sex or gender information on the Register (for example, new 28C) is confusing.

- b) Provision is made³ for a Magistrate, on application of a parent of a child under 16 years, to approve inclusion of gender information for the child “if satisfied that the change is in accordance with the requirements under section 28B(a)”. Section 28B(a) provides that gender information of a person under 16 years of age must not be included unless “the gender to be included is consistent with the will and preferences of the person”. On the face of it, this suggests that a Magistrate cannot approve inclusion of gender information for a child who is incapable of expressing their will or preference (for example, a newborn or infant).
- c) For children for whom sex or gender is already registered, an application may be made to change or remove the registered sex or gender. An application to change or delete the sex or gender information of a person may be made under new sections 28C(1),(2) and (3):
 - i. Under the proposed 28C(2), the parent⁴ of a person under 16 years may apply for a registration of a change to the child’s sex or gender to record current gender, or removal of sex or gender information from the Register. New section 28D provides that the application is to be accompanied by a gender affirmation declaration where the child is able to provide one.
 - ii. Proposed section 28C(3) also deals with the application of one parent for registration of a change or deletion of the sex or gender information of a child under 16 years. Where the application is made by one parent, provision is made for approval of the proposed change by a Magistrate. Such approval may only occur if the Magistrate is satisfied that the change is in accordance with the child or young persons’ will and preferences.
 - iii. Proposed section 28C(1) allows a young person aged 16 years and above, whose birth is entered in the Register, and who has made a gender affirmation, to apply to the Registrar for a change of that young person’s registered sex or gender to record current gender, or removal of sex or gender information.

New section 28F provides that if the sex or gender information of a person is changed in respect to any person, then, unless requested by the applicant, a birth certificate issued by the Registrar is not to show any sex or gender information.

My preliminary view is that, in relation to applications to change or remove sex or gender information relating to a child or young person under 18 years of age, additional requirements to ensure that the interests of a child or young person aged less than 18 years are promoted and protected would significantly strengthen the Bill.

³ Clause 21 – new section 28A(4)

⁴ I am not entirely sure whether this provision is intended to apply to parents.



Examples of additional requirements exist in the Australian Capital Territory and in South Australia. In both jurisdictions there is a requirement that a child or young person under the age of 18 years has undertaken appropriate clinical treatment.

I understand concerns have been expressed, particularly by transgender Tasmanians about clinical requirements and I note the Bill currently specifically prevents the Registrar from requiring any form of medical certificate or other medical documentation relating to sex or gender. I wish to make it very clear that I do not agree with the current requirement to undertake sex reassignment surgery as a precondition to an application to amend sex or gender information collected under the BDMR Act.

However, in my opinion, consideration should be given to including a requirement in the Bill that a child or young person undergo appropriate counselling as a precondition to an application to remove or change sex or gender information collected under the BDMR Act, and that evidence of this could be required through an additional statutory declaration by an appropriately trained person. This in turn would help inform decision makers as to the will and preferences of a child or young person.

Furthermore, we must maintain a focus on the fundamental right of children and young people to have their best interests assessed and taken into account as a primary consideration in all actions and decisions that concern them.⁵ I am therefore concerned that the Bill removes consideration of “best interests” in applications to change a child’s name (see section 24 of the BDMR Act) and makes no reference to “best interests” in the context of other decisions under new Part 4A.

If the Bill as amended does not receive the support of the Legislative Council, it is, in my opinion, imperative that any existing requirement in the BDMR Act for a child or young person to undergo sex reassignment surgery as a precondition to change of their registered sex be removed. Instead, safeguards of the type I propose above should be put in place to ensure that children and young people are aware of and understand the potential implications of their decision, and to ensure that their rights and wellbeing are protected and promoted.

The position I have outlined is generally consistent with recommendations made by the Australian Human Rights Commission in its 2009 Report *The Concluding Paper of the Sex and Gender Diversity Project* (which highlights the special needs of needs of children and young people).⁶

I also commend to Honourable Members the ACT Human Rights Commission Human Rights Advice on the *Births, Deaths and Marriages Registration Act 1997* (ACT).⁷

⁵ General Comment No 14 (2013) on Article 3 (1) of the Convention on the Rights of the Child; see also section 3 of the CCYP Act.

⁶ <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/sex-files-legal-recognition-sex>
Accessed 28 November 2018

⁷ <http://hrc.act.gov.au/res/Advice%20on%20births%20deaths%20and%20marriages%20provisions%20Public%20Copy.pdf>
Accessed 28 November 2018.



