



Gay and Lesbian Rights Lobby

**Submission to The Legal Affairs and
Community Safety Inquiry on the Births Deaths
and Marriages Registration Amendment Bill
2018**

March 2018



Gay and Lesbian Rights Lobby (NSW)

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ABOUT THE GAY & LESBIAN RIGHTS LOBBY

Established in 1988, the NSW Gay & Lesbian Rights Lobby (GLRL) is the peak organisation for lesbian and gay rights in NSW. Our mission is to achieve legal equality and social justice for lesbians, gay men and their families.

The GLRL has a strong history in legislative reform. In NSW, we led the process for the recognition of same-sex de facto relationships, which resulted in the passage of the Property (Relationships) Legislation Amendment Act 1999 (NSW) and subsequent amendments. The GLRL contributed significantly to reforms introducing an equal age of consent in NSW for gay men in 2003 and the equal recognition of same-sex partners in federal law in 2008.

The rights and recognition of children raised by lesbians and gay men have also been a strong focus in our work for over ten years. In 2002, we launched Meet the Parents, a review of social research on same-sex families. From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the reform recommendations outlined in our 2003 report and Then ...The Brides Changed Nappies. The major recommendations from our report were endorsed by the NSW Law Reform Commission's report, Relationships (No. 113), and were enacted into law under the Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 (NSW).

In 2010, we successfully lobbied for amendments to remove discrimination against same-sex couples in the Adoption Act 2000 (NSW), and in 2013 we were instrumental in lobbying to secure the passage of anti-discrimination protections for LGBTI Australians, through amendments to the Sex Discrimination Act (1984). We also campaigned successfully for the removal of the "homosexual advance" defence from the Crimes Act 1900 (NSW) and the extinguishment of historical homosexual sex convictions, both in 2014.

This submission will address all suggested consequential amendments mentioned in the Births, Deaths and Marriages Registration Amendment Bill 2018.



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INTRODUCTION

As one of the peak lobby groups in NSW we work closely with bisexual, transgender and intersex partner organisations and all Members of Parliament to advance the rights of our members and LGBTI communities in NSW, and across Australia.

On 7 December 2017, a Bill to reform Australian marriage law was passed in the Commonwealth Parliament and marriage equality is now a reality for most Australians. However, there are some consequential legislative issues for Queensland. One important example is the procedure by which a person may apply to alter the sex marker on their birth certificate.

It is important to establish that many intersex, trans and gender diverse people in relationships have been able to marry prior to the *Marriage Amendment (Definition and Religious Freedoms) Bill 2017*, depending on their personal legal sex classification and the legal sex classification of their partner, for example a legally affirmed transgender man could marry his cisgender female partner (in line with *Re Kevin* [2001] FamCA 1074.)

Trans and gender diverse are umbrella terms that describe people who identify their gender as different to the legal sex that was assigned to them at birth. Trans people may position 'being trans' as a history or experience, rather than an identity, and consider their gender identity as simply being female, male or a non-binary identity. Some connect strongly with their trans experience. The processes of transition may or may not be part of a trans or gender diverse person's life.

Intersex is an umbrella term describing people are born with physical sex characteristics that may not fit medical norms for bodies that are typically assigned female or male at birth, these variations may be apparent at birth, may develop during puberty or may become apparent later in life. Intersex people, just as any other person may identify as male, female or a non-binary identity, indeed according to a 2015 survey on Australian intersex people, 75% reported being male or female, while the remaining 25% reported a non-binary gender identity. Intersex is not a non-binary gender identity, or a gender identity at all.

Intersex, trans and gender diverse people have any sexual orientation including heterosexual, queer, lesbian, gay, bisexual, pansexual, asexual etc. However, many intersex, trans and gender diverse Australians have experienced marriage discrimination including requirements to be legally single prior to intersex people having their birth certificate corrected or trans and gender diverse people legally affirming their gender.

It is important that our legal systems accurately reflect and accommodate the reality of sex diverse genders and bodies that exists in our society, as they have for millennia.

Provisions in Part 5 of Schedule 2 of the *Marriage Amendment (Definition and Religious Freedoms) Bill 2017* stipulate inclusion of additional amendments incorporating the *Commonwealth Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth) and relevant provisions within the *Sex Discrimination Act 1984*



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(Cth) so that a state or territory government can no longer impose the requirement of being unmarried in order for a person to request a gender change on a document issued by that state or territory government.

By repealing section 22 of the *Births, Deaths and Marriages Registration Act 2003* (Qld); consideration and adoption of a similar legislative change would see Queensland be brought into line with the Commonwealth, with respect to these matters.

GLRL provide in-principle support to amend the *Births, Deaths and Marriages Registration Act 2003* 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.

With the passage of marriage equality, the justification for requiring a person to be unmarried no longer exists. The exemption for state and territory governments to include an unmarried requirement in birth certificate laws in s 40(5) of the Sex Discrimination Act 1984 (Cth) will accordingly be removed in 12 months.

We submit the Bill, through the removal of 'only if the person is not married' from section 22 of the BDM Act, appropriately addresses this issue.

The BDM Act also contains a number of other outdated, unnecessary and invasive requirements that significantly disadvantage transgender, gender diverse and intersex people in Queensland. For example:

- In order to apply for their sex marker to be changed, individuals are still required to have undergone sexual reassignment surgery (BDM Act s 23(4)), and medical evidence is required instead of self-affirmation (BDM Act s 23(4)).
- Contrary to best practice and the jurisprudence of the High Court, the BDM Act does not yet expressly allow a person to specify their sex marker as categories other than male or female.

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

Clause 2 provides that Part 2 amends the *Births, Deaths and Marriages Registration Act 2003*.

Clause 3 amends section 22 of the *Births, Deaths and Marriages Registration Act 2003* 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 *Births, Deaths and Marriages Registration Act 2003*. 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 *Births, Deaths and Marriages Registration Act 2003*, but not yet decided, at the time of commencement.



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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. The removal of this discriminatory provision also means that Queenslanders who have undergone gender reassignment surgery no longer have to divorce their partners to have their preferred gender legally recognised.

New section 67(b) clarifies that amended section 22 applies to an application made under section 23 of the *Births, Deaths and Marriages Registration Act 2003* 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

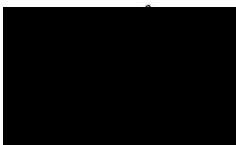
By repealing section 22 of the Births, Deaths and Marriages Registration Regulation Act 2015 (Qld); consideration and adoption of a similar legislative change would see Queensland be brought into line with the Commonwealth, with respect to these matters.

GLRL support that *Clause 5* provides that Part 3 amends the Births, Deaths and Marriages Registration Regulation Act 2015 (Qld).

GLRL support the recommendation in *Clause 6* to omit section 12(2)(d) from the Births, Deaths and Marriages Registration Regulation Act 2015 (Qld) "to ensure that an application under section 23 of the *Births, Deaths and Marriages Registration Act 2003* to note the reassignment of a person's sex no longer needs to be accompanied by evidence that the person is not married."

We thank the Committee for the opportunity to provide a submission and welcome any further discussion to with you as the Births, Deaths and Marriages Registration Amendment Bill 2018 progresses.

Yours sincerely



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