

**Legal Affairs and Safety Committee  
Inquiry into the Births, Deaths and Marriages Registration Bill 2022**

**Department of Justice and Attorney-General (DJAG)  
response to submissions**

**Table of Contents**

<b>Introduction</b> .....	<b>1</b>
<b>Consultation process</b> .....	<b>1</b>
1. Timeframe.....	1
2. Who was consulted? .....	2
<b>Views on Part 5 of the Bill</b> .....	<b>3</b>
1. Foundational concepts .....	4
<i>Conflation of sex and gender</i> .....	4
<i>Self-declaration vs medicalisation</i> .....	8
<i>Reliance on Yogyakarta Principles</i> .....	10
<i>Trans women are not women</i> .....	10
<i>Access to women’s safe spaces</i> .....	12
<i>Violence against women</i> .....	16
<i>Quotas/affirmative action</i> .....	19
<i>Accuracy of statistical information</i> .....	22
2. Framework for persons aged 16 years and above.....	23
3. Framework for children under 16.....	23
<i>Medicalisation of gender questioning children</i> .....	23
<i>Co-occurring issues in trans and gender diverse children</i> .....	25
<i>Gender identity may be transitory</i> .....	26
<i>Parental responsibility and children’s maturity</i> .....	27
<i>Assessment of developmentally informed practitioner</i> .....	29
<i>Accessibility in regional and remote communities</i> .....	32
<i>Nature of the court proceeding</i> .....	33
<i>Assistance for children navigating the process</i> .....	34
4. Effect provision.....	35
<i>General impacts</i> .....	35
<i>Impacts for other Queensland legislation</i> .....	36
<i>Implications for QPRIME</i> .....	37
<i>References to ‘gender’ in the statute book</i> .....	37
<i>Impacts on wills</i> .....	38
5. Other .....	38

<i>Scope of sex descriptors</i> .....	38
<i>Recognised details certificates</i> .....	39
<b>Recognition of contemporary family and parenting structures</b> .....	<b>40</b>
1. Support for changes .....	40
2. Definition of 'birth parent' .....	40
3. Parenting descriptors .....	42
4. Recording parentage details.....	43
5. Limit on number of parents.....	44
<b>Birth registration</b> .....	<b>45</b>
1. Application by one parent.....	45
2. Timeframe for birth registration – general.....	46
<b>Issues impacting the intersex community</b> .....	<b>47</b>
1. Timeframe for birth registration – variations of sex characteristics.....	47
2. Framework in relation to deferrable surgeries .....	47
<b>Issues impacting the adoption community</b> .....	<b>48</b>
<b>Implications for correctional environment and 'restricted persons' changes</b> .....	<b>49</b>
1. Opposition to 'restricted persons' amendments.....	49
2. Compatibility with human rights.....	50
3. Criteria furthers dangerous stereotypes .....	50
4. Conflict with existing QCS policy .....	51
5. Suggested amendments .....	51
6. Management of prisoners that have recorded a change.....	51
7. Updates to practice and procedures.....	52
8. Risks to safety of prisoners .....	52
9. Prisoner access to gender-affirming healthcare.....	52
10. Concerns about the safety of other women in prison.....	53
11. Persons in criminal proceedings.....	53
<b>Change of name framework</b> .....	<b>53</b>
1. 12-month residency requirement.....	53
2. Re-registration of relevant event .....	54
<b>Certificates</b> .....	<b>55</b>
1. Opt-in approach to sex information on a birth certificate.....	55
2. Inclusion of previous name.....	56
3. Retention of previous record .....	56
<b>Registry operations</b> .....	<b>57</b>
1. Streamlining and procedural changes .....	57
2. Fees to alter a person's own record of sex .....	57
3. Fee waiver .....	58
<b>Anti-Discrimination Act issues</b> .....	<b>59</b>

1.	Amendments progressed in the Bill .....	59
2.	Broader implications for the Anti-Discrimination Act .....	61
	<b>Statutory review .....</b>	<b>66</b>

## Introduction

A total of 365 submissions were received in relation to the Legal Affairs and Safety Committee's inquiry into the Births, Deaths and Marriages Registration Bill 2022 (the Bill). These comprised 29 submissions from organisations and 320 from individuals, with the remainder not stated.

The submission numbers referred to throughout this response are consistent with the numbering adopted on the Queensland Parliament website.

As advised by the Committee secretariat, the Department of Justice and Attorney-General (DJAG; the Department) understands:

- Submission numbers 18, 44, 50, 53, 62, 78, 83, 107, 126, 139, 145, 154, 165, 179, 195, 199, 205, 218, 224, 247, 284, 254, 255 & 357 are confidential and have not been published; and
- Submission numbers 26, 55, 132, 166, 171, 204 & 248 have been recorded as 'Clarification pending' as the committee is awaiting responses from those submitters before considering publication.

DJAG notes the analysis of submissions has been impacted by the short timeframes to prepare the response and the volume of submissions received.

DJAG notes that submissions held polarised views on key issues in relation to Part 5 of the Bill. This is consistent with the experience of all other jurisdictions which have undertaken reform in this area.

The analysis below sets out a brief overview of each issue raised, provides some examples of submitter comments on the issue, and then outlines the Department's response.

*\*NB: Submitter comments have in some cases been paraphrased.*

## Consultation process

A number of submissions expressed concerns regarding the consultation process, both in terms of timeframes and stakeholders involved.

### 1. Timeframe

Approximately one fifth of organisations and a small number of individuals commented that the timeframe for submissions was too short, and that it should not have been scheduled over the Christmas and New Year holiday period.

Submitter	Comment
Queensland Law Society (Sub 34)	The short consultation period held during the Christmas and New Year period will not yield the best legislation for the people of Queensland.
IWD Brisbane Meanjin (Sub 295)	The short period for submissions, over the Christmas holiday period, looks very much like a government rushing legislation through to minimise community input.

Active Watchful Waiting (Sub 365)	The bill was rushed through over the holiday period with no parliament available to debate and little time for the general public to organise submissions.
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### > Department response

These are matters outside the control of the department.

The consultation period and setting of the submission deadline for this inquiry is a matter for the Committee.

#### 2. Who was consulted?

A small number of organisations and approximately 10 per cent of individual submitters expressed concerns that community consultation was inadequate and that certain interested stakeholder groups, in particular, women and others impacted by the reforms, have not been consulted.

Submitter	Comment
IWD Brisbane Meanjin (Sub 295)	No community surveys have been conducted, no analysis or social impact study has been conducted into the consequences for women and girls of enabling men who call themselves women to legally falsify their birth certificates.
Fair Go for Queensland Women (Sub 327)	Unfortunately, we were not allowed or afforded that opportunity, having been denied participation in the consultation process bar one meeting on 15 June 2022, which could more accurately be described as an 'information session' and not consultation.  The interests of women and girls were not considered in the creation of the Bill, women were not consulted and nor are the rights or interests of women and girls discussed in the Statement of Compatibility.
Sisters Inside Inc. (Sub 362)	Only one Aboriginal and Torres Strait Islander organisation was involved in the consultation process and no organisation working within the Queensland prison system was involved in the consultation. This is a regrettable decision as people who come under the custody of the chief executive are significantly impacted by the proposed Bill.

### > Department response

DJAG notes the consultation process which informed the development of these reforms has been lengthy and extensive.

As the Explanatory Notes state, formal public consultation on the review of the *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) occurred throughout 2018 and 2019, including through the release of a discussion paper about how Queensland life events registration services can improve legal recognition of the trans and gender diverse community and their families.

Over 500 submissions and 6,500 online survey responses were received. While a significant number of these were critical of reforms in this area, key LGBTIQ+, legal and health bodies strongly supported amendments to improve legal recognition of trans and gender diverse people.

Consultation throughout 2021 and 2022 occurred with key stakeholders through the holding of roundtables.

An overview of the reforms was provided to representatives of IWD Brisbane Meanjin and Fair Go for Queensland Women.

Queensland also had the benefit of considering the outcomes of reviews undertaken in this area by law reform bodies in other jurisdictions, including by the Tasmanian Law Reform Institute (TLRI) and the Law Reform Commission of Western Australia (LRCWA).

### Views on Part 5 of the Bill

The great majority of submissions – both those in support and those opposed – related to the new framework for acknowledgement of sex, established in Part 5 of the Bill.

The primary themes from submissions in support of the proposed process outlined in Part 5 of the Bill included:

- upholding human rights; and
- benefits to the wellbeing of the transgender and gender diverse community.

Submitter	Comment
Queensland Human Rights Committee (Sub 360)	The Bill delivers reforms which are essential to ensure the privacy, freedom of expression, and equality before the law of people accessing Queensland's birth registration system, and in particular trans and gender diverse people; and diverse families including same-sex parent families.
Queensland Law Society (Sub 34)	Supports the Bill's objective to strengthen the legal recognition of trans and gender diverse people and better recognise contemporary family and parenting structures.
Amnesty International (Sub 36)	Very much welcomes the introduction of the Bill as it removes the current requirement for an individual to have undergone 'sexual reassignment surgery' before a reassignment of sex in the person's record of birth.
Equality Australia (Sub 356)	Each of these reform components have precedents in the reforms already undertaken by almost all Australian jurisdictions, with Queensland bringing together the learnings from each state and territory into one Bill that draws upon some of the best aspects of other state and territory laws.
Queensland Family and Child Commission (Sub 359)	supports the proposed improvements to strengthen the legal recognition of trans and gender diverse people, including new processes that enable young people to change their record of sex

The primary themes from submissions opposed to the proposed process outlined in Part 5 of the Bill included:

- impacts on women’s rights and safety; and
- the conflation of sex and gender.

Submitter	Comment
IWD Brisbane Meanjin (Sub 295)	Over the past 21 months IWD BM has conducted thirteen rallies or mini marches against sex self-identification and the transitioning of children in the Brisbane CBD and Southbank. With very few exceptions, people were completely unaware of their Government's plan to legislate for sex self-identification. The typical response was of shock and disbelief when we explained the coming Bill. Again with very few exceptions most people we spoke with did not support the Government's plans.
Women’s Forum Australia (Sub 304)	The Bill elevates gender identity over biological reality, women’s and children’s safety, and common sense. Given its particularly adverse implications for women and girls and victims of violence, it is extraordinarily disappointing that it has been introduced by the Minister for Women and Prevention of Domestic and Family Violence.
Feminist Legal Clinic Inc. (Sub 317)	In a democratic society we expect the law to operate on a level playing field, with no evidence of preferential consideration being afforded any individual or group. Legislation, for example, should be for the benefit of all citizens. It should not, as is the case with the Births, Deaths and Marriages Registration Bill (Qld), be proposed with the stated intention of alleviating the existential angst of a vocal minority.
Active Watchful Waiting Inc. (Sub 365)	Self-identification is harmful to women, children, parental rights, lesbian, gay and bisexual people, and this bill promotes the first stage of transitioning; social transitioning, the replacing of one’s sex in documentation with gender identity. Social transitioning is not a neutral act, it is shown to concretise a gender identity in youth.

The submissions in relation to Part 5 of the Bill were split approximately 50/50 between those in support of and those opposed to the amendments.

#### 1. Foundational concepts

##### *Conflation of sex and gender*

Nearly one third of organisations and approximately 25 per cent of individuals expressed concerns about the conflation of sex and gender in the Bill.

