



TASMANIA

LEGISLATIVE COUNCIL

SESSION OF 2019

(SECOND SESSION OF THE FORTY-NINTH PARLIAMENT)

VOTES AND PROCEEDINGS

No. 5

WEDNESDAY, 3 APRIL 2019

1 COUNCIL MEETS.— The Council met at 11.00 o'clock in the forenoon and the President read Prayers.

2 MOTION WITHOUT NOTICE.— *Ordered*, That Ms *Forrest* have leave to move a Motion without Notice.

3 SUSPENSION OF STANDING ORDER.— *Ordered*, That so much of Standing Order No. 155 be suspended to enable any Member who proposes an Amendment to the Justice and Related Legislation (Marriage Amendments) Bill 2018 (No. 47 of 2018) in the Committee of the Whole Council, to speak more than three times in Debate on the proposed Amendment. (Ms *Forrest*)

4 BILL NO. 47 OF 2018.— The Order of the Day was read for the consideration in Committee of the Justice and Related Legislation (Marriage Amendments) Bill 2018.

And the President having left the Chair, the Council resolved itself into the said Committee.

(In the Committee)

Mr *Gaffney* in the Chair.

Clause 1 Amendment proposed. (Ms *Forrest*)

Page 5.

Leave out "Marriage".

Insert instead "Marriage and Gender".

The Question being put, That the Amendment be agreed to.

Committee divided.

AYES 9

NOES 5

Ms *Armitage*

Mr *Armstrong*

Mr *Farrell*

Mr *Dean*

Mr *Finch*

Mrs *Hiscutt*

Ms *Forrest*

Ms *Howlett* (Teller)

Mr *Gaffney*

Ms *Ratray*

Ms *Lovell* (Teller)

Ms *Siejka*

Mr *Valentine*

Mr *Willie*

It was resolved in the Affirmative.

Clause as amended agreed to.

Clause 2 disagreed to.

Clauses 3 to 5 agreed to.

Clause 6 Amendments made. (Ms *Armitage*)

First Amendment

Page 7, paragraph (a).

Leave out the words "a parent or guardian".

Insert instead "the father, the mother, a parent or a guardian".

Second amendment

Same page, paragraph (b)

Leave out the words "the parent".

Insert instead "the father, mother or parent".

Clause as amended, agreed to.

Clause 7 Amendment made. (Ms *Armitage*)

Page 7,

Leave out the words "a parent".

Insert instead "the father, the mother, a parent or a guardian".

Clause as amended, agreed to.

Clause 8 agreed to.

Clause 9 Amendment proposed. (Mr *Dean*)

Page 8.

Leave out paragraphs (a) to (i) (inclusive).

Insert instead the following paragraphs:

- (a) by inserting the following definition after the definition of *award*:

"biological sex", in relation to a person, means the male or female sex phenotype of the person, if observable at birth;

- (b) by omitting the definition of *gender identity*;

- (c) by inserting the following definition after the definition of *sexual orientation*:

"social identity", in relation to a person, means the sex-related appearance, or other sex-related characteristics, of the person, whether or not the appearance or characteristics have occurred by way of medical intervention or by virtue of the person's biological sex, and includes transsexualism;

- (d) by omitting the definition of *transgender*;
- (e) by omitting the definition of *transgenderism*;
- (f) by omitting from the definition of *transsexualism* the word "gender" (wherever occurring) and substituting "sex".

Ordered, That Mr *Valentine*, have leave to Table a letter to Members of the Legislative Council from the Anti-Discrimination Commission dated 1 April 2019.

The Question being put, That the Amendment be agreed to,

It passed in the Negative.

Clause 9 as read, further considered.

5 SITTING SUSPENDED.— It being 1.00 o'clock p.m. the Sitting of the Council was suspended.

The Council resumed the Sitting at 2.30 o'clock p.m.

6 QUESTION TIME.— The President called for Questions without Notice. There were four Questions asked.

7 BILL NO. 47 OF 2018.— The Council again resolved itself into a Committee on the Justice and Related Legislation (Marriage Amendments) Bill 2018.

(In the Committee)

Mr *Gaffney* in the Chair.