I acknowledge the more recent publication and the relevance of the *Yogyakarta Principles plus 10*, however I note that they do not explicitly discuss the special protections required by children and young people due to their age and vulnerability and the need to ensure that their best interests are protected and promoted.

I trust that the above information will assist you with your consideration of this Bill.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc Minister for Human Services
cc Attorney-General and Minister for Justice

Attachment:

Former Commissioner Morrissey's April 2016 submission to Equal Opportunity Tasmania's Options Paper regarding amendments to the *Birth, Deaths and Marriages Registration Act 1999*

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11 April 2016

Dear Ms Wagner

**Re: Legal Recognition of sex and gender diversity in Tasmania:
Options for amendment to the *Births, Deaths and Marriages Registration Act 1999***

Thank you for the opportunity to comment on the above Options Paper, which considers options for amendment of the *Births, Deaths and Marriages Registration Act 1999* (the BDMR Act) from the perspective of the legal recognition of sex and gender diversity in Tasmania.

The Options Paper describes the mechanisms which currently exist under the BDMR Act for recognition of sex and gender diversity; I will not therefore repeat that information in this submission. I note the Options Paper can be accessed electronically from Equal Opportunity Tasmania's website [here](#).

Preliminary matters

As Commissioner for Children, my role is to promote the wellbeing of all children and young people¹ in Tasmania, taking particular account of the framework of rights set out in the United Nations *Convention on the Rights of the Child* (the CRC). Consequently, this submission considers the matters raised in the Options Paper from the perspective of the impact or potential impact on children and young people in Tasmania.

Further information about my specific functions and the way in which I perform these functions is available on my website at childcomm.tas.gov.au/about/

¹ The term "children and young people" in this submission refers to those aged below the age of 18 years.

Child Rights

The CRC recognises that children and young people have the same human rights as adults, but that they require additional protections because of their vulnerability due to their age.

The CRC includes a number of articles of particular relevance to children and young people who are sex and gender diverse, including the four 'general principles' under the CRC which are considered fundamental to implementation of all other rights:

- the right to non-discrimination (article 2)
- the child's best interests as a primary consideration (article 3)
- the right to life, survival and development (article 6)
- the right to express their views and to have those views respected (article 12)

Other relevant rights under the CRC include:

- the right to care and protection (article 3.2)
- birth registration (article 7)
- preservation of identity (article 8)
- the right to freedom of expression (article 13)
- the right to freedom of thought (article 14)
- the right to privacy (article 16)
- the right to protection from physical or mental violence, injury, abuse or exploitation (article 19)
- the right to health (article 24)

It is important to emphasise that the CRC also recognises, the rights, responsibilities and duties of parents to provide, *in a manner consistent with the evolving capacities of the child*, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention (article 5). This approach is consistent with the approach taken to children's capacity to consent to medical treatment adopted by the High Court in Marion's Case².

Additionally, the *International Covenant on Civil and Political Rights* (ICCPR) includes a number of articles which are relevant to sex and gender diverse children and young people, including the right to recognition before the law (article 16) and the right to freedom from arbitrary interference with privacy and/or family life (article 17).

The *Yogyakarta Principles*³, developed and adopted by a leading international group of rights experts in 2007, provide guidance on how human rights should be interpreted and applied in the context of sex and gender diversity. The principles outline the right to equality and non-discrimination in relation to sex and gender diverse people as follows:

Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom...⁴

² *Department of Health and Community Services v JWB and SMB (Marion's Case)* [1992] HCA 15; (1992) 175 CLR 218

³ http://www.yogyakartaprinciples.org/principles_en.htm

⁴ Principle 3.

According to the World Professional Association for Transgender Health⁵

*Genital reconstruction is not required for social gender recognition, and such surgery should not be a prerequisite for document or record changes; the Real Life Experience component of the transition process is crucial to psychological adjustment, and is usually completed prior to any genital reconstruction, when appropriate for the patient, according to the WPATH Standards of Care. Changes to documentation are important aids to social functioning, and are a necessary component of the pre-surgical process; **delay of document changes may have a deleterious impact on a patient's social integration and personal safety** [emphasis added].*

For children and young people who identify as a gender that is not typically associated with their registered sex at birth, it is highly unlikely that they would undergo sex reassignment surgery before they reach adulthood⁶; however it is well understood that recognition of a social gender identity is fundamental, and that changing the record of sex and/or name to reflect that identity is important.