Submitter	Comment
Australian Christian Lobby (Sub 32)	Birth Certificates should not be used as a vehicle to describe "gender" (i.e., "the social attributes and opportunities associated with being female and male"). If the Bill is passed, "sex" will no longer be "the biological

	and physiological characteristics that define humans as female or male" but will become a purely social characteristic and thus will not describe the sex of a child at live birth. The ACL opposes the redefinition of the term "sex".
Queensland Law Society (Sub 34)	Concerned that the concepts of 'sex' and 'gender' are conflated, and recommend that if the provisions are passed, sex and gender should be distinguished in the Act. Agree with approach taken by TLRI in relation to maintaining the distinction of sex and gender and the focus be on working to eliminate discriminatory application of laws by careful and deliberate use of appropriate terms.
Multicultural Australia (Sub 197)	The Bill fails to recognise the distinction between sex and gender, removing the legal distinction between these concepts. While there is some contention in relation to the distinction between these concepts, they are afforded distinct meanings by key authorities and consider that further consultation and consideration of this aspect of the Bill is required, in conjunction with a review of other relevant legislative instruments with intersecting definitions.
IWD Brisbane Meanjin (Sub 295)	The Bill relies on a faith-based ideology that says humans can change sex. In the entire history of people there has never been an example of a human changing sex. if gender identity is regarded as important enough to be recorded it needs to be recorded in addition to, not instead of, sex.
FamilyVoice Australia (Sub 314)	Governments should not promote the lie that a person can change their sex when this is pure fantasy and that neither hormone treatment nor surgery can actually change a person's sex.
Fair Go for Queensland Women (Sub 327)	Falsifying the sex on legal documents is not a suitable solution to recognising 'gender', a wholly subjective and unprovable concept. Sex is immutable and a male is not and cannot be a woman.
Coalition of Activist Lesbians (Sub 350)	It is vital that governments do not accept populist ideas and confuse sex with gender.

### > Department response

The Bill adopts a broad, inclusive approach to what constitutes a person's sex, including that it should take account of the gender identity of a person.

Over recent years, international developments, changing common law and advancements in research have led to agencies with responsibility for human rights law taking a more expansive and purposive approach. In Australia, the courts have noted that biological factors are not the only relevant factors in determining sex.

In particular, the High Court has held that both self-perception and how others perceive a person are also relevant factors in determining a person's sex and these are just as important as physical characteristics.



Over time, the common law has come to reflect a multifactorial approach that considers multiple biological, psychological and social factors when determining the legal sex of a trans and gender diverse person.

This approach is seen in a number of cases. For example: *Re Kevin: Validity of Marriage of Transsexual, Attorney-General (Cth) v "Kevin and Jennifer"* (Re Kevin appeal) and *AB v State of Western Australia; AH v Western Australia*.

For instance, in *AB v State of Western Australia* the High Court held the requirement that a person had 'undergone a reassignment procedure' (for a recognition certificate) did not require the person to have undertaken every surgical procedure available. Rather, it was a question of whether they have altered their gender characteristics sufficiently to be identified as a member of the opposite sex, which requires consideration of their physical characteristics (including appearance, dress, behaviour, lifestyle), but does not require knowledge of the status of their internal sexual or reproductive organs.

There was strong feedback from stakeholders received through the consultation process relating to sex and gender. In particular, stakeholders advised that the separation conceptually of sex and gender may have unintended consequences resulting in differences of treatment of trans and gender diverse persons that may in some instances manifest as discrimination.

Stakeholders stressed that legislating a distinction between biological sex and affirmed gender could propagate a culture of discrimination against trans and gender diverse people because:

- the distinction could be used as a tool to exclude or otherwise reduce the rights and privileges of trans and gender diverse people;
- much of the trans exclusionary advocacy efforts are fundamentally aligned to this distinction to erode rights and ultimately erase trans and gender diverse people's rightful recognition;
- the distinction will have the unfortunate and unintended consequence of entrenching a hierarchy of legal rights for trans people depending on whether or not they choose to undergo sexual reassignment surgery (that is, it would create a two-tier class of legal recognition—those who have undergone sexual reassignment surgery and those who have not);
- it would be inconsistent with the approach taken in most other Australian states and territories which do not separate out the concepts of 'sex' and 'gender' at law (discussed below); and
- it is inconsistent with the way the courts have evolved over time when interpreting sex and gender identity issues by determining that biological factors are not the only relevant factors in determining sex.

### Other jurisdictions

While all States and Territories record sex at birth, there are inconsistencies with how other jurisdictions conceptualise the process that a trans or gender diverse person must complete in order to update their registered marker on their birth certificate, in particular:

- both Victoria and the ACT enable a trans or gender diverse person to apply to alter the record of sex in the person's birth registration;
- Tasmania enables a trans or gender diverse person to register a gender and for the purposes of birth certificates only displays gender;

- in South Australia, a trans or gender diverse person may apply for registration of a change of the person's sex or gender identity; and
- in Northern Territory, a trans or gender diverse person may apply to register a change of the person's sex or gender.

Despite these differences in terminology and framing, there is greater consistency across the jurisdictions when it comes to the 'effect' that the registration of a new marker has for the purposes of the treatment of that person under other laws.

While Victoria adopts a largely self-affirming approach to sex, its BDMR Act clarifies that if the record of a person's sex in the person's birth registration is altered, the person is a person of the sex as altered and that this has effect for the purposes of, but subject to, the law of Victoria.

In the ACT, a person who has had their record of sex changed is, for the purposes of, but subject to, any territory law, a person of the sex stated in the certificate.

In South Australia, a person who has changed their sex or gender identity will be taken to have satisfied a requirement under another South Australian Act or law that the person provide details of their sex if the person provides details of their sex or gender identity as changed.

In Northern Territory, where a person's change of sex or gender is registered, the person is, for the purposes of (but subject to) any law in force in the Territory, a person of the sex or gender as so changed (i.e. sex and gender are conflated and the effect of the change deals with references to sex and gender for the purposes of territory law).

While the Tasmanian BDMR Act has references to both 'sex' and 'gender', importantly, the legislation makes it clear that once a person registers a gender, the person ceases to be of the registered sex or gender that was previously noted in relation to the person, and that a reference to a person's sex in any law in force in the State is taken to be a reference to the registered sex or gender (if any) in relation to the person.

In summary, while each jurisdiction does it with their own nuance, the net effect and outcome is that once a person updates the sex marker on their birth registration, the new marker is taken to be the person's sex for the purposes of all other laws in that jurisdiction.

#### Findings from Queensland Human Rights Commission (QHRC) review

The recent review undertaken by the QHRC is also instructive in considering this issue.

In its report *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* (Building Belonging report), the QHRC found that a narrow interpretation of 'sex' as meaning only 'biological sex' (such as hormones, chromosomes, and anatomical characteristics) is inconsistent with the principle of statutory interpretation that if there is ambiguity in legislation, this should be resolved in a way most favourable to people for whose benefit the Act is intended.

The QHRC further found that a narrow interpretation of sex as meaning only 'biological sex' is unlikely to be compatible with human rights. The QHRC noted the Human Rights Act requires courts to interpret the Anti-Discrimination Act 1991 (AD Act) in a way that is compatible with human rights, including the right to equality before the law, and the right to privacy.

Further, in reference to recent jurisprudence on the matter, the QHRC considered the current meaning of 'sex' would encompass:

- the sex that a person was assigned at birth, where this aligns with the person's gender identity (cisgender people); and
- the sex with which a person identifies, where a person's gender identity does not align with their sex assigned at birth (trans and gender diverse people).

The QHRC further observed that:

- sex and gender are intrinsically related concepts; and
- defining attributes/terms like 'sex' or 'gender' is inherently limiting as they are evolving concepts on which there are different views (allowing these terms to be interpreted by courts or tribunals ensures they can be context-dependent).

In its review, the QHRC acknowledged the concurrent reforms being progressed by this Bill and noted that any reforms to the AD Act should be considered in light of this.

In sum, the approach taken in the Bill in collapsing 'sex' and 'gender' is consistent with the preferred approach advanced by the QHRC and the approach of other jurisdictions. It reflects changing expectations of being able to accurately describe a personal identity beyond a rigid demarcation of two binary sexes.

DJAG notes some stakeholders submissions suggested alternatives to amending a person's registered sex on a birth certificate through the proposed process (for example, by creating a separate 'gender' field on the birth certificate in addition to the 'sex' field; or by creating an alternative document for people who wish to identify their gender). However, the presentation of both sex and gender on a birth certificate would out people as trans or gender diverse and reinforce a culture of discrimination against trans and gender diverse people.

#### *Self-declaration vs medicalisation*

A number of submitters commented on the move from a medicalised approach to a self-declaration approach, as reflected in the removal of the requirement for a person to undergo sexual reassignment surgery in order to alter their record of sex and the introduction of a more accessible framework based on a declaration by the applicant.

Organisations that commented on this issue were predominately supportive of the self-declaration approach adopted in the Bill while amongst individuals, there was an almost even division between those who supported and those who opposed the approach.

Submitter	Comment
Jigsaw Queensland Inc. (Sub 128)	Supports the principle that citizens ought to have an identity document of their choosing, including with respect to their choice of gender designation.
Just.Equal Australia (Sub 183)	Welcomes the removal of the requirement for transgender people in Queensland to have genital surgery in order to access identity documentation, including birth certificates, which reflects their gender identity. Also welcome the decision not to require any documentation in support from a medical practitioner.

Multicultural Australia (Sub 197)	Supports the amendments that strengthen legal recognition of trans and gender diverse people, beyond a medicalized model to the reflect the lived gender identity of the person.
Queensland Human Rights Commission (Sub 360)	Ensuring fair and equitable access for transgender and gender-diverse people to change their record of sex upholds rights protected by the HR Act – the right to recognition and equality and the right to privacy; and note they have been raising concerns about the existing unreasonable requirement for a person to undergo ‘sexual reassignment’ surgery to change the sex on their birth certificate.
Associated Christian Schools (Sub 361)	Understands the reasoning for removing the requirement for surgery before altering a record of a person’s sex. ACS agree that surgical intervention carries risks, and our desire is always for the safety and wellbeing of children and young people.

### > Department response

Domestic and international discourse on this issue suggests that a self-identification process better supports the human rights of transgender communities.

The Yogyakarta Principles<sup>1</sup>, a set of non-binding international principles on gender identity, recommend that if sex and gender information is registered, it is based on an accessible self-identification process with no eligibility criteria, such as medical treatment (see Principle 31).

The UN High Commissioner for Human Rights recommends that legal recognition for trans and gender diverse people:

- be based on self-identification by the applicant;
- be a simple administrative process; and
- not require abusive requirements, such as medical certification, undergoing surgery, treatment, sterilization or divorce.

The World Health Organization’s *International Statistical Classification of Diseases and Related Health Problems*<sup>2</sup> (ICD-11), adopted by the World Health Assembly in May 2019, officially removed trans categories from mental and behavioural disorders. A new category was created instead called “Conditions related to sexual health.” The category of transsexualism was removed and replaced with a new category called “gender incongruence of adolescence and adulthood.”

Further, as noted by the QHRC in their submission to the Committee:

- surgery or other medical interventions, such as hormone therapy, may not be desirable for or accessible to all trans and gender-diverse people; and
- a medicalised approach is inconsistent with the AD Act.

<sup>1</sup> (2007) *The Yogyakarta Principles: Principles on the application on international human rights law in relation to sexual orientation and identity*, [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>2</sup> World Health Organization (2022) *International Classification of Diseases* (11<sup>th</sup> rev.), <https://icd.who.int/en>

### Reliance on Yogyakarta Principles<sup>3</sup>

Two organisations and one individual criticised the reliance on the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (Yogyakarta Principles) to support the amendments in Part 5 of the Bill. A further eight individuals commented in support of the Yogyakarta Principles.

The Yogyakarta Principles were developed by a group of international human rights experts and address a broad range of international human rights standards as they relate to sexual orientation and gender identity.

Submitter	Comment
Prof. Patrick Parkinson AM (Sub 36)	The explanatory notes fail to mention that the Yogyakarta Principles were drawn up by self-selected activists in non-government organisations and have never been agreed by the governments of the United Nations and cannot be said to have any formal legal status in international law.
IWD Brisbane Meanjin (Sub 295)	The Yogyakarta Principles has no legal standing, it has not been approved by the UN.

### > Department response

DJAG refers the Committee to the comments of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, who observed:

The process that led to the Yogyakarta Principles was not one of obligation-setting (as some narratives erroneously argue) but rather of standard identification, from an interdisciplinary basis, of the acknowledgement of sexual orientation, gender identity, gender expression and sex characteristics within treaty law, international customs, national practice, judicial decisions, and doctrine ... all of which comprise sources of international law<sup>4</sup>.

...

The Yogyakarta Principles are cherished around the world as a major achievement of activism in the field of sexual orientation and gender identity. As proven by the reference made to them by global and regional bodies, they hold a singular value as a doctrinal source that has done great service to the furtherance of the human rights of lesbian, gay, bisexual, trans, non-binary and other gender diverse persons<sup>5</sup>.