Clauses 9 as read, further considered.

Amendment proposed. (Ms *Ratray*)

Page 8, paragraphs (a) and (b).

Leave out the paragraphs.

The Amendment was by leave withdrawn (Ms *Ratray*)

To report progress and seek leave to sit again.

The Council being resumed Mr *Gaffney* reported that the Committee had made progress in the Bill, and that he was directed to move that the Committee may have leave to sit again.

Resolved, That the Council will, at a later hour, again resolve itself into the said Committee.

8 SITTING SUSPENDED.— *Resolved*, That the Sitting of the Council be suspended until the ringing of the Division bells. (Mrs *Hiscutt*)

The Sitting was suspended at 3.44 o'clock p.m. and resumed at 4.02 o'clock p.m.

9 BILL NO. 47 OF 2018.— The Council, according to Order, again resolved itself into a Committee on the Justice and Related Legislation (Marriage Amendments) Bill 2018.

(In the Committee)

Mr *Gaffney* in the Chair.

Clause 9 as read, further considered.

Amendment proposed. (Ms *Ratray*)

Page 8, paragraphs (a) and (b).

Leave out the paragraphs.

The Question being put, That the Amendment be agreed to,
Committee divided.

AYES 6

NOES 8

Ms *Armitage*

Mr *Farrell*

Mr *Armstrong*

Mr *Finch*

Mr *Dean*

Ms *Forrest*

Mrs *Hiscutt*

Mr *Gaffney*

Ms *Howlett* (Teller)

Ms *Lovell*

Ms *Ratray*

Ms *Siejka*

Mr *Valentine* (Teller)

Mr *Willie*

So it passed in the Negative.

Clause 9 as read agreed to.

Clause 10 read.

The Question being put, That the Clause as read be agreed to.

Committee divided.

AYES 7

NOES 6

Mr *Farrell*

Ms *Armitage*

Mr *Finch*

Mr *Armstrong*

Ms *Forrest* (Teller)

Mr *Dean*

Ms *Lovell*

Mrs *Hiscutt*

Ms *Siejka*

Ms *Howlett* (Teller)

Mr *Valentine*

Ms *Ratray*

Mr *Willie*

It was resolved in the Affirmative.

Clause 10 agreed to.

Clause 11, Amendments proposed. (Mr *Dean*)

First amendment

Page 10, paragraph (b).

Leave out "following paragraph".

Insert instead "following paragraphs".

Second amendment

Same page, same paragraph.

Leave out proposed new paragraph (e).

Insert instead the following proposed new paragraphs:

- (e) the biological sex of the person or any member of the group; or
- (ea) the social identity of the person or member of the group; or
- (eb) any intersex characteristics of the person or member of the group; or

The Question being put, That the Amendments be agreed to,

It passed in the Negative.

The Question being put, That the Clause as read be agreed to,

Committee divided.

AYES 9

NOES 5

Mr *Farrell*

Ms *Armitage*

Mr *Finch*

Mr *Armstrong*

Ms *Forrest* (Teller)

Mr *Dean*

Mr *Gaffney*

Mrs *Hiscutt*

Ms *Lovell*

Ms *Howlett* (Teller)

Ms *Rattray*

Ms *Siejka*

Mr *Valentine*

Mr *Willie*

It was resolved in the Affirmative.

Clause 12 agreed to.

Clause 13, Amendment proposed. (Ms *Forrest*)

First amendment

Page 11, paragraph (a).

Leave out the paragraph.

Insert instead the following paragraphs:

- (a) by inserting the following definitions after the definition of *funeral director*:

"gender" – see section 3A;

"gender amendments day" means the day on which Part 4 of the *Justice and Related Legislation (Marriage and Gender Amendments) Act 2019* commences;

"gender declaration" means a statutory declaration in which the declarant declares that the declarant identifies as being of the gender specified in the declaration and lives, or seeks to live, as a person of that gender;

(ba) by inserting the following definitions after the definition of *midwife*:

"previous registered gender", in relation to a person, means a gender that was the registered gender in relation to the person before section 28C(7) applied in relation to the registered gender;

"previous registered sex", in relation to a person, means a sex that was the registered sex in relation to the person before section 28C(7) applied in relation to the registered sex;

The Question being put, That the Amendment be agreed to,

Committee divided.