Terminology

For ease of reference I have adopted the definitions provided in the Glossary at page 32-33 of the Options Paper.

Issues /Options discussed

Despite a number of areas of progress to extend protections for transgender and intersex people in recent years - eg amendments to the *Anti-Discrimination Act 1998 (Tas)* and Commonwealth guidelines on the recognition of sex and gender⁷ - there continue to be a number of areas which remain to be addressed. Legal recognition of sex and gender diversity is one such area. The current framework under the *BDMR Act* means that children and young people who are sex or gender diverse may identify and be living as a gender which is inconsistent with the registered sex and name which appears on their birth certificate.

At the outset, I emphasise that in order to ensure consistency and predictability for transgender and intersex children and young people and their families it is preferable that there be clarification at a national level in relation to legal recognition of sex and gender diversity. In the absence of consensus on a national approach, reform at a state level is in my view necessary.

⁵ WPATH, *Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage for Transgender and Transsexual People Worldwide*, Accessed 4 April 2016 at http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care.%20V7%20Full%20Book.pdf

⁶ Although I do acknowledge that other stages of physical intervention may occur in childhood or adolescence – refer to the line of Family Court cases referred to in Hon. Justice Strickland, *To Treat Or Not To Treat: Legal Responses to Transgender Young People Revisited*, presented at the Association of Family and Conciliation Courts Australian Chapter Conference, Sydney, Australia, 14-15 August 2015, accessed 4 April 2016 at http://www.familycourt.gov.au/wps/wcm/connect/06d0072c-de78-4149-9877-f58183301425/Legal+Responses+to+Transgender+Young+People+Revisited.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=06d0072c-de78-4149-9877-f58183301425 .

⁷<https://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF>

I am aware of and acknowledge the complexity of the issues considered and the possible legal implications associated with the approach I propose below; these implications require careful consideration and I recommend that expert legal advice be obtained.

1. REGISTERING A CHILD'S CHANGE OF SEX

Part 4A of the *BDMR Act* sets out a framework for applying to register a change of sex in Tasmania. Section 28A(2) enables the parents of a child whose birth is registered in the state to apply to register a change of sex for the child. The application may be made by one parent where there is no other surviving parent or the applicant is the sole parent registered for the child. In certain circumstances, the child's guardian may make the application.

Section 28B provides that an application under section 28A is to be accompanied by:

a statutory declaration from each of 2 medical practitioners verifying that the person who is the subject of the application has undergone sexual reassignment surgery.

"Sexual reassignment surgery" is defined to mean :

a surgical procedure involving the alteration of a person's reproductive organs carried out –

(a) for the purpose of assisting the person to be considered to be a member of the opposite sex; or

(b) to correct or eliminate ambiguities relating to the sex of the person;

a) Should a child or young person be able to apply to register a change of sex?

There is no provision which enables a child or young person to make such an application; nor is there any requirement for the child or young person to consent to an application to register a change of sex (as is the situation in relation to an application to change a child's name where the child is 12 years and above).

Article 12 of the CRC provides that, "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

At common law, a child's capacity to provide informed consent to medical treatment does not hinge on the age of the child. The majority of the High Court in *Marion's Case* held that 'a minor is capable of giving informed consent when he or she achieves a sufficient understanding and intelligence to enable him or her to fully understand what is proposed'.⁸ This affirmation of the capacity of "mature minors" to make decisions about medical treatment is consistent with the concept of evolving capacities which is incorporated into CRC. In this regard, I note that some jurisdictions in Australia have

⁸ *Marion's Case, op. cit.* See also *Gillick v West Norfolk AHA* (28) [1985] UKHL 7; (1986) AC 112; pp 183-184.

legislation governing the age at which a child is determined to have capacity to consent to medical treatment.

Setting an age at which the ability to make an application to register a change of sex transfers to a child appears to be consistent with international standards, so long as it does not operate in a manner that prejudices those below that age and appropriate safeguards to promote best interests are in place (refer to the discussion regarding prerequisites to an application to register a change of sex below). So, for example, the UN *Committee on the Rights of the Child* encourages the introduction of a fixed age at which the right to consent to medical treatment transfers to the child⁹.

Therefore, in general terms, **I support** the introduction of a process which would enable a mature young person to apply to change their registered sex – perhaps limited to those aged 16 and above – subject to the procedural safeguards I propose in the following section of this submission.