### *Trans women are not women*

A small number of organisations explicitly stated in their submissions that a trans woman is not a woman. Amongst the approximately 25 per cent of individual submitters who opposed the conflation of sex and gender in the Bill (as outlined above), a similar view can be inferred from comments that sex is a matter of “biology” and cannot be changed. Comments such as these were made by the majority of those individual submitters.

<sup>3</sup> (2007) *The Yogyakarta Principles: Principles on the application on international human rights law in relation to sexual orientation and identity*, [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>4</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 7

<sup>5</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 8 (footnote 46)

Submitter	Comment
Sall Grover (Sub 79)	I will never believe that a man is a woman, no law will change my mind, and I am ashamed to live in a state that would force me to believe this nonsense in any way. I am begging the Queensland government to stop this bill from passing and to furthermore ensure that women as adult human females is enshrined in law.
Russell Gray (Sub 185)	The proposed changes to the legislation will undermine the description of women as “cisgender women”, which is outrageous.
LGB Alliance Australia (Sub 313)	‘Trans-men’ are females. ‘Trans-women’ are males. ‘Nonbinary’ refers to an undefined feeling and sense of self which, like all gender identities, is unrelated when referring to the male and female sexes.
Fair Go for Queensland Women (Sub 327)	Regardless of what the individual might like to think about their gender, sex is immutable. A male is not and cannot be a woman and definitely cannot be female, as female refers to sex, not gender, as does woman. Human sex does not and cannot change and it is not in anyone’s interests to introduce legislation to suggest that it can.

### > Department response

The Government’s position, as expressed in the Bill, is consistent with the *Queensland Women’s Strategy 2022-27*<sup>6</sup> (the Strategy) which outlines the Queensland Government’s approach to ensuring women and girls are safe, valued, and able to freely participate in the economic, social and cultural opportunities available.

A key principle underpinning the Strategy is that gender equality is inclusive.

The Strategy recognises all people who identify as women, including those who are transgender, as well as people who are non-binary or gender diverse and acknowledges that Queensland women and girls with diverse backgrounds and experiences have the right to be safe and be provided with the same opportunities as everyone else.

This foundational policy position guides and informs the framework adopted in Part 5 of the Bill.

This inclusive definition was the subject of feedback during the consultation process to inform development of the Strategy. As part of developing the Strategy, the Queensland Government undertook extensive state-wide community consultation during August – October 2021. Participants across all consultation activities generally acknowledged the need for greater recognition and support for the challenges experienced by different groups of women and girls, including LGBTIQ+ women.

<sup>6</sup> State of Queensland (2022) *Queensland Women’s Strategy 2022-27*, <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/95357068-d24b-4565-a991-7b8be088ced9/queensland-womens-strategy-2022-27.pdf?ETag=c655247f0b2cb9f9295b45147ce05295>

### Access to women's safe spaces

The primary theme from submissions opposed to the process adopted in Part 5 of the Bill relates to the negative impacts on women's rights and safety. This concern was raised by approximately one third of both organisations and individuals.

Submitter	Comment
Australian Christian Lobby (Sub 32)	Oppose legislation that gives legal rights to biological males to access women 's spaces.
Binary Australia (Sub 157)	Concerned that the proposed Bill will lead to the endangering of vulnerable women, girls, and children by some in society who seek to take advantage of such laws. Males in Australia and around the world have abused the goodwill of society and lawmakers to access vulnerable women's spaces in prisons, changerooms, shelters, rape crisis groups, sporting fields and more, leading to appalling and horrifying outcomes for women.
Women's Action Alliance Canberra (Sub 292)	The Bill, if passed, will have the effects of jeopardising single sex spaces and safety of vulnerable women and girls, compromising freedom of association for women's groups.
IWD Brisbane Meanjin (Sub 295)	Concerned about men accessing women's spaces such as changerooms, DV shelters and the women's estate in prison. Predatory men will do anything to create conditions where they can easily access women and children.
Women's Forum Australia (Sub 304)	<p>Males are much more likely to be the perpetrators of sexual violence and females are far more likely to be victims. Men should not be allowed to identify into women's single-sex spaces and services; such spaces must be based on biological sex, not gender.</p> <p>The reforms are incompatible with efforts to end violence against women and children. They will mean an end to dedicated safe spaces for women and children who are victims of violence.</p>
LGB Alliance Australia (Sub 313)	The Bill will have disturbing effects on women and girls, due to erasure of single-sex spaces. Males will get access to work and be sheltered in domestic violence shelters for vulnerable women and children. This would allow abusive males to access shelters which would previously have been a safe haven for their female partners or ex-partners
FamilyVoice Australia (Sub 314)	The Bill places the safety of women and girls at risk and, in particular, highlights that recognising a person's fake gender on their birth certificate gives an explicit government endorsement to gender-confused males to use female bathrooms.
Active Watchful Waiting Inc (Sub 365)	The Queensland self-id law will have significant harmful impact on single sex spaces, short-listed spots, single sex sports, diverse cultures, religion, sex realist beliefs, right of association, women's services, data collection and

	homosexuality. To address those harms and discrimination, women and girls need to have specific protections, based upon sex.
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**> Department response**

DJAG acknowledges the importance of ensuring that measures designed to protect and advance women continue to achieve those goals, as well as ensuring that people are not discriminated against on the basis of their gender identity.

DJAG notes the tenor of concerns raised by stakeholders relating to women’s safety.

As part of recent evidence provided to the Scottish Government, UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, made the following key observations:

- More than 250 million persons live in countries based on self-identification and some 100 million more in regional areas of particular countries.
- In his mandate, Madrigal-Borloz has not received any information of administrative or criminal judicial findings that self-identification processes have been used by predatory men for the purpose of perpetuating gender or sexual violence against women in gender-segregated places, and desk and online research to that effect has yielded no results.
- There are no reported cases that would support the submission that crimes perpetrated by trans women, trans men or non-binary persons are the result of an abuse of the system of legal recognition for the purpose of gaining undue access to a segregated space or any gender-related differential treatment<sup>7</sup>.

In summary, Madrigal-Borloz concludes that ‘in countries that have legal recognition based on self-identification, there is no credible evidence to suggest systemic risk of predatory men using the process of identifying and living as a woman as an opportunity to perpetrate gender or sexual-based violence.’<sup>8</sup>

Two independent Australian law reform bodies have considered the impacts that changes such as those proposed in the Bill have on other aspects of society. This includes the TLRI which considered the impacts of the Tasmanian reforms after they had commenced<sup>9</sup>; and the LRCWA as part of designing a new model of gender registration for Western Australia<sup>10</sup>.

The findings of the TLRI indicate:

- concerns regarding ‘misuse’ of the Tasmanian gender registration process are misplaced (applications to register a gender are not made lightly and, in other Australian jurisdictions where fairer birth certificate laws have been in place, there is no evidence of increased risk of misuse);
- there is no peer-reviewed evidence to suggest that individuals claim to be a particular gender in order to access locations or events (for example, a women’s refuge) from which they may otherwise be prohibited; and

<sup>7</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 13

<sup>8</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 13

<sup>9</sup> Tasmanian Law Reform Institute (2020) *Legal Recognition of Sex and Gender*, [https://www.utas.edu.au/data/assets/pdf\\_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf](https://www.utas.edu.au/data/assets/pdf_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf)

<sup>10</sup> Law Reform Commission of Western Australia (2018) *Project 108 Final Report: Review of Western Australian legislation in relation to the registration or change of a person’s sex and/or gender and status relating to sex characteristics*, <https://www.wa.gov.au/system/files/2021-02/LRC-Project-108-Final-Report.pdf>



- no evidence was provided that supports the view that jurisdictions that have adopted self-identification gender laws have experienced any increase in assault against women by trans and/or gender diverse people<sup>11</sup>.

Further, a review of literature performed by the Scottish Government in 2019, in the course of preparing an Equality Impact Statement on its legislation<sup>12</sup>, found no empirical data to suggest the legal recognition of trans and gender diverse people on the basis of self-identification results in increased levels of sexual violence against cisgender women and children in public spaces. Equally, the review found no empirical data to support the claim that transwomen are more likely than cisgender women to sexually assault other women in women-only spaces.

As part of its consideration of similar legislative changes in New Zealand during 2021, the New Zealand Department of Internal Affairs found ‘no evidence to suggest that self-identification processes would lead to more predatory men entering women’s facilities. This has not occurred since a self-identification process was introduced for passports in 2012. While submitters have referred to incidents overseas of men accessing women’s spaces, there has not been evidence of these scenarios being linked to people amending their sex or gender on documents via a self-identification process.’<sup>13</sup>

The Australian Psychological Society warn against casting undue suspicion on an individual’s motives for stating a particular sex:

[T]he presumption that a person of a particular sex or gender may gain unfair advantage in accessing a location or event that others deem not appropriate is ill-founded. Further, there is now evidence that restricting the use of facilities according to assumptions about sex or gender can have significant mental and physical health costs for sex and gender diverse people. Conversely, there is no peer-reviewed evidence to suggest that individuals claim to be a particular sex or gender in order to access locations or events from which they may otherwise be prohibited.<sup>14</sup>

At a more practical level, DJAG is not aware of any evidence that suggests birth certificates play a major role in establishing a person’s right to access sex or gender-based services. Trans and gender diverse people have lived in Queensland communities for many years. Trans and gender diverse people continue to live, work and participate in Queensland society.

As part of its review, the LRCWA noted it ‘was not presented with evidence which established that trans women impose an inherent risk to others in these spaces. The LRCWA also notes documented evidence of violence being perpetrated against trans and gender diverse people.’ Further, the LRCWA stated ‘if there are concerns about trans women being included in family violence refuges, the Commission considers there should be

<sup>11</sup> Tasmanian Law Reform Institute (2020) *Legal Recognition of Sex and Gender*,

[https://www.utas.edu.au/\\_data/assets/pdf\\_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf](https://www.utas.edu.au/_data/assets/pdf_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf), p 61

<sup>12</sup> Scottish Government (2019) *Potential impacts of GRA reform for cisgender women: trans women’s inclusion in women-only spaces and services*, <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2020/01/foi-202000011201/documents/foi-202000011201-document-5---earlier-version-of-literature-review/foi-202000011201-document-5---earlier-version-of-literature-review/govscot%3Adocument/FOI-202000011201%2BDocument%2B%2B-%2BEarlier%2BVersion%2Bof%2BLiterature%2BReview.pdf>

<sup>13</sup> Te Tari Taiwhenua | New Zealand Department of Internal Affairs (2021) *Births, Deaths Marriages, and Relationships Registration Bill Supplementary Order Paper – Departmental Report*, [https://www.parliament.nz/resource/mi-NZ/53SCGA\\_ADV\\_115653\\_GA20249/db8d6fa4822606181a87285dbc93eff564b4fa3f](https://www.parliament.nz/resource/mi-NZ/53SCGA_ADV_115653_GA20249/db8d6fa4822606181a87285dbc93eff564b4fa3f), p 9

<sup>14</sup> Australian Psychological Society (2019) *Submission to the Tasmania Law Reform Institute on the Legal Recognition of Sex and Gender*, [https://psychology.org.au/getmedia/cf07aa2a-2a88-4ca7-b1b2-7f4148cdd950/aps\\_submission\\_legal\\_recognition\\_sex\\_and\\_gender\\_tas.pdf](https://psychology.org.au/getmedia/cf07aa2a-2a88-4ca7-b1b2-7f4148cdd950/aps_submission_legal_recognition_sex_and_gender_tas.pdf), p 9

appropriate policies and procedures to ensure all feel safe in such places, rather than simply excluding trans women.<sup>15</sup>

As part of its analysis, the Scottish Government did not identify any evidence supporting the claim that trans women are more likely than non-trans women to sexually assault other women in women only spaces. Much of the literature reiterates this lack of any evidence, legal, medical or otherwise, to support this characterization of trans women as deviant or predatory.

