

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

*Justice Miscellaneous (Removal of Outdated Sex Terminology) Bill 2023*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

Mr Speaker, our Government is a government with heart, and we are committed to ensuring a confident and inclusive community where all people are treated fairly and with respect.

The Justice Miscellaneous (Removal of Outdated Sex Terminology) Bill 2023 (the Bill) makes relatively minor, but nonetheless important, amendments to four pieces of Justice-related legislation to reflect contemporary and inclusive language in relation to sex and gender. While this does not change the legal policy reflected in that legislation, it is an important part of our commitment to contemporary language in legislation.

Members will recall that usage of the term 'intersex' was discussed last year during the debate on the Youth Justice Amendment (Searches in Custody) Bill 2022 and the Justice and Related Legislation (Miscellaneous Amendments) Bill 2022 (the Justice Miscellaneous Bill).

In both instances, I confirmed that my Department of Justice was reviewing terminology in this space, and that I would wait for the outcome of this review before making legislative amendments to ensure consistency on the preferred terminology.

Mr Speaker, I am pleased to now share that work has been completed, with my Department of Justice recently releasing the *Framework for Data Categories and Collection: Sex, Gender, Variations of Sex Characteristics and Sexual Orientation* (the Framework).

This Framework, which was developed in consultation with the Department's LGBTIQ+ Reference Group, has now been endorsed by the Tasmanian State Service Secretaries Board.

The Framework is based on the standards created by the Australian Bureau of Statistics, and its purpose is to standardise the collection and dissemination of

data relating to sex, gender, variations of sex characteristics and sexual orientation across the Department, and potentially more broadly across government.

In doing so, the Framework addresses the conceptual issues and definitions relevant to each of those four variables (i.e. sex, gender, variations of sex characteristics and sexual orientation).

Relevantly for present purposes, the Framework provides that the preferred terminology for people who have innate genetic, hormonal or physical sex characteristics, that do not conform to medical norms for female or male bodies, is 'those with innate variations of sex characteristics' rather than the outdated term 'intersex'.

Mr Speaker, this change in terminology reflects that 'intersex' is an umbrella term used to describe people with innate variations of sex characteristics. However, not all people with such characteristics identify as 'intersex', and therefore, it is not an inclusive term.

People with innate variations of sex characteristics do not necessarily share the same biological characteristics, birth assignment, gender or gender identity. Rather, there is a diversity of genders and gender identities among people with innate variations of sex characteristics, and this change in terminology reflects that.

Mr Speaker, my commitment last November during debate on the Justice Miscellaneous Bill 2022 was that once the Framework was finalised, I would bring forward a Bill to consolidate this terminology across all relevant Acts, to ensure consistency of our legislation.

The Justice Miscellaneous Bill 2022 when passed in this House did contain the term intersex in a clause amending the long title of the *Births, Deaths and Marriages Registration Act 1999*. However, I am advised an amendment was successfully moved to that Bill in the other place, to replace the word intersex with 'has innate variations of sex characteristics' so no action is required in respect of that Act.

Mr Speaker, I will now address the substantive clauses of the Bill. There are three pieces of legislation that contain the term 'intersex': the *Anti-Discrimination Act 1998* (the Anti-Discrimination Act); the *Court Security Act 2017* (the Court Security Act), and the *Youth Justice Act 1997* (the Youth Justice Act). Further, the *Public Trustee Act 1930* (the Public Trustee Act) refers to the even more outdated term of 'neuter gender'.

Firstly, the Bill contains several terminology amendments to the Anti-Discrimination Act. The first amendment is to the definition of 'transsexual' in section 3 of this Act. The Bill removes the term 'intersex' (and the associated wording) from the definition of transsexual as it is redundant. There is no necessary relationship between being transsexual and having innate variations of sex characteristics. While at the time of drafting that wording may have been included to avoid doubt, however contemporary understanding of these terms means it is no longer appropriate.

Mr Speaker, the Bill also amends section 16 of the Anti-Discrimination Act, which prohibits discrimination on the basis of listed attributes, one of which is 'intersex variations of sex characteristics'. This amendment is a simple one: 'intersex' is replaced with 'innate', so that the provision reads 'innate variations of sex characteristics', consistent with the Framework.

The final amendment to the Anti-Discrimination Act is to section 19, which prohibits the incitement of hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on certain grounds. One of the listed grounds is 'intersex variations of sex characteristics'. Again, the amendment is simply to replace 'intersex' with 'innate', so that the relevant part of the provision reads 'innate variation of sex characteristics'.

With respect to the Court Security Act, Clause 9 makes three amendments to section 13 of this Act, which concerns searches of people entering or on court premises. Section 13 includes requirements for the gender of the searching officer and any officers present.

The first amendment is to remove the definition of intersex, given that it refers to the definition of intersex in the Anti-Discrimination Act, which no longer exists. The new terminology is now understood and does not require special definition. The other two amendments to this section remove the term 'intersex', and replace it with 'has innate variations of sex characteristics'.

The amendment to the Youth Justice Act similarly addresses the conduct of searches. When referring to searches, the Youth Justice Act requires them to be conducted by a 'person of the required gender'. The term 'intersex' features within that definition, so that the Bill amends that reference by replacing it with 'has innate variations of sex characteristics'.

Mr Speaker, these are the amendments that arise directly from the Framework. However, a further amendment is also necessary.

Section 3(2) of the Public Trustee Act states 'words importing the masculine gender include references to the female gender and neuter gender'. The term 'neuter gender' is clearly not an acceptable term in the legislation. In fact, section 3(2) is redundant given gender references in all Acts are now read as inclusive of all genders under section 24A of the *Acts Interpretation Act 1931*. For that reason, the Bill removes section 3(2) entirely.

None of these amendments reflect any change in the legal policy established in these Acts, other than the important policy that legislation should be contemporary and inclusive.

I am pleased that the amendments made by this Bill reflect the Framework, which was developed in close consultation with the Department's LGBTIQ+ Reference Group, and also reflects key stakeholder submissions on the Justice Miscellaneous Bill 2022 which can now be implemented across all relevant Acts.

Mr Speaker, this Bill recognises that the terminology we use, and our understanding of the experience of others, is always changing. Indeed, these terms may evolve further in the future. We embrace that change, and will continue to update legislation where necessary, to ensure it is consistent with contemporary values.

Our Government is pleased that this is one of the many steps we've taken to support our overall commitment to all Tasmanians that they feel valued, included, encouraged and supported.

Mr Speaker, I commend the Bill to the House.