Consistent with article 12 of the CRC, **it is also my view** that younger children, below the age of 16, should nevertheless be provided the opportunity to express their wishes in respect of an application to register a change of sex made on their behalf, unless the Registrar is satisfied that they are not capable of doing so.

I do acknowledge that no other Australian jurisdiction currently permits an application to be made by a child or young person to change their registered sex; rather, that application must be made by a parent (or person with parental responsibility).

b) Pre-requisites to an application to register a change of sex

As previously indicated, it would appear that “sexual reassignment surgery” is a pre-requisite to registering a change of sex. This is a particularly onerous requirement, and one which effectively excludes the possibility of registering a change of sex for children and young people with gender dysphoria (for whom surgery is generally unavailable).

In my opinion, it is inconsistent with the rights of a child to preclude a child who genuinely identifies and is living as a gender not typically associated with their registered sex from legal recognition on the basis they have not undergone sex reassignment surgery. Having regard *inter alia* to the decision of the High Court in *AB v Western Australia* [2011] HCA 42, child rights principles, anti-discrimination law and progress nationally and internationally, the current onerous pre-requisite for sexual reassignment surgery before a change of sex can be registered should be removed. I note also that the Royal Australasian College of Physicians has advocated for removal of the need for genital sex-affirmation surgery to change one's sex¹⁰.

I do believe it is necessary however to include procedural safeguards imposed primarily to ensure that a child's best interests are promoted and protected; these safeguards should apply to applications in relation to children and young people under 18 years of age. Section 24 of the Australian Capital Territory *Births, Deaths and Marriages*

⁹ See the Committee's *General Comment No 12 (2009) on the right of the child to be heard*, (CRC/C/GC/12), p23, para 102.

¹⁰ <https://www.racp.edu.au/docs/default-source/advocacy-library/pa-sl-australian-human-rights-commission-sexual-orientation-gender-identity-and-intersex-redacted.pdf>

Registration Act 1997, provides that the following are prerequisites to any application¹¹ to change the registered sex of a child or young person under 18:

- a) *the parents or person with parental responsibility, believe on reasonable grounds that alteration of the record of the child's sex is in the **best interests of the child**; and*
- b) *the child –*
 - (i) *has received **appropriate clinical treatment** for alteration of the child's sex; or*
 - (ii) *is an intersex person.*

The term “appropriate clinical treatment” is not defined to allow a doctor or psychologist to decide what that threshold means in each case.

Where the application is made by a young person aged 16 and above on their own behalf, the “best interests” criterion above could be satisfied by a statement from that young person or another person who can comment on relevant matters.

Conclusion – Registering a change of sex

I support adoption of a scheme similar to that in place in the ACT, subject to modifications discussed above including my proposal that a young person aged 16 years and above may make an application to register a change of sex in their own right, and where appropriate the wishes of the child be obtained in circumstances where the child's age is such that an application can only be made on their behalf by a parent/parents etc.

2. REGISTERING A CHILD'S CHANGE OF NAME

Section 24 of the BDMR provides as follows:

(1) The parents of a child –

(a) who is domiciled or ordinarily resident in the State; or

(b) whose birth is registered in the State –

may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the child's name.

(2) An application for registration of a change of a child's name may be made by one parent if –

(a) the applicant is the sole parent named in the registration of the child's birth under this Act or any other law; or

(b) there is no other surviving parent of the child; or

¹¹ I note that an application in relation to a child or young person may only be made by the parents of a child or a person with parental responsibility for the child. I have not included in this the requirement to have one's birth registered in the ACT.

(c) a magistrate approves the proposed change of name.

(3) A magistrate may, on application by a child's parent, approve a proposed change of name for the child if satisfied that the change is in the child's best interests.

Each parent of a child aged less than 18 years has parental responsibility for that child. Parental responsibility is defined under the *Family Law Act 1975* to mean all the duties, powers, responsibilities and authority which, by law parents have in relation to children. Parental responsibility is altered only as a consequence of a court order.

Determining a child's name falls squarely within the ambit of parental responsibility¹² and is a matter frequently considered in parenting cases under the *Family Law Act 1975*. While the *registration* of a child's name occurs under state-based schemes, Courts may make orders requiring parties to complete relevant documentation in order to effect a change of name or may prevent the same.

