

Reply to Fileborn, McCann, Mitchell, & Kunjan’s ‘Victorian changes to gender on birth certificate will not increase sexual violence. Here’s why’

[Posted to Medium 24th August 2019].



Earlier this week, *The Conversation* published [a piece](#)[1] by some of my colleagues at the University of Melbourne, arguing in support of the [Births, Deaths and Marriages Registration Amendment Bill 2019](#)[2] (hereafter ‘the bill’). This is a reply to that piece.

The title. The bill doesn’t change gender on birth certificates. Birth certificates don’t record gender. They record sex. The bill changes the sex recorded on people’s birth certificates, from what it *is*, to what the person making an ‘acknowledgement of sex’ application *believes* it is. The bill replaces sex with gender identity, while still calling it sex. It’s confusing, I know.

The conclusion. The authors claim that “changes to gender” — *sex* — “on birth certificate[s] will not increase sexual violence”, and conclude that “these reforms are important and should go ahead”. Let’s assume it’s true that the changes to birth certificates will not result in any increase in sexual violence. Is this a reason to support the bill? No, unless you think the *only* reason to oppose the bill was the risk of sexual violence. I sure don’t think that’s the only reason. My main reason for opposing it is that it may change the meaning of sex for the purpose of single-sex spaces, making them de facto mixed-sex. (See [my talk here](#)[3] about why women-only spaces are important — the slide at 11.00 has the full list of both spaces and rationales for them). The [Victorian Women’s Guild](#)[4] opposes the bill because it has impacts on medical care, sport, women’s safety, children’s rights, and legal protections.

The evidence. The authors say at the end of the first section “there is no evidence that these changes” — removing the requirement of sex reassignment surgery for legal change of sex — “have had negative effects in any of these jurisdictions” (Tasmania, the Australian Capital Territory, & South Australia). This is not quite right. Rather, there is no evidence about *whether or not* these changes have had negative effects, and that’s because no one has actually done the research. I sincerely wish they would do it.

Legal documentation reflecting identity. At the start of the second section the authors talk about “a person’s access to legal documentation that accurately reflects their identity”. Why on earth would legal documentation need to reflect *identity*? I’m a philosopher, and a radical feminist, and a lesbian. I have literally no documentation that says so. I’m feeling pretty fine about that. Would it make a difference if I felt *really strongly*? Should we then add ‘philosopher’ to my birth certificate? I say no; birth certificates record sex, and sex is not the same thing as gender identity, and legal documentation isn’t for reflecting people’s identities anyway. (It is sometimes for reflecting the *facts* that underpin that identity when the identity is accurate, like I have a piece of paper that says I have a PhD in Philosophy. If there are no such facts, then there should be no such documentation).

Sex is so complicated. There’s the usual exasperating move in the third section where the authors perform the standard co-option of intersex people’s issues in order to make a point that bears no relation to transgender people. “Contrary to popular belief,” they say, “biological sex is much more complex than these two binary categories” (male and female). They kind of shoot themselves in the foot by *admitting* that sex “may be based on a range of factors, including chromosomes, sexual organs, secondary sex characteristics, and hormone levels”. It’s a shame they don’t follow this through to admit that on this understanding, no transgender woman is female. (A transsexual woman might be — see [my discussion here](#)[5] about changing sex).

Sex as a social marker of gender. Out of the blue comes the assertion that “crucially, “sex” as it is recorded on birth certificates operates as a social marker of gender (as identity), not simply a matter of biology”. *How on earth* is a midwife supposed to know the gender identity of a newborn baby? This is completely absurd. The birth certificate is a record at birth of biology. At this stage the baby doesn’t even have the cognitive capacities to have a gender identity. (Elizabeth Barnes and Alex Byrne have both talked about the ‘exclusion problem’ accounts of gender identity have for people lacking in particular kinds of cognitive capacities — see the references [here](#)[6]). Given how completely wrong the authors are about this claim, the answer to their section subtitle ‘Do these changes conflate sex and gender?’ seems to be *yes, absolutely*.