The Scottish literature search did not identify any evidence supporting a link between women-only spaces being inclusive of transgender women, and cisgender men falsely claiming a trans identity to access these spaces and commit sexual violence. Other sources included in this search reiterate a lack of any evidence to support this claim (Dunne 2017, Eckes 2017).

In particular, the Scottish Literature review which was undertaken notes:

Much of the literature suggests that some cisgender women being triggered by masculine appearances does not justify a blanket exclusion of trans women from services or spaces (particularly given that they themselves are a very vulnerable group), but rather highlights the need for individual assessments and tailoring the service for each individual's needs, which are also likely to encompass a wide variety of things unrelated to gender identity (Dunne 2017, Manners 2019). Dunne, for example, writes that 'it is perhaps understandable that abuse victims will ... be sensitive to those who – voluntarily or involuntarily – have been masculinized by society. This sensitivity which survivors experience is real, and it is important that policy makers create appropriate structures to address the complex, individualised needs of these persons. It may be that, while the law can generally open gender segregated-spaces (toilets, locker rooms, fitting rooms, etc.) to all trans individuals, there needs to be a small, sub-section of services where stricter polices, perhaps based on legal gender, continue to apply.' However, he also goes on to note that 'It may be possible to protect cisgender women's sense of security without excluding trans persons ... justifications that centre on discomfort tend to be overstated, and can indeed be accommodated within a more nuanced, non-discriminatory approach' such as clear communication of policies and rules of conduct.<sup>16</sup>

Conversely, in 2020 the Australian National Research Organisation for Women's Safety found that trans women experience sexual violence at higher rates than cisgender women<sup>17</sup>.

The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz notes:

The human rights of trans women are not dependent on the hypothetical risk that predatory men could disguise themselves as such and perpetrate crime. In democratic societies, the possibility of abuse of rights must be foreseen,

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<sup>15</sup> Law Reform Commission of Western Australia (2018) *Project 108 Final Report: Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics*, <https://www.wa.gov.au/system/files/2021-02/LRC-Project-108-Final-Report.pdf>, p 75

<sup>16</sup> Scottish Government (2019) *Potential impacts of GRA reform for cisgender women: trans women's inclusion in women-only spaces and services*, <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2020/01/foi-202000011201/documents/foi-202000011201-document-5---earlier-version-of-literature-review/foi-202000011201-document-5--earlier-version-of-literature-review/govscot%3Adocument/FOI-202000011201%2BDocument%2B5%2B-%2BEarlier%2BVersion%2Bof%2BLiterature%2BReview.pdf>, p 6

<sup>17</sup> ANROWS (2020) *Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia*, Research to Policy & Practice (Issue 14: June 2020), [https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359\\_0.pdf](https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359_0.pdf)

and addressed, through appropriate, evidence-based preventive, prosecution, and accountability mechanisms, which do not include arbitrary obstacles to legal recognition of gender identity.<sup>18</sup>

### Domestic Violence Shelters/Refuges

Domestic violence is not limited to any one type or types of relationships. It can, and does, occur in all relationships, regardless of the individuals' sex, sexual orientation or sex or gender identity.

All Queensland Government funded domestic and family violence shelters and refuges are required to comply with the *Domestic and Family Violence Support Services Practice Principles, Standards and Guidance*. Under Principle 6, all services are to be client-centred, accessible for all and provide an appropriate and equitable response for all cohorts. Women's services, including domestic violence refuges and shelters, continue to have an obligation to ensure their clients are protected.

For example, DVConnect notes on its website that its service is for anyone identifying as female, regardless of age, accessibility, ethnicity or gender orientation. DJAG is not aware of any reported concerns regarding trans women's access to refuges.

#### *Violence against women*

Two organisations queried statements made by the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General) in her explanatory speech on the Bill about the prevalence of violence against trans and gender diverse people and contrasting this with rates of violence against women.

Submitter	Comment
IWD Brisbane Meanjin (Sub 295)	<p>Query the statement by the Attorney-General that: "It is an unfortunate reality that trans and gender diverse people face much higher rates of discrimination, violence and social exclusion than their cis counterparts."</p> <p>Women face men's violence in epidemic numbers and that 'trans' people enjoy broad community acceptance. Women and girls, on the other hand, are frequently at risk of sexual harassment, sexual assault and other forms of violence.</p>
Fair Go for Queensland Women (Sub 327)	<p>The Attorney General stated "It is an unfortunate reality that trans and gender diverse people face much higher rates of discrimination, violence and social exclusion than their cis counterparts." They query where the evidence for this statement is drawn.</p>

### > Department response

DJAG acknowledges and does not dispute that violence against women is overwhelmingly perpetrated by men and that the true extent of violence against women in Australia is unknown.

<sup>18</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 13

The discrimination, violence, hate and social exclusion experienced by trans and gender diverse people is not expressed to displace nor remove the significance of the violence that women and girls experience at the hands of male perpetrators.

In his recent submission to the Scottish Government, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, further identifies that the Committee on the Elimination of Discrimination against Women has explicitly called for states to respect the rights of transgender women to bodily integrity, autonomy and self-determination and to actively take measures to address gender-based violence against trans women and ensure that supports, measures and services for survivors are accessible to all women, in particular, those facing intersecting forms of discrimination, such as trans women.

DJAG notes the wide range of research that documents the experiences of trans and gender diverse people, a few of which are referenced below.

- ANROWS Practice Paper: *Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia*<sup>19</sup>

The ANROWS Practice Paper states ‘International research indicates trans women are at higher risk of sexual violence than cisgender women (James, 2016; National Coalition of Anti-Violence Programs, 2014, 2015, 2016). In Australia, a recent survey of trans and gender diverse people that asked participants “Have you ever been forced or frightened into doing something sexually that you did not want to do?” reported that 53.2 percent had experienced sexual violence compared to 13.3 percent of the broader Australian population (Callander et al., 2019). Trans women of colour face discrimination and violence on the basis of the intersection of their gender and racial identities and, for some, their sexual identities as queer women’.<sup>20</sup>

- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability supported and funded a Research Report: *Violence, abuse, neglect and exploitation of LGBTQA+ people with disability: a secondary analysis of data from two national surveys*, November 2022. The report found that trans and gender diverse participants with disability reported higher levels of family violence and harassment or assault based on their sexual orientation or gender identity and lower participation and feelings of acceptance outside of LGBTIQ groups and venues than their cisgender counterparts. Overall, the report observed disproportionately high rates of harassment, assault and violence and mental health challenges among trans and gender diverse young people and adults with disability in Australia<sup>21</sup>.
- Findings from Australia’s largest national survey of the health and wellbeing of LGBTIQ people to date – *Private Lives 3 National Report*<sup>22</sup> show that trans and gender diverse people are continuing to experience significant disparities across a range of health and wellbeing indicators, and concerning levels of discrimination, harassment and violence, compared to the general population.

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<sup>19</sup> ANROWS (2020) *Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia*, Research to Policy & Practice (Issue 14: June 2020), [https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359\\_0.pdf](https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359_0.pdf)

<sup>20</sup> ANROWS (2020) *Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia*, Research to Policy & Practice (Issue 14: June 2020), [https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359\\_0.pdf](https://apo.org.au/sites/default/files/resource-files/2020-06/apo-nid306359_0.pdf), p 3

<sup>21</sup> Hill, AO et al. (2022) *Violence, abuse, neglect and exploitation of LGBTQA+ people with disability: a secondary analysis of data from two national surveys*, <https://apo.org.au/sites/default/files/resource-files/2022-11/apo-nid321129.pdf>

<sup>22</sup> Hill, AO et al. (2020) *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*, [https://www.latrobe.edu.au/data/assets/pdf\\_file/0009/1185885/Private-Lives-3.pdf](https://www.latrobe.edu.au/data/assets/pdf_file/0009/1185885/Private-Lives-3.pdf)

Reported rates of family and intimate partner violence were high among PL3 participants. Generally, lower proportions of cisgender men reported experiencing intimate partner or family violence compared to cisgender women, trans men, trans women and non-binary participants. Rates of sexual assault were highest among cisgender women, trans men and non-binary people, which further reflects the gendered nature of violence toward people socialised as women. It also resembles patterns in the first Private Lives Survey, in 2005, in which trans men and cisgender women reported the highest levels of intimate partner violence.

- The Human Rights Campaign (HRC) reported that highest number of transgender and gender non-conforming people ever reported were victims of fatal violence in 2020 and they declared that anti-trans violence is epidemic.<sup>23</sup>
- Transphobia worldwide often results in frequent episodes of extreme violence towards transgender people.<sup>24,25</sup> Between October 2019 and September 2020, 75 countries and territories worldwide reported murders of trans and gender-diverse people.<sup>26</sup> Additionally, data is not being systematically collected in most countries, and coupled with misgendering by families, authorities, and media, the extent of violence against transgender persons is likely underestimated.
- Trans and gender diverse people experience structural violence as a consequence of living within a social world that largely fails to accept, account for, or accommodate for them, rendering them vulnerable in a range of domains, including health, labour, housing, and the criminal legal system.<sup>27</sup>
- Trans and gender diverse people also experience higher rates of interpersonal violence and discrimination across various contexts, including educational and employment settings, public spaces (such as restrooms), healthcare settings, and at home.<sup>28,29,30,31,32,33</sup>

Mr Madrigal-Borloz, in his letter to the Scottish Government in relation to the Gender Recognition Reform (Scotland) Bill, notes:

Risk-management is an argument that may be put forward to justify mechanisms of gatekeeping in relation to access to legal recognition of gender identity, often in connection with alleged concerns regarding gender

<sup>23</sup> Human Rights Campaign Foundation (2020) *An Epidemic of Violence: Fatal Violence Against Transgender and Gender Non-Conforming People in the United States in 2020*, <https://www.hrc.org/resources/an-epidemic-of-violence-fatal-violence-against-transgender-and-gender-non-conforming-people-in-the-u-s-in-2020>

<sup>24</sup> Divan, V et al. (2016) *Transgender social inclusion and equality: a pivotal path to development*, Journal of the International AIDS Society (Vol. 19), <https://doi.org/10.7448/IAS.19.3.20803>

<sup>25</sup> Transrespect versus Transphobia Worldwide (2020) *TMM Update: Trans Day of Remembrance 2020*, <https://transrespect.org/en/tmm-update-tdor-2020/>

<sup>26</sup> Transrespect versus Transphobia Worldwide (2020) *TMM Update: Trans Day of Remembrance 2020*, <https://transrespect.org/en/tmm-update-tdor-2020/>

<sup>27</sup> Collier M and Daniel M (2019) *The production of trans illegality: Cisnormativity in the U.S. immigration system*, Sociology Compass (Vol. 13(4))

<sup>28</sup> Effrig JC, Bieschke KJ and Locke BD (2011) *Examining victimization and psychological distress in transgender college students*, Journal of College Counselling (Vol. 14(2)), pp 143–157

<sup>29</sup> Griner SB, Vamos CA, Thompson EL, Logan R, Vázquez-Otero C and Daley EM (2020) *The intersection of gender identity and violence: Victimization experienced by transgender college students*, Journal of Interpersonal Violence (Vol. 35, pp 23–24)

<sup>30</sup> Hoxmeier JC and Madlem M (2018) *Discrimination and interpersonal violence: Reported experiences of trans\* undergraduate students*, Violence and Gender (Vol. 5(1)), pp 12–18

<sup>31</sup> Kuehn B (2019) *Transgender youth victimization*, The Journal of the American Medical Association (Vol. 321(10)) p 931

<sup>32</sup> Lanham, M et al. (2018) *'We're going to leave you for last, because of how you are': Transgender women's experiences of gender-based violence in healthcare, education, and police encounters in Latin America and the Caribbean*, Violence and Gender (Vol. 6(1)), pp 37-46

<sup>33</sup> Lombardi E, Wilchins RA, Priesing D and Malouf D (2002) *Gender violence: Transgender experiences with violence and discrimination*, Journal of Homosexuality (Vol. 42(1)), pp 89–101

and sexual violence against women. The imperative of protecting women in all their diversity from violence is firmly established in international human rights law and policy. Indeed, in that context, multiple UN bodies... have identified a concerning pattern of violence that is specifically targeted at trans women, and that is often brutal in nature, and have explicitly called for urgent measures to tackle such violence, including ensuring access of trans women to shelters and other services<sup>34</sup>.