Conclusion – Registering a change of name

In my opinion, and for reasons similar to those expressed above in relation to a mature young person's ability to make their own application to register a change of sex, I propose that, at the very least, a young person aged 16 years and over should be able to make an application to register a change of name in their own right, and where appropriate the wishes of the child be obtained in circumstances where the child's age is such that an application can only be made on their behalf by a parent/parents etc

RECOMMENDATIONS PUT FORWARD FOR CONSIDERATION IN THE OPTIONS PAPER

The Options Paper proposes a number of Recommendations which I set out below. I do not propose responding to each Recommendation at this point (particularly because I am not authorised to comment on matters that affect adults only) although I would be very interested in considering the outcomes of this consultative process.

1. That the requirement for sexual reassignment surgery before a person can register their change of sex under the *Births, Deaths and Marriages Registration Act 1999 (Tas)* be removed.

See my comments above

2. That there be no requirement for surgical, medical or hormonal treatment to change sex classification.

See my comments above

3. That the requirements for an application to the Registrar to record a change of sex be consistent with the approach taken to registering a change of name, including limiting the option of registering a change of sex to once in a 12-month period.

No specific comment at this time, but see my comments generally above

¹² *Chapman v Palmer* (1978) 4 Fam LR 462; FLC 90-510.

4. That section 28A of the *Births, Deaths and Marriages Registration Act 1999* (Tas) be amended by omitting from subsection 1(c) the requirement to not be married.

Agreed

5. That the age at which a person can apply to have a change of sex registered be aligned with the legal principles expounded by the Family Court in *Re: Lucy (Gender Dysphoria)* [2013] FamCA 518 (12 July 2013); *Re: Sam and Terry (Gender Dysphoria)* [2013] FamCA 563 (31 July 2013) and confirmed by the Family Court of Australia – Full Court in *Re: Jamie* [2013] FamCAFC 110 (31 July 2013).

See my comments above

6. That the age at which a person can apply to have a change of name registered be lowered to 16 years of age.

See my comments above

7. Provisions be introduced in the *Births, Deaths and Marriages Registration Act 1999* (Tas) to require a child's informed consent to applications by a parent(s) or legal guardian to register a change of sex of a young person over 12 years of age.

See my comments above

8. In situations where two parents dispute an application to have a change of name or change of sex registered relating to a child over 12 years of age, the law be amended to allow the application of one parent to be accepted as long as it is accompanied by the informed consent of the child to whom the application relates.

No comment at this time

9. That section 15 of the *Births Deaths and Marriages Registration Act 1999* (Tas) be amended to provide discretion to the Registrar to extend the time within which a birth must be registered.

Agreed. An extension of the time within which a birth must be registered would enable the parents of a child born with apparent intersex variations to take comprehensive expert advice, seek assistance and support, and more fully consider the options available.

10. That parents and health practitioners involved with the care of the child for whom it is not possible to provide an immediate sex classification be provided with information and appropriate contacts within the intersex community and others with relevant expertise.

Agreed in principle.

11. That treatment or any intervention primarily undertaken to modify or 'normalise' the visible or apparent sex characteristics of children for psychosocial reasons be classified as 'special medical procedures', and require consent of a Tasmanian board or tribunal such as the Guardianship and Administration Board informed by experts on gender and sex diversity.

This is a complex matter which should be considered separately from the issue of registration.

12. That the Tasmanian Government require all public authorities to review their requirements to collect information regarding sex and gender with the intention of removing this requirement whenever possible.

Agreed in principle, noting that such information should only be collected by a public authority where it is necessary for one or more of its functions or activities.

13. That the Tasmanian Government only collect information about a person's biological sex where there is a legitimate need to do so.

Agreed – see my comment above in response to Recommendation 12.

14. That, where it is considered necessary to know a person's sex or gender, information be collected regarding the person's gender and options be available for a person to identify their gender as other than male or female by the introduction of a 'non-binary' classification category.

Agreed in principle

15. That the classification of sex in the Register of Births, Deaths and Marriages be extended to include a new category referred to as X meaning 'non-binary'.

Agreed in principle

16. That historical data relating to a person's previous sex or gender not be included on corrected or amended birth certificates unless requested by the applicant.

No comment at this time

Conclusion

Thank you for the opportunity to comment on the above.

Given the complexity of the issues arising, and taking account of the potential consequences that could flow from the various amendments proposed, the views I have expressed above are preliminary only at this stage.

I am available to discuss my views and look forward to the outcome of this consultation process.

Yours sincerely



Mark Morrissey
Commissioner for Children

Cc Hon Jacquie Petrusma, Minister for Human Services
Cc Hon Vanessa Goodwin, Attorney- General and Minister for Justice