Being ‘outed’. In the same section as the above, the authors raise the issue of legal documentation that is discrepant with perceived sex ‘outing’ a person as transgender or gender diverse. The worry seems to be overstated here, given that i) most people use passports as their main document for providing identification, and passports can be easily changed; and ii) many — most? transgender and gender diverse do not ‘pass’ as the opposite sex. In that case, it’s not their *documentation* that outs them.

Challenging obviously male people in women’s spaces. What is perhaps the most frustrating oversight of the article comes in the fourth section, which asks ‘Will these changes increase the risk of sexual violence?’ The authors identify ‘several strands’ to the critique of the proposed reforms which say that it will: one, “that male offenders will change their legally documented sex to access women’s spaces”; and two, “that women will be less able to challenge men who access women’s spaces”. Great! The second of these is really important, and is certainly one of the things many of the radical and gender critical feminists I talk to are worried about. So what’s their answer? Oh.... *they don’t give one*. They answer the first (much easier to answer) and then move on. Gah.

On the first ‘strand’, they focus entirely on ‘male offenders’ as though these are *non-transgender* men who *pretend to be transgender women* in order to gain access to women. Of course this is unlikely. Why don’t they address male violence, and the related fact that transgender women are male, and that [making single-sex spaces mixed-sex has been shown to lead to increased rates of sexual assault, voyeurism and harassment](#)[7]? They could still run the argument that the marginal increase in likelihood of compromised safety trades off favourably for trans inclusion, given that the probability was already low, and adding a fairly small group of males won’t increase it much. But they need to actually make that argument.

(As a side note, there's a totally weird bit in that section where they say that if feminists go around worrying about laws that raise the likelihood of sexual violence in public spaces, they're reinforcing "damaging and narrow understandings of what "real" sexual violence is, and of where women (and other survivors) face the most risk". It's completely unclear to me how talking about the sexual assault, voyeurism, and harassment of female people by male people in public spaces sends this message. Unless the background assumption is 'if you talk about X, you are implying that there is *only X and nothing else happens or matters*'. But that's a pretty incredible background assumption.)

The authors also comment that it's not true that sex-segregated spaces are currently safe or protective for women, because there *has* been sexual violence in them. This is a bit of a change of tack!—now it's not so much that transgender women pose no risk at all to women's safety (the same risk that any random male person poses), but rather than *women aren't safe anyway, so why worry about making them less safe!* The failure in reasoning here should be obvious: something doesn't have to be perfect for us to worry about not making it worse.

Transgender people also face a risk of violence. The second-to-last section is all about how transgender and gender diverse people are at risk of violence themselves. But no one is denying this; the question is whether anyone at risk of violence *belongs in a women-only space*. I say no. Gay men may be at higher risk of violence from other men than straight men are. Do they belong in women-only spaces? Obviously not. The authors assert that "there is no evidence that TGD [transgender and gender diverse] people pose a greater risk of perpetration than cisgender men or women". This is weird, given that no one is saying transgender and gender diverse people pose a *greater* risk. Gender critical and radical feminists are saying, however, that the fact that transgender *women* in particular pose the *same* risk as other males (as far as the evidence so far shows — and again, it would be great if there was more research done on this, including about other behaviour associated with toxic masculinity, not just violence) is a reason to exclude them from women's single-sex spaces. *That's* the real point that needs addressing, and was not addressed by the authors in this piece.

Links:

[1] <https://theconversation.com/victorian-changes-to-gender-on-birth-certificate-will-not-increase-sexual-violence-heres-why-122125>

[2] <https://www.legislation.vic.gov.au/bills/births-deaths-and-marriages-registration-amendment-bill-2019>

[3] <https://www.youtube.com/watch?v=WB-ejiAuoN4>

[4] <https://www.victorianwomensguild.org/>

[5] Is it possible to change sex? – archived at hollylawford-smith.org

[6] A Philosophical Perspective on Gender Identity [long] – archived at hollylawford-smith.org

[7] <https://www.independent.co.uk/life-style/women/sexual-assault-unisex-changing-rooms-sunday-times-women-risk-a8519086.html>