Mr Madrigal-Borloz also quotes the Commissioner on Human Rights of the Council of Europe who stated, when informing her findings about distortions of human rights between different communities or populations in the UK:

[a]nother worrying feature of the current discourse is the framing of the protection of the rights of trans people as diametrically opposed to, and incompatible with, the protection of the rights of women, or of lesbians, gays or bisexuals. The Commissioner is of the opinion that such distortions of human rights as a zero-sum game between different groups must be vigorously rejected. In this context, the Commissioner highlights in particular that trans people and cis-gender women, rather than being groups in competition with each other for the realisation of their human rights, are far more likely to have a shared experience of prejudice, gender inequality, harmful stereotyping, and a higher vulnerability to violence. These human rights issues must be tackled urgently across the board and, in the Commissioner's view, attempts to artificially pit these groups against each other will only undermine these efforts<sup>35</sup>.

#### *Quotas/affirmative action*

One organisation and approximately five per cent of individuals expressed concerns that the reforms in the Bill could impact adversely on affirmative action practices for women.

<b>Submitter</b>	<b>Comment</b>
Dr Christina James (Sub 33)	Women have fought hard for gender equality and attempts to address the gender imbalance e.g. quotas for women on boards, for prizes in the arts and sciences, for sporting achievements, are made a mockery of by the inclusion of biological males.
Individual (Sub 118)	What about women's scholarships, prizes set aside for women's categories and women's ratios such as the Labor party's policy to correct the sex imbalance in politics? Women weren't handed the rights and positions we have now. They were fought for.
Lori Puster (Sub 200)	Concerned the Bill will take away opportunities specifically targeted for women e.g. scholarships.
LGB Alliance Australia (Sub 313)	Males will skew the measurement of affirmative action programs for women

<sup>34</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, p 10

<sup>35</sup> Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27757>, pp 10-11

## > Department response

DJAG notes the concerns raised in the submissions that greater recognition and respect for gender diversity may have adverse impacts on women's rights, affirmative action policies designed to redress historic discrimination. It also notes that no evidence was provided that supports this view.

Notably, jurisdictions that have adopted similar laws have not reported any experiences with skewed data or any downstream impacts.

However, DJAG notes that in certain areas of operations and functions, agencies will need to give separate consideration to relevant obligations and exemptions under anti-discrimination law.

Options under the AD Act may be available for organisations able to demonstrate that discrimination against a person or group on the basis of any of the protected attributes is required to redress disadvantage. The onus will be on the organisation seeking the exemption to demonstrate any disadvantage that justifies the application of the exemption.

### *Women's sports*

Another theme emerging from submissions opposed to Part 5 of the Bill focuses on disadvantaging women in sport. A small number of organisations and approximately 10 per cent of individuals had concerns about impacts on women's sports.

Submitter	Comment
Women's Forum Australia (Sub 304)	Allowing males who self-identify as female to participate in female-only sports raises both fairness and safety concerns for female athletes at all levels. Allowing male athletes to compete in women's sport limits career progression for young female athletes.
Active Watchful Waiting Inc. (Sub 365)	Women will lose the right to exclude male-bodied people from women's sports and the right for fair competition for women, as women's rights are subsumed beneath the demands of trans-identifying males even where there is overwhelming evidence that male inclusion is in opposition to the interests of women and girls.

## > Department response

Inclusive participation in sports is a complex issue that predates the Bill.

There are specific exemptions in the AD Act which make it lawful to restrict participation in sporting activities to either males or females if the restriction is reasonable having regard to the strength, stamina or physical requirements of the activity.

Section 42 of the *Sex Discrimination Act 1984* (Cth) provides an exemption from discrimination on grounds of sex, gender identity or intersex status where a person is excluded from 'participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.'

Sporting organisations are encouraged to discuss issues about inclusiveness in an open and tolerant way so that all participants feel safe and protected when participating in sporting activities.

Guidelines have been developed by the Australian Human Rights Commission (AHRC), in partnership with Sport Australia and the Coalition of Major Professional and Participation Sports, to provide guidance to sporting organisations on promoting the inclusion and participation of trans and gender diverse people in sport.<sup>36</sup>

The Australian Sports Commission notes that all 'Australians should have the opportunity to be involved in sport and physical activity, regardless of their gender, sexual orientation, ability, cultural background or ethnicity. It is important that sporting bodies, from local clubs through to national sporting organisations, reflect the diversity in the communities they are a part of, and that together, we ensure every person is treated with respect and dignity and protected from discrimination.'

The issue of restricting participation in sport on the basis of sex or gender identity involves an unfortunate but necessary balancing of competing individual rights. Studies show that young people who participate in athletics have better mental and physical health than their peers who do not participate in athletics<sup>37</sup>. It is also widely acknowledged that young transgender people are at significantly greater mental health risk than their peers.<sup>38</sup>

Separately, non-binary experiences are often forgotten, and while there may be some overlap with trans experiences, non-binary people must navigate the difficult binary female/male distinction that exists in sport.

In this regard, as part of its *Building Belonging* report, the QHRC found that the AD Act should retain a sport exception in the same form as the current version on the basis that human rights considerations weigh in favour of not changing the approach. The QHRC also observed the provision should be monitored to ensure that the exception remains relevant, evidence-based, and necessary in the future.

The QHRC notes scientific research about the relevance of strength, stamina, and physique to particular sporting activities is a relatively new and emerging field. Further research regarding trans and gender diverse people in sport is a developing discipline.

The QHRC offer a detailed analysis of issues in relation to participation sport from pages 360-367 of the *Building Belonging* report.

The Queensland Government is currently carefully considering the findings and recommendations of the *Building Belonging* report.

Ultimately, participation in sport requires a nuanced response. The inclusion of trans and gender diverse people and compliance with the AD Act is a matter to be dealt with by individual clubs and sporting codes, having regard to the AHRC guidelines.

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<sup>36</sup> Australian Human Rights Commission (2019) *Guidelines for the inclusion of transgender and gender diverse people in sport*, <https://humanrights.gov.au/our-work/lgbti/publications/guidelines-inclusion-transgender-and-gender-diverse-people-sport-2019>

<sup>37</sup> Eime, RM et al. (2013) *A systematic review of the psychological and social benefits of participation in sport for children and adolescents: informing development of a conceptual model of health through sport*, International Journal of Behavioral Nutrition and Physical Activity (Vol. 10: Art. 98, pp 1-21), <https://ijbnpa.biomedcentral.com/articles/10.1186/1479-5868-10-98>

<sup>38</sup> Strauss, P et al. (2019) *Associations between negative life experiences and the mental health of trans and gender diverse young people in Australia: findings from Trans Pathways*, Psychological Medicine (Vol. 50(5), pp1-10), <https://www.cambridge.org/core/journals/psychological-medicine/article/associations-between-negative-life-experiences-and-the-mental-health-of-trans-and-gender-diverse-young-people-in-australia-findings-from-trans-pathways/074F9A6C4C3322B73BCCFD39E622B290/share/b44b982ebf195a88f2191ec978356577b29b4860>



### Accuracy of statistical information

A small number of organisations and approximately 10 per cent of individual submitters expressed concerns about the accuracy of data collection and statistics if sex and gender identity are not differentiated.

Submitter	Comment
Binary Australia (Sub 157)	Crime statistics will be skewed as males who appropriate womanhood are counted as female.
Women's Forum Australia (Sub 304)	The reforms will impact and effectively falsify crucial data collection informing public policy and services in the areas of health, crime, employment and so on. Accurate, sex-disaggregated data is essential in order to understand differences in the lives of women and men, and in order to combat sexism.
LGB Alliance Australia (Sub 313)	Males identifying as women, or an undefined 'nonbinary' and 'other' categories, will spoil the accuracy and usefulness of scientific research.
Fair Go for Queensland Women (Sub 327)	The current legislation undermines accurate data collection, and efforts to address male violence against women. In order to accurately record and report upon 'discrimination, violence and social exclusion' there must be facility to record individuals on the basis of sex and gender identity.

### > Department response

DJAG considers that these submissions overstate the role of birth certificates in data collection.

In most cases, giving information on one's sex or gender is up to the individual and is not checked against what appears on their birth certificate. Other factors that influence the recording of sex and gender data include changing expectations around sex and gender, and the guidance given by the Australian Bureau of Statistics (ABS).

The ABS *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables 2020*<sup>39</sup> (ABS Standard) provides that while typically based upon the sex characteristics observed and recorded at birth or infancy, a person's reported sex can change over the course of their lifetime and may differ from their sex recorded at birth.

Accurate statistics can be collected by correctly framing the question of interest – for example, asking for a person's sex recorded at birth, rather than their sex at the time of completing a survey.

Further, DJAG notes there will be no change to the birth notification process or the initial birth registration process under the Bill. A child's sex at birth on their birth registration will continue to be registered as either 'male' or 'female'. The Registry of Births, Deaths and Marriages will maintain this record, even if alterations of sex are made later in the person's life.

<sup>39</sup> Australian Bureau of Statistics (2020) *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables*, <https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>

## 2. Framework for persons aged 16 years and above

As outlined above, many submissions related to foundational issues underpinning the reforms. There were very few submissions in relation to the actual parameters of the framework for persons aged 16 years and above. The small number of organisations that commented on this focussed on the requirement for the applicant to provide a supporting statement from an adult who has known the applicant for at least 12 months. One individual expressed concern that the statutory declaration process may be open to abuse by persons exerting undue influence over vulnerable individuals.

Submitter	Comment
Just Equal Australia (Sub 183) Equality Tasmania (Sub 307) LGBTI Legal Service Inc (Sub 363)	Do not support the requirement that an application to alter the record of sex be accompanied by a supporting statement as it undermines the principle of self-identification.
LGB Alliance Australia (sub 313)	A supporting statement with the specifications in the Bill is insufficient to ensure the truth or sincerity of the application.

### > Department response

Although not a pure 'self-declaration' model (like that adopted in Tasmania and some jurisdictions internationally), the Bill allow a person to declare their sex with no requirement for a medical statement from a doctor or psychologist. This avoids medicalising the process and aligns with the Victorian approach.

The supporting statement requirement is considered to appropriately strike the balance between accessibility and the integrity of the system. Obtaining a supporting statement is not considered overly onerous.

## 3. Framework for children under 16

### *Medicalisation of gender questioning children*

A small number of organisations and individuals expressed concerns that by establishing a pathway to alter a child's record of sex that is more accessible (and therefore supporting their social transition), the Bill will lead more children to seek medical transition.

Submitter	Comment
Women's Action Alliance Canberra (Sub 292)	The Bill, if passed, will have the effects of fast tracking the medicalisation of gender questioning children.
LGB Alliance Australia (Sub 313)	By the Bill supporting a child's social transition, it will set a young person on a pathway of irreversible body modification.
Individual (Sub 364)	Concerned children will be opting out of puberty and sterilised for life.

Active Watchful Waiting Inc. (Sub 365)	Highlights the impact of supporting social transitioning of minors that leads to medical transitioning, in the current culture of gender affirming care.
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## > Department response

DJAG notes the concern raised.

The perspectives expressed in the submissions that advance the belief that the Bill will lead to the medicalisation of gender questioning children, conflate gender affirmation and medical intervention. Gender affirmation does not automatically mean that a person will undergo medical intervention.

While a small cross section of trans and gender diverse persons view medical procedures as necessary to their wellbeing and the only path to their gender identity realisation, this necessity is not felt by the entire transgender community.

A 2021 study examined the clinical characteristics of children (including adolescents) presenting to a newly established, multidisciplinary Gender Service in New South Wales, along with the challenges that clinicians faced in providing clinical services to these patients and their families.

The study found that the diverse context of socio-political discourses was often what shaped the views of families and children:

“families tended to medicalize the child’s distress, attributing it solely to gender dysphoria as an isolated phenomenon, with the consequence that the family identified the medical pathway as providing the only potential way forward. The motivation to engage in individual or family work to explore the broad range of difficulties and psychological, family, or loss/trauma issues contributing to the clinical picture was generally low”<sup>40</sup>.