AYES 10

NOES 4

Ms *Armitage* (Teller)

Mr *Armstrong*

Mr *Farrell*

Mr *Dean*

Mr *Finch*

Mrs *Hiscutt*

Ms *Forrest*

Ms *Howlett* (Teller)

Mr *Gaffney*

Ms *Lovell*

Ms *Ratray*

Ms *Siejka*

Mr *Valentine*

Mr *Willie*

It was resolved in the Affirmative.

Further Amendment proposed. (Ms *Forrest*)

Second amendment

Page 12, after paragraph (b).

Insert the following paragraph:

(ca) by inserting the following definitions after the definition of *Register*:

"registered gender", in relation to a person, means the registered gender in relation to the person that is registered under section 28C(1) and that has not ceased in accordance with section 28C(7) to be the registered gender in relation to the person;

"registered sex", in relation to a person, means –

(a) the sex that is registered under section 16(3) or (4) in relation to the person; or

(b) the sex of the person that was last registered under this Act in relation to the person before the gender amendments day –

if that sex has not ceased in accordance with section 28C(7) to be the registered sex in relation to the person;

The Question being put, That the Amendment be agreed to,

Committee divided.

AYES 10

NOES 4

Ms Armitage

Mr Armstrong

Mr Farrell

Mr Dean

Mr Finch

Mrs Hiscutt

Ms Forrest (Teller)

Ms Howlett (Teller)

Mr Gaffney

Ms Lovell

Ms Rattray

Ms Siejka

Mr Valentine

Mr Willie

It was resolved in the Affirmative.

And the Question being put, That the Clause as amended be agreed to,
Committee divided.

AYES 10

NOES 4

Ms Armitage

Mr Armstrong

Mr Farrell

Mr Dean

Mr Finch

Mrs Hiscutt

Ms Forrest

Ms Howlett (Teller)

Mr Gaffney

Ms Lovell

Ms Rattray

Ms Siejka

Mr Valentine (Teller)

Mr Willie

It was resolved in the Affirmative.

Clause 13 as amended, agreed to.

Clause 14 disagreed to.

Clause 15 Amendment proposed. (*Ms Forrest*)

Page 13, proposed new subsection (1), paragraph (b).

Leave out "gender".

Insert instead "sex".

The Question being put, That the Amendment be agreed,
Committee divided.

AYES 11

NOES 3

Ms Armitage
Mr Armstrong
Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell (Teller)
Ms Rattray
Ms Siejka
Mr Valentine
Mr Willie

Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)

It was resolved in the Affirmative.

Clause as amended agreed to.

Clause 16, Amendment made. (*Ms Forrest*)

Page 14, proposed new subsection (3).

Leave out the proposed new subsection.

Insert instead the following new subsections:

- (3) The Registrar, in registering the birth of a person, is to register the sex of the person as being either male or female.
- (4) The Registrar may not change from male to female, or from female to male, the registered sex in relation to a person, except if it is necessary to correct an error made before or at the time the person's sex was first registered in relation to the person.
- (5) The Registrar may only register the sex of a person under subsection (3) or (4) and must not register the sex of a person as any sex other than male or female.
- (6) Nothing in subsection (3), (4) or (5) is to be taken –
 - (a) to prevent a gender being registered under section 28C(1) in relation to a person; or
 - (b) to prevent a registered sex in relation to a person ceasing, in accordance with section 28C(7), to be the registered sex in relation to the person; or
 - (c) to invalidate the registration of a previous registered sex that occurred before the gender amendments day.

Clause as amended, further considered.

The Question being put, That the Clause as amended be agreed to,

Committee divided,

AYES 10

NOES 4

Ms Armitage
Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell

Mr Armstrong (Teller)
Mr Dean
Mrs Hiscutt
Ms Howlett

Ms Rattray
Ms Siejka
Mr Valentine
Mr Willie (Teller)

It was resolved in the Affirmative.

