
Explanatory Notes

Births, Deaths and Marriages Registration Amendment Bill 2018

Policy objectives and the reasons for them

The objective of the Bill is to amend the *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) to remove the restriction in section 22 on noting the reassignment of a married person's sex on the register of births or the adopted children register.

The restriction on a married person having the reassignment of their sex noted on the register of births or the adopted children register reflects the definition of marriage under the *Marriage Act 1961* as it stood prior to the commencement on 9 December 2017 of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cwlth) (MADRF Act).

The MADRF Act introduced marriage equality by amending the definition of marriage under the *Marriage Act 1961* (Cwlth) (Marriage Act) to enable same-sex couples to marry. The MADRF Act also amends the *Sex Discrimination Act 1984* (Cwlth) (Sex Discrimination Act) to repeal the exemption from anti-discrimination law in relation to a refusal to alter a person's sex on an official record because the person is married, where the refusal is in accordance with state and territory laws. This amendment will commence on 9 December 2018.

The effect of the marriage restriction in section 22 of the BDMR Act is that if a party to a marriage wants to have their reassignment of sex noted on the register of births or adopted children register, they must first obtain a divorce. Given that people of any sex may now be married, the Bill proposes to remove the restriction in section 22 on a married person having the reassignment of their sex noted on the register of births or adopted children register.

Achievement of policy objectives

Section 22 of the BDMR Act provides that the reassignment of a person's sex after sexual reassignment surgery may be noted in the person's entry in the register of births or adopted children register *only if the person is not married*.

The Bill achieves its policy objectives by amending section 22 of the BDMR Act to remove the requirement that a person not be married to have the reassignment of their sex noted on the register of births or adopted children register.

The Bill also includes a transitional provision to make it clear that applications to note the reassignment of a person's sex on the birth register or adopted children register that have been made but not decided at the time of the commencement should be determined under the new requirements of the BDMR Act, as they exist after the amendments have commenced.

The Bill also makes a related amendment to the *Births, Deaths and Marriages Registration Regulation 2015* (BDMR Regulation). Regulation 12(2) of the BDMR Regulation prescribes documents for the purpose of an application under section 23 of the BDMR Act to note the reassignment of a person's sex on the birth register or adopted children register. The Bill removes regulation 12(2)(d) of the BDMR Regulation, that requires a person to provide evidence that they are not married to seek to note the reassignment of their sex on the births register or adopted children register.

Alternative ways of achieving policy objectives

There is no alternative way of achieve the policy objectives of the Bill.

Estimated cost for government implementation

Implementation of the Bill will be met from within existing agency resources.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

As the amendments in the Bill are consequential to the introduction of marriage equality, the Government has not consulted on the amendments in the Bill.

However, it is noted that since the introduction of marriage equality, there have been increasing calls (including from sex and gender diverse stakeholders) for the amendment to section 22 of the BDMR Act to be made.

Consistency with legislation of other jurisdictions

There are similar restrictions on a married person having the reassignment of their sex noted on their birth registration in most Australian jurisdictions (i.e. New South Wales, Victoria, Northern Territory and Tasmania).

As discussed above, as at 9 December 2018, the current exemption in the Sex Discrimination Act from anti-discrimination law in relation to a refusal to alter a person's sex on an official record because the person is married, where the refusal is in accordance with state and territory laws, will be repealed.

Jurisdictions with similar marriage restrictions to Queensland in relation to applications to note the reassignment of sex on a birth registration may seek to make similar amendments to those in the Bill, particularly given the impending removal of the exemption in Sex Discrimination Act.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Bill is the Births, Deaths and Marriages Registration Amendment Act 2018.

Part 2 Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 2 provides that Part 2 amends the BDMR Act.

Clause 3 amends section 22 of the BDMR Act to remove the requirement that a person not be married to have the reassignment of their sex after sexual reassignment surgery noted in the person's entry in the register of births or adopted children register. Clause 3 makes minor changes to the heading of section 22.

Clause 4 inserts a new transitional provision into new Part 9, Division 8 of the BDMR Act.

New section 67(a) provides that section 22 (as amended), applies to an application to note the reassignment of a person's sex made under section 23 of the BDMR Act, but not yet decided, at the time of commencement.

The purpose of this provision is to ensure that at the time of commencement, for those applications, made but not yet decided, it is not a requirement that the applicant not be married to have the reassignment of their sex noted on the register of births or adopted children register.

New section 67(b) clarifies that amended section 22 applies to an application made under section 23 of the BDMR Act whether or not the person underwent sexual reassignment surgery before or after the commencement of the amended section 22. The purpose of this provision is to put it beyond doubt that an application may be made under section 23 by a person who has undergone sexual reassignment surgery, even where that surgery occurred before the commencement of the amendment to section 22.

Part 3 Amendment of Births, Deaths and Marriages Registration Regulation 2015

Clause 5 provides that Part 3 amends the BDMR Regulation.

Clause 6 omits section 12(2)(d) from the BDMR Regulation to ensure that an application under section 23 of the BDMR Act to note the reassignment of a person's sex no longer needs to be accompanied by evidence that the person is not married.