It is the role of clinicians to provide children presenting with gender dysphoria/gender identity issues and their families with a comprehensive assessment to best explore and understand each individual child’s story, along with that of the family, in an effort to identify and address the broad range of factors that contribute to the child’s distress and loss of well-being.

Support, treatment and assistance may include:

- assisting a child to explore their gender identity and providing information about the diversity of gender identities and expressions;
- assessing whether a child is experiencing gender dysphoria and exploring various medical and social interventions which may assist in alleviating that dysphoria;
- assessing suitability for hormonal and surgical treatments;
- providing psychological support with issues that relate to transition.

Altering the record of a child’s sex is one of many different options that may be explored as a way in which gender variation could be expressed and may or may not be an appropriate pathway. The options for each child will differ on a case-by-case basis.

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<sup>40</sup> Kozłowska, K et al. (2021) *Australian Children and Adolescents with Gender Dysphoria: Clinical Presentations and Challenges Experienced by a Multidisciplinary Team and Gender Service*, Human Systems: Therapy, Culture and Attachments (Vol. 1, Iss. 1, pp 70-95), <https://journals.sagepub.com/doi/pdf/10.1177/26344041211010777>, p 85

The contention in submissions that the Bill, if passed, will fast track the medicalisation of children incorrectly misstates the purpose of the Bill.

It also fails to acknowledge that a diagnosis of gender dysphoria is usually deemed necessary before a child or young person can access medical interventions. Further, that medical interventions must be accessed through a medical professional and subject to the age of a child, with consent from both parents or persons with parental responsibility.

DJAG refers the Committee to the submission of Equality Australia which note that this Bill does not alter or affect the law on who can consent to medical treatment for a young person seeking gender affirming healthcare, with the prevailing authority being that both parents must consent to any gender affirming healthcare where a young person is under 18.

Rather, the Bill decouples legal affirmation from medical affirmation and preserves for the young person and their family full autonomy over medical decision making.

*Co-occurring issues in trans and gender diverse children*

A small number of organisations and individuals raised concerns about the impact on children who are neurodiverse, experiencing mental illness, or who have a history of trauma or family dysfunction.

Submitter	Comment
Prof. Patrick Parkinson (Sub 56)	Damage will be done from giving legislative support to the social transition of vulnerable children who have experienced child abuse, family dysfunction and suffer from various psychiatric comorbidities. The Bill will have an adverse impact on children and adolescents who have neurobiological disorders or are mentally very unwell, and who may embrace a transgender identification to gain notice or popularity.
Women’s Action Alliance Canberra (Sub 292)	Gender dysphoria in children can mask trauma and autism – conditions that indicate other treatment approaches. Gender dysphoria can also mask same-sex attraction, as evidenced by a growing cohort of people who later regret transitioning and recognise in retrospect that they had internalised homophobic attitudes.
Individual (Sub 300)	The Bill could be recklessly and negligently enabling psychological conditions without proper medical or psychological assessment.
Women’s Forum Australia (Sub 304)	Children and adolescents presenting with gender dysphoria often have a history of childhood trauma, family dysfunction, sexual abuse or discomfort with their sexuality, as well as comorbid mental health issues, including anxiety, depression, behaviour disorders and autism.

## > Department response

There are widely divergent and, in some instances, quite polarised views about how gender incongruence and gender-related distress in children and young people should be interpreted.

DJAG acknowledges the wealth of evolving research in relation to children and young people presenting with either complex issues with gender identity including incongruence or with gender dysphoria and the existence of co-occurring challenges, such as psychiatric comorbidities, mental health problems or issues related to family dysfunction, abuse or attachment disorders.

As noted above, it is the role of clinicians to provide children presenting with gender dysphoria/gender identity issues and their families with a comprehensive assessment to best explore and understand each individual child's circumstances.

The presence of co-occurring factors, is one that is best addressed through early support in order to increase understanding of the reasons why children and adolescents experience gender diversity, provide tailored support to optimise health outcomes and provide a thoughtful and thorough assessment to those seeking medical interventions and those who do not require medical or clinical intervention.

It is outside the scope of the Bill to provide for each and every co-occurring issue that arises in relation to each child who seeks to alter their record of sex.

The assessment of the child by the developmentally informed practitioner, which is required for both the administrative and court pathways established by the Bill, provide an important independent safeguard of the child's general health and wellbeing and enables the particular vulnerabilities of children to be taken into account.

For those matters that come before the Childrens Court, a parent or person with parental responsibility that seeks to oppose the young person's application is not prevented from introducing evidence of the presence of any co-occurring issues the child. It will be a matter for the court to determine, having regard to all the evidence, whether it is in the best interests of the child, to make an order in the terms of the application.

### *Gender identity may be transitory*

A small number of organisations and individuals expressed concerns that allowing children to alter their legal record of sex will concretise a gender identity which might otherwise be transitory.

Submitter	Comment
Prof. Patrick Parkinson (Sub 56)	Allowing children to change their birth certificates is not good policy because of desistence among gender incongruent children. Trans identification amongst teenagers is a fad.
Individual (Sub 293)	The Bill will encourage young people to make "concrete" their neo-identities that may otherwise be transient and exploratory.
Women's Forum Australia (Sub 304)	Allowing children to concretise a transgender identity in law is at odds with developing approaches that recognise

	that gender dysphoria is often both transient and the result of underlying social and mental health issues.
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## > Department response

The feedback received through the consultation process indicates that being trans is not simply a trend or a phase.

Rather, for children and young people who experience challenges with gender identity, incongruence with their sex at birth or with gender dysphoria, it is a serious and persistent distress.

The *Australian Standards of Care and Treatment Guidelines for trans and gender diverse children and adolescents* states that 'every child who presents with concerns regarding their gender will have a unique clinical presentation and their own individual needs'<sup>41</sup>.

The options for intervention will be different for every child and tailored interventions are important for this cohort.

Dr Stephen Stathis from the Queensland Children's Gender Service notes:

"Some families are concerned about children and young people changing their minds later in life, regretting either a social transition or medical gender affirming treatments.

Retransition, or changing gender identity after socially or medically transitioning, does occur in small numbers and the exact gender trajectory of any child can never be predicted. Internationally, a recent study found that just 0.03% of young children who began puberty blockers re-transitioned to the gender presumed at birth and 2.5% of early social transitioners re-transitioned socially to their gender presumed at birth.

While the vast majority of trans adolescents do not retransition, counselling and support is important for those that do experience a shift in gender identity. In adults, the figures vary but it remains low and external pressures associated with difficulties in society being trans are often cited as key factors."<sup>42</sup>

### *Parental responsibility and children's maturity*

Some organisations and individuals expressed concerns that children under 16 do not possess the maturity to make decisions which would alter their record of sex, and that those provisions of the Bill which allow a child to alter their record of sex with the support of only one parent, or without the support of parents at all, will erode parental rights.

Submitter	Comment
Australian Christian Lobby (Sub 32)	Opposes the introduction of legislation that allows a child to alter their record of sex without parental consent.
Prof. Patrick Parkinson (Sub 56)	Children under 18 should not be permitted to seek a registration of a gender identity.

<sup>41</sup>The Royal Children's Hospital Melbourne (2020) *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents Version 1.3*, <https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf>, p 5

<sup>42</sup> Stathis, S (2022) *Helping trans, non-binary and gender diverse kids thrive*, <https://www.childrens.health.qld.gov.au/helping-trans-non-binary-and-gender-diverse-kids-thrive/>

Individual (Sub 172)	Children are too young to be making such life-changing decisions
Women's Forum Australia (Sub 304)	The Bill pits children against their parents and parents against one another by allowing children under 16 to change their registered sex with the permission of one parent only, or without any parental permission at all in certain circumstances.
Evelyn Williams (Sub 306)	Children this age cannot understand the implications of what they are asking for.
Fair Go for Queensland Women (Sub 327)	Young people of the age of 16 do not possess the assured cognitive capacity to fully understand the full repercussions that this Bill may entail. They further submit it is generally recognised that brain development and maturation is ongoing at least until the age of 25 years and that the age used in the Bill should, at the very least, align with age of majority in Queensland, i.e., 18 years.
Active Watchful Waiting Inc. (Sub 365)	The Bill removes parental rights of care. When the state can over-ride a parent or both parents who are against their child's transition, this interference amounts to a breach of the UN Convention on the Rights of the Child.

### > Department response

DJAG considers that extending legal recognition of trans and gender diverse people to children and young people as detailed in the Bill achieves an appropriate middle ground having regard to the age of the child and responsibilities of parents or persons with parental responsibility.

In developing the child framework proposed in the Bill, DJAG examined good practices in legal frameworks in a number of overseas jurisdictions, mainly – Malta, Norway and Belgium, as well as in comparator countries – the United Kingdom, Ireland, France, Portugal and Denmark.

The legal developments across Australia towards providing greater legal recognition for transgender and gender diverse people and in particular how they apply to children were also examined.

The common features of good practice in legal frameworks across the jurisdictions studied, touch on important principles from the *United Nations Convention on the Rights of the Child*<sup>43</sup> and operate against a large body of human rights, other instruments (recommendations, resolutions) and normative standards, both universal and regional.

The child framework in the Bill adopts the good practice from jurisdictions that operate on a model of self-determination for both adults and children, meaning individuals can elect to update their birth certificate without the need for medical diagnoses or surgical change.

DJAG notes that the child framework acknowledges the role of parents or other persons allocated parental responsibility, particularly in the exercise of parental responsibility about major long-term decisions that affect children.

<sup>43</sup> UN Office of the High Commissioner (1990) *Convention on the Rights of the Child*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

The framework in the Bill recognises this and appropriately modifies the process for achieving the best interests of the child in line with their capacity.

Alongside these considerations, courts are taking an increasingly liberal view of the rights of children to participate in important decisions affecting them and allowing the views of the child to be given due weight in accordance with age and maturity.

While it is presumed that parental responsibility for a child ends at the age of 18, as a matter of common law, parental authority diminishes as the capacity of a child to decide matters for themselves develops. This is referred to as the concept of 'evolving capacities' of the child.

The concept of the 'evolving capacities' of the child is an important concept in international human rights treaty and in the interpretation of the *United Nations Convention on the Rights of the Child*<sup>44</sup> (UNCRC).

The term 'evolving capacities' has been treated as an enabling principle, an interpretative principle, and a policy principle within the framework of the UNCRC.

The concept of evolving capacities under the UNCRC informs not only the framework of parental guidance, but the whole of the Convention.

Importantly, the concept of 'evolving capacities' recognises that as children grow and develop, their capacities evolve, and parents must adjust their direction and guidance to enable their children to exercise increasing agency over their lives.

As such, a child can be competent to decide a matter for themselves before they turn 18. The 'best interests of the child' acknowledges the child's legal personality and that a child should, as far as practicable, be involved in decisions about their life.

The alteration of sex provisions in the Bill that apply to children under the age of 16 adopts the concept of the evolving capacities of children as a guiding policy principle.

Age limits necessarily involve a degree of generalisation using age as a proxy measure of maturity and capacity to act responsibly. This recognises that some younger children are unlikely to have the sufficient level of maturity to make this decision independently, while it is more likely for older children to be able to understand the nature and effects of changing their registered sex.

Further information about the balancing of the child's best interests with the concept of parental responsibility is outlined in the Human Rights Statement of Compatibility for the Bill.

#### *Assessment of developmentally informed practitioner*

A small number of organisations and individuals expressed views on the requirement that an application by a child under 16 to alter their record of sex be accompanied by an assessment by a developmentally informed practitioner, including whether this is an adequate safeguard. Views on this issue were varied.