Clause as amended agreed to.

To report progress and seek leave to sit again.

The Council being resumed Mr *Gaffney* reported that the Committee had made progress in the Bill, and that he was directed to move that the Committee may have leave to sit again.

Resolved, That the Council will, at a later hour, again resolve itself into the said Committee.

10 SITTING SUSPENDED.—*Resolved*, That the Sitting of the Council be suspended until the ringing of the Division bells. (Mrs *Hiscutt*)

The Sitting was suspended at 6.39 o'clock p.m. and resumed at 7.42 o'clock p.m.

11 BILL NO. 47 of 2018. —The Council, according to Order, again resolved itself into a Committee on the Justice and Related Legislation (Marriage Amendments) Bill 2018.

(In the Committee)

Mr *Gaffney* in the Chair.

Clause 17 agreed to.

Clause 18, Amendment proposed. (Ms *Forrest*)

Page 14.

Leave out "of 16 years or over".

Insert instead "who has attained the age of 16 years".

Amendment proposed to be made to the main proposed Amendment. (Ms *Rattray*)

Page 5 of the proposed amendments, the proposed insertion.

Leave out "the age of 16 years".

Insert instead "the age of 18 years".

Ms *Armitage* in the Chair.

Ordered, That Mr *Valentine*, have leave to Table a letter to Members of the Legislative Council from the Commissioner for Children and Young People dated 19 March 2019.

The Question being put, That the Amendment proposed to be made to the main proposed Amendment be agreed to,

The Question being put,

Committee divided.

AYES 6

NOES 8

Ms Armitage

Mr Farrell

Mr Gaffney

Mr Finch

Mr Dean

Ms Forrest

Mrs Hiscutt

Mr Gaffney (teller)

Ms Howlett (Teller)

Ms Lovell

Ms Rattray

Ms Siejka

Mr Valentine

Mr Willie

So it passed in the Negative.

The Question being put, That the main proposed Amendment be agreed to.

It was resolved in the Affirmative.

Clause 18 as amended, agreed to.

Clause 19 Amendment made. (*Ms Forrest*)

Page 14, paragraph (a).

Leave out "under the age of 16 years".

Insert instead "who has not attained the age of 16 years".

The Question being put, That the Clause as amended be agreed to.

Committee divided.

AYES 8

NOES 6

Mr Farrell

Ms Armitage

Mr Finch

Mr Armstrong

Ms Forrest (Teller)

Mr Dean

Mr Gaffney

Mrs Hiscutt

Ms Lovell

Ms Howlett (Teller)

Ms Siejka

Ms Rattray

Mr Valentine

Mr Willie

It was resolved in the Affirmative.

Clause as amended agreed to.

Mr Gaffney in the Chair.

Clause 20 Amendment proposed (*Mr Dean*)

Page 15.

Leave out all words after "is amended by".

Insert instead "omitting from subsection (3) all words after "for the person" and substituting the following:

"must –

- (a) include both the name to which the person's name has been changed and a notation of each name of the person that was previously registered; or
- (b) if the Registrar thinks fit and has been requested to do so by the person applying for the birth certificate, include only the name to which the person's name has been changed, without a notation of any name of the person that was previously registered."

The Amendment was, by leave withdrawn. (Mr *Dean*)

Clause as read postponed.

Clause 21 read.

To report progress and seek leave to sit again.

The Council being resumed, Mr *Gaffney* reported that the Committee had made progress in the Bill, and that he was directed to move that the Committee may have leave to sit again.

Resolved, That the Council will, tomorrow, again resolve itself into the said Committee.

12 ADJOURNMENT.— A Motion was made (Mrs *Hiscutt*) and the Question was proposed, That the Council will at its rising adjourn until 9.30 o'clock a.m. on Thursday, 4 April 2019.

A Debate arose thereupon,

And the Question being put,

It was resolved in the Affirmative.

Resolved, That the Council do now adjourn. (Mrs *Hiscutt*)

The Council adjourned at 9.50 o'clock p.m.

D.T. PEARCE, *Clerk of the Council*.

Briefing:

- *Electoral Amendment Bill 2019*