<b>Submitter</b>	<b>Comment</b>
Queensland Law Society (Sub 34)	QLS question the utility of the 'assessment' by a developmentally informed practitioner and suggest that

<sup>44</sup> UN Office of the High Commissioner (1990) *Convention on the Rights of the Child*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>



	<p>consideration be given to amending the definition of assessment to ensure the assessment is practically useful to the court when deciding an application.</p> <p>Recommends:</p> <ul style="list-style-type: none"> <li>• amending the definition of ‘assessment’ to ensure the assessment is practically useful to the court when deciding an application; and</li> <li>• removing the need for an assessment to be provided by a developmentally informed practitioner when parents or persons with parental responsibility agree to the alteration of the child’s record of sex (clauses 41 and 52).</li> </ul>
R Harrison (Sub 115)	The requirement for a developmentally informed practitioner to assess a child is an inadequate safeguard.
Multicultural Australia (Sub 197)	Recommends implementing safeguards for trans and gender diverse youths aged 12 to 16, without imposing the requirement to undergo an assessment with a ‘developmentally informed practitioner’, which can create barriers for disadvantaged youths.
Women’s Action Alliance Canberra (Sub 292)	Critical of the assessment to be undertaken by a developmentally informed practitioner on the basis that it does not “question the appropriateness of a child’s transition” but rather support the child on their “transition journey”. The attestation by a developmentally informed practitioner is rendered an essentially tick-the-box exercise.
LGB Alliance Australia (Sub 313)	The Bill does not provide sufficient, nor even any adequate, safeguards against unnecessary, damaging, irreversible effects of gender transitioning, or gender socialisation, for children; or to ensure the child’s understanding of consequences. The definition of assessment does not define or describe how a child’s understanding might be questioned or ascertained.
Aboriginal and Torres Strait Islander Legal Service (Sub 342)	Retaining the requirement for an assessment to be undertaken by a developmentally informed practitioner is consistent with the best interests of the child. However there is scope to consider an added safeguard, namely a requirement for a full psychological assessment.

### > Department response

The central policy intent behind the assessment is to provide assurance that the child or young person understands the practical consequences of the application to alter their record of sex. That is, what this means for them in a range of different settings (for example, at school and other environments).

The approach taken in the Bill is consistent for all children under the age of 16 i.e., whether the application goes through the administrative or court pathway, an assessment is required. This provides equity and a foundational safeguard to support the process.

DJAG notes the QLS feedback related to the assessment and, in particular, that consideration be given to amending the definition of assessment to ensure the assessment is practically useful to the court when deciding an application.

The criteria for an assessment may be prescribed by regulation (clause 37(a)(iii) and (b)(iii). DJAG will consider the criteria proposed by the QLS in its submission as part of the refinement of the draft Regulation which was tabled by the Attorney-General.

A key aspect of developmentally informed practitioners is their accessibility to children that live in regional and remote areas and the existing professional relationship (clinical, patient, mental health support, therapy etc.) to the child. Access is not limited to personal attendance with a developmentally informed practitioner.

Consistent with the *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children*<sup>45</sup>, the support for children given by a developmentally informed practitioner may be provided through tele-health, telephone counselling services or online support.

A developmentally informed practitioner that can write an assessment must already have a relationship with the child, that may be a GP/patient relationship, or school guidance counsellor/student etc. This will allow the child to ask the professional who has already been providing the child with support, to write the assessment and prevent forum shopping.

The non-medicalised nature of the assessment ensures the pool of suitably qualified third parties is not necessarily limited to health professionals; however, a developmentally informed practitioner must be qualified or have experience working with children and understand child development.

Widening the pool of suitable people, the reforms also address the accessibility concerns raised over the cost, geographic unavailability and long waiting lists inherent in relying on a medical professional.

DJAG notes the ATSILS submission for an added safeguard in the form of a full psychological assessment.

Consistent with the underlying policy of de-medicalising the framework, along with a review of the various types of supports that a child and their family engage with throughout transition, feedback from consultation and also having regard to the changes made by the World Health Organisation in the 11th edition of the *International Statistical Classification of Diseases and Related Health Problems*<sup>46</sup> (ICD-11), it is considered that an assessment undertaken by a developmentally informed practitioner is the most appropriate type of evidence.

The scope of who may undertake the role of a developmentally informed practitioner includes professions such as psychologists or those that are involved in treatment of a diagnosis for gender dysphoria, or those that treat children who do not need to undertake medical treatment to realise their gender identity. A key aspect is that the developmentally informed practitioner has an ongoing relationship with respect to the child's transition and is best placed to make the assessment.

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<sup>45</sup> The Royal Children's Hospital Melbourne (2020) *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents Version 1.3*, <https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf>

<sup>46</sup> World Health Organization (2022) *International Classification of Diseases* (11<sup>th</sup> rev.), <https://icd.who.int/en>

### *Accessibility in regional and remote communities*

A small number of organisations expressed concerns regarding the accessibility of the children’s framework, particularly in relation to the availability of a developmentally informed practitioner to conduct an assessment, for children in regional and remote communities and from other disadvantaged groups.

<b>Submitter</b>	<b>Comment</b>
Multicultural Australia (Sub 197)	Notes the potential difficulties, for families and youths experiencing financial disadvantage or who do not reside in metropolitan areas, of engaging with and paying for this assessment.
Sisters Inside Inc. (Sub 362)	<p>These pathways are limiting to children currently in custody, children with unstable and unsupportive guardianship or care, and children in rural, regional and remote areas. Aboriginal and Torres Strait Islander trans and gender diverse children and young people, those living in rural or regional communities, and/or trans and gender diverse children and young people who are currently in or have recently left youth prison are far less likely to access “developmentally informed practitioners” to attest to a change in gender markers on government identification.</p> <p>The Committee needs to consider any impacts that the proposed changes to the Bill will have on trans and gender diverse children who are criminalised or whose parents or guardians are criminalised, or who face barriers in accessing Court applications. The Bill fails to go beyond the ‘identifying’ process and does not expressly contemplate socio/political factors that could impact a person’s ability to self-identify.</p>

### **> Department response**

A key aspect of developmentally informed practitioners is their accessibility to children that live in regional and remote areas and the existing professional relationship (clinical, patient, mental health support, therapy etc.) to the child. Access is not limited to personal attendance with a developmentally informed practitioner.

The scope of who is qualified to undertake the role of a developmentally informed practitioner has also been developed having regard to the difficulties that a child or young person might face in regional or remote areas of Queensland and captures school guidance counsellors or health practitioners that travel to remote areas to deliver health services.

Children in out of home care or in the care of the Chief Executive (child safety) are not prevented from applying under the pathways in the Bill. Schedule 1 of the Bill recognises the various ways persons, other than parents, may be allocated parental responsibility for a child.

### *Nature of the court proceeding*

Transcend Australia expressed concerns about some aspects of the court pathway.

Submitter	Comment
Transcend Australia (Sub 182)	<p>Concerned that the process proposed under the Bill and Regulation will require a young person to seek formal legal assistance to prepare submissions and attend the Children's Court.</p> <p>Recommends clarifying whether the intention of clauses 45 and 46 requires that the child be subjected to a full, (very formal) litigated hearing, or whether such an application will be considered on the papers by the Judge alone in Chambers, or alternatively via more informal, alternative dispute resolution methods such as mediation.</p> <p>Seeks further clarity over whether (in the case of clause 45(8) a parent or person with parental responsibility has a right to provide submissions in response to the child's application and whether these will be considered by the Court as part of its assessment of the child's best interests at clause 45(8).</p>

### **> Department response**

Clauses 45 and 46 provide for court proceedings to be initiated in and determined by the Childrens Court.

The provisions do not contemplate that an application made under these provisions will be determined on the papers or by way of mediation.

However, Part 5, Division 5, Subdivision 1 of the Bill sets out how proceedings are to be conducted. In particular:

- Clause 70 provides in exercising its jurisdiction or powers in the proceeding, the Childrens Court must regard the wellbeing and best interests of the child as paramount; and
- Clause 76 provides that the Childrens Court may hear from the child in the way the court considers appropriate, including, for example, by hearing from the child without the other participants being present.

The Childrens Court is considered the most suitable jurisdiction which will adopt a child-centred approach.

As a respondent to an application made by a child under clause 45, it is envisaged that a parent or parent with parental responsibility may make submissions to the Court which it may consider in determining whether making the order is in child's best interests.

However, DJAG notes that clause 46 enables a child that makes an application under clause 45, to concurrently seek an order to dispense with the requirement to serve a copy of the application on one or more of the respondents.

This acknowledges that there are a range of reasons why parent(s) or persons with parental responsibility may not consent to the application, including for example where the parent rejects the child's gender identity or where the other parent has been a perpetrator of family violence, and either the supportive parent or the child is fearful of contacting them to obtain their approval.

The Childrens Court must not make the order dispensing with service, unless the court is satisfied that the requirement could reasonably be expected to adversely affect the child (the child may make a submission to the court on this issue). This determination may involve considering the risks to the child's health and safety, or to the health and safety of another person related to the child.

#### *Assistance for children navigating the process*

A small number of organisations made suggestions about assistance that should be provided for children navigating the process to alter their record of sex.

<b>Submitter</b>	<b>Comment</b>
Queensland Law Society (Sub 34)	Recommends that government allocate appropriate funding to community legal centres and relevant health services to ensure children under 16 can practically access assessments by a developmentally informed practitioner and the ability to make an application to the Childrens Court.
Transcend Australia (Sub 182)	Request the Government continue to work with LGBTIQ+ groups, QHRC and Legal Aid Queensland to prepare information material outlining the processes once this Bill is passed. Strongly support an approach to allow Legal Aid Queensland (and or Community Legal Centres) to provide advice to children seeking to utilise the court pathway.
Equality Australia (Sub 356)	Recommend that information is provided on the relevant pages of the Births, Deaths and Marriages website about how support services (including legal support) can be accessed and applied for by young people and their families, particularly where young people do not have the support of each of their parents or legal guardians.

#### **> Department response**

This feedback is noted.

Further work will be undertaken during planning and implementation of the reforms that will include, amongst other things, consideration and development of guidelines, forms and supporting material to assist children and young persons, lawyers and developmentally informed practitioners to navigate the new processes.

In relation to funding, operational changes required to support the implementation of the reforms will be met from within existing resources.

Subject to passage of the Bill, DJAG will work collaboratively with key stakeholders during implementation to ensure appropriate processes are in place for commencement.

Further consideration will be given to the suggestion of Equality Australia.

#### 4. Effect provision

##### *General impacts*

A small number of submitters expressed concerns or posed queries about the general impacts of the 'effect provisions' in the Bill, which provide that once a person's sex is altered in the relevant register, "the person is a person of the sex as altered for the purposes of, but subject to, a law of the State".

<b>Submitter</b>	<b>Comment</b>
Queensland Law Society (Sub 34)	Concerned that a person's sex registration may be overridden and unable to be enforced due to the reference in the Explanatory Notes to "gendered terms directed to the anatomical capacity of a person".
Queensland Human Rights Commission (Sub 360)	Unsure of the intended meaning of the example provided in the Explanatory Notes regarding 'anatomical capacity' and anticipates situations where it could be beneficial to trans and gender diverse people to have flexible interpretations of other legislation which contains gendered terms.
Sisters Inside Inc. (Sub 362)	Prioritising a person's anatomical characteristics over their gender identity and expression will negatively impact the lives and safety of trans and gender diverse people in Queensland. This will reduce access of trans and gender diverse people to healthcare, housing, employment, and education opportunities. A person's correct legal gender identity and expression should be used over a person's anatomical characteristics. This is especially relevant to the experience of trans and gender diverse people in prison.

##### > Department response

The language used in the 'Effect' provision in clause 47 of the Bill is most consistent with the Victorian BDMR Act (see section 30G(1), (1A) and (3)). It is also similar to the Tasmanian BDMR Act (see section 28D).

It appears that the QHRC may have collapsed the two elements of the 'but subject to' component of the Effect provision highlighted in the Explanatory Notes into one.

First, the reference to 'but subject to' in the Effect provision will allow for an express contrary intent to be expressed in other legislation. Consistent with legislative interpretative principles, if such an express contrary intent was adopted in the future it would need to be clear, precise and justified.

Second, the reference to 'but subject to' in the Effect provision will allow for the new Births, Deaths and Marriages Registration Act to be read appropriately alongside other legislation (whether enacted before or after these amendments) to produce a logical reading.

This second element goes to the heart of the QHRC's request – it will facilitate flexible and beneficial interpretations of gendered terms in other legislation, where appropriate.

For example, the *Surrogacy Act 2010* currently uses the term ‘birth mother’. The definition of ‘birth mother’ is directed to the anatomical capacity of a person to become pregnant and bear a child to facilitate the carriage and birth of that child for another person. Accordingly, where the requirements of a surrogacy arrangement are met, the definition of ‘birth mother’ is likely to capture a person whose sex is recorded as something other than female, in circumstances where that person has the anatomical characteristics necessary to become pregnant and bear a child.

This example highlights a situation where the anatomical capacity of a person must be considered to produce a logical reading of the *Surrogacy Act*.

The intent of the ‘Effect’ provision is not to prioritise anatomical characteristics over gender identity and expression. The opposite is true – in providing that a person is a person of the sex as altered for the purposes of, but subject to, a law of the State, clause 47 establishes that, from a general standpoint, in most instances where other legislation refers to ‘sex’, a trans or gender diverse person is to be treated for the purposes of that law in accordance with the sex as altered with the registrar.

DJAG notes that section 48 of the *Human Rights Act 2019* requires courts and tribunals to interpret statutory provisions, to the extent possible that is consistent with their purpose, in a way compatible with human rights.

#### *Impacts for other Queensland legislation*

A small number of organisations recommended an audit of Queensland legislation to determine and address impacts of the ‘effect provisions’, or queried impacts for specific legislation.

Submitter	Comment
Queensland Law Society (Sub 34)	<p>What is the intended interpretation of the personal search powers under the <i>Police Powers and Responsibilities Act 2000</i>?</p> <p>An audit should be undertaken of all Queensland legislation and associated Government policies and procedures referring to "sex" or "gender" to examine whether any consequential amendments are required as a result of the ability to register a sex descriptor of any kind.</p>
Prof. Patrick Parkinson AM (Sub 56)	<p>Consideration of all the effects of clause 47 of the Bill for Queensland laws where a distinction between being male or female arises should be undertaken. This should be through a public inquiry or a referral to the Law Reform Commission.</p>
Equality Australia (Sub 356)	<p>Recommend an audit of Queensland laws that use gender-specific language or language that refers to people’s sex-related characteristics or bodily functions to ensure all legal rights, entitlements, privileges and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex characteristics.</p>
Queensland Human Rights Commission (Sub 360)	<p>Following the passage of the Bill, an audit of Queensland legislation should be completed to identify occurrences of the terms ‘sex’, ‘gender’, and other gender-specific</p>

	language such as ‘woman’, ‘man’, ‘sister’, and ‘father’ to ensure equal recognition and treatment of trans, gender diverse and intersex people in all of Queensland’s laws.
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**> Department response**

DJAG acknowledges the Bill has implications for other laws across the statute book.

This is one of the reasons why the Bill commences by proclamation.

This is to provide an appropriate implementation lead-in to enable all government agencies to consider their portfolio legislation to determine whether amendments are required because of the Bill.

DJAG notes audits have been completed by other jurisdictions including Tasmania (completed by the TLRI) and the Australian Capital Territory (completed by Equality Australia)<sup>47</sup>. These will be instructive in identifying key issues which need to be considered.

*Implications for QPRIME*

The Queensland Law Society (Sub 34) seek clarification on whether the Queensland Police Records Information Management Exchange (QPRIME) will be updated to align with the new process for altering a record of sex. QPRIME is an integrated policing information and records management system.

**> Department response**

The Queensland Police Service (QPS) allows people to update personal information held in the QPRIME system where they have legally changed their name or sex.

Members of the public can notify the QPS of these changes and upload accompanying documentation on the QPS website: [www.police.qld.gov.au](http://www.police.qld.gov.au).

The QPS will be exploring whether any changes to this process are necessary as part of implementing the Bill.

Gender information displayed on bench charge sheets reflects the sex of the person as it is recorded in QPRIME.

Under the Bill there is no longer a requirement to undergo sex reassignment surgery. The QPS is exploring how sex descriptors will be recorded as part of implementing the Bill.

More broadly, as part of implementation, there will be a need for agencies to review policies, procedures and forms to consider the impacts of the Bill.

*References to ‘gender’ in the statute book*

The Queensland Law Society (Sub 34) notes the ‘effect provisions’ fail to make reference to legislation that refers to gender.

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<sup>47</sup> Tasmanian Law Reform Institute (2020) *Legal Recognition of Sex and Gender*, [https://www.utas.edu.au/data/assets/pdf\\_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf](https://www.utas.edu.au/data/assets/pdf_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf), Appendix 3; Equality Australia (2019) *ACT LGBTQ+ Legal Audit: Reforms for an Inclusive Act*, <https://equalityaustralia.org.au/resources/lgbtq-issues-in-the-act/>



## > Department response

Based on its ordinary meaning, existing legislative references to 'gender' (that is, how a person identifies and feels themselves to be) would be inclusive of transgender people and encompass persons beyond the binary conception of male and female.

DJAG notes that a person who alters their record of sex under the proposed reforms will be doing so to align with their gender.

References to 'gender' across the statute can be assessed on a case-by-case basis to determine whether any amendments may be required.

### *Impacts on wills*

The Queensland Law Society (Sub 34) raises concerns about the current drafting of the 'effect provisions' as they relate to entitlements under wills.

Submitter	Comment
Queensland Law Society (Sub 304)	<p>Wills may leave class gifts to children by gender. A person who alters their record of sex will maintain an entitlement based on their sex at birth (through application of clause 47(3)) while also gaining an entitlement based on their sex as altered (through application of clause 47(1)). This will dilute the entitlements of other members of the relevant class.</p> <p>Clause 47(3) should be amended to provide that unless there is a contrary intention, the document creating the entitlement is to be construed on the basis of the person's sex at the time the document was drafted/settlement or the entitlement arose (if by operation of law).</p>

## > Department response

DJAG notes the wording of clause 47(3) is consistent with existing section 24(5) of the BDMR Act.

Also, the wording adopted in clause 47(3) of the Bill is consistent with equivalent sections in the BDMR Acts of the Australian Capital Territory (see section 29), Tasmania (see section 28D(6)) and South Australia (see section 29T).

DJAG will further consider the issues raised by the Queensland Law Society.

## 5. Other

### *Scope of sex descriptors*

Just.Equal Australia (Sub 183) welcome the introduction of an ability for people to nominate gender identities other than male or female. The approximately 5 per cent of individuals who commented on the sex descriptors available under the Bill were divided on this issue.

Submitter	Comment
Briar Wormington (Sub 188)	I support the legal recognition of non-binary genders. Enabling people to select a sex descriptor of their choice allows for legal recognition of non-binary genders at an individual level while not restricting the terminology that someone may use to describe their own gender.
Christine Chehade (Sub 324)	The Bill gives the registrar the discretion to determine that some identities are not "genuine" if they are "obscene, offensive or absurd" or not in the "public interest". By doing so, the Bill effectively changes the role of the government registrar from a recorder of sex to an assigner of sex.
Individual (Sub 325)	It is unreasonable and nonsensical to include gender descriptions such as 'agender', 'non-binary' and 'genderqueer'.

### > Department response

Expanding the scope of sex descriptors that a person may nominate recognises that current male/female sex descriptors or 'core descriptors' fail to acknowledge the realities that exist within people's sex and gender identities. This reality is not satisfactorily addressed by the creation of a 'catch all' category for those that do not neatly live and experience sex identities within the male/female binary cisgender framework.

Collapsing the different ways of identifying as transgendered and living one's life into a 'catch all' category would ignore the differences within transgendered and gender diverse communities. It would also undermine the difference between gender diverse cohorts despite broadening the possibilities of sex identification from two to three or more; and conflate the disparate experiences of sex and gender diverse people without recognising and valuing the differences between their identities and experiences.

The Bill therefore enables a person to nominate a sex descriptor of male, female or any other descriptor of a sex so long as it is not a prohibited sex descriptor. This could include descriptors more commonly known and used in western societies, as well as terms used by gender diverse cultures such as Fa'afafine (Samoan), Hijra (South Asia), brotherboy and sistergirl (for First Nations communities). Allowing descriptors of this nature is an acknowledgement and promotion of a person's cultural rights which are protected under the *Human Rights Act 2019*.

#### *Recognised details certificates*

Multicultural Australia (Sub 197) supports the introduction of a framework for people born outside of Queensland to obtain a new recognised details certificate, acknowledging their name and sex.

### > Department response

This feedback is noted.

## Recognition of contemporary family and parenting structures

A number of submissions addressed amendments in the Bill to provide greater recognition of contemporary family and parenting structures. Submitters were divided on this issue, with significant numbers both in support and opposed.

### 1. Support for changes

A number of submitters expressed their support for amendments to provide greater recognition of contemporary family and parenting structures.

Submitter	Comment
Queensland Law Society (Sub 34)	Support and welcome the proposal to facilitate the registration of multiple combinations of parental descriptors.
Multicultural Australia (Sub 197)	Support the amendments proposed by Clause 12 of the Bill to support same-sex and gender diverse parents to record a parenting descriptor on their child's birth certificate that correctly reflects their parenting role. The current restrictions on the registration of children's birth certificates, and the current definition of 'birth', are outdated, discriminatory and exclusive.
UQ Ally Action Committee (Sub 322)	Support the option for parents to select from "mother", "father", and "parent" and recognise that the parental descriptor is deeply personal and of great value, and support every person being afforded the choice to select a term that appropriately describes their relationship to their child.
Queensland Human Rights Commission (Sub 360)	Ensuring that parents recorded on a child's birth certificate can be registered as 'mother', 'father', or 'parent' promotes the right to protection of families as a fundamental unit in society.

### > Department response

This feedback is noted.

### 2. Definition of 'birth parent'

Comments in relation to the introduction of the term 'birth parent' in the Bill, defined to mean "the person, of any sex, who gave birth to the child", came from a small number of individuals and one organisation, who were divided this issue. Of the individuals, two thirds welcomed the definition and one third raised concerns.

Submitter	Comment
Sandra Nugent (Sub 98)	Use of birth parent terminology is dehumanising and misogynistic.
R Harrison (Sub 115)	The option for mother or birth parent should be provided for recording the details of the person who gave birth. The option of father or parent should be provided for the parent who did not give birth. These options give the

	greatest amount of flexibility for parents regardless of their sex or how they identify, at the same time as recognising that biological sex is fundamental to reproduction and birth, and that accurate records matter to children who are born.
Individual (Sub 196)	The descriptors in Bill reduce women to a 'subset' of their own sex class. Biological men cannot identify as mothers.
Chelsea Morgan (Sub 270)	The change in the definition of birth in relation to mother is also appreciated. Cisgender women are still entirely free to call themselves mothers, we can also acknowledge the role that two women may play in raising a child together, but we do not need to force men to call themselves mothers.
Coalition of Activist Lesbians Inc. (Sub 350)	Only biologically female people give birth to human babies.

### > Department response

The current definition of 'birth' in the BDMR Act means that the person who has given birth to a child must be registered as the child's 'mother'.

The limitations in the current BDMR Act were highlighted in the 2020 Queensland Civil and Administrative Tribunal (QCAT) decision *Coonan v Registrar of Births, Deaths and Marriages* ([2020] QCAT 434).

In that case, the Registrar had registered the applicant as his child's 'mother' rather than 'father', in circumstances where the applicant had had the reassignment of his sex registered under a corresponding law but had retained the anatomical capacity to conceive and had given birth to his child.

On construing the relevant provisions of the BDMR Act, the Tribunal found it was clear from the definition of 'birth' that a mother, under the Act, is the person who gave birth; and that the BDMR Act does not envisage that a father is someone who can give birth within the meaning of the Act.

The Tribunal found that while the applicant's sex had been reassigned to male, the proper construction of the BDMR Act led to the conclusion that the correct and preferable decision was to register the applicant as the child's mother, and therefore upheld the decision of the Registrar.

The amendments in the Bill will prevent a situation like this occurring again.

The Bill removes this definition of 'birth' and adopts the term 'birth parent' – defined as the person, of any sex, who gives birth to the child – in certain provisions.

The provisions that use the term 'birth parent' are limited to section 5, when outlining the persons responsible for giving notice of the birth of a child; and section 98, outlining when a stillborn child is taken to have died.

Although the term is also used in sections 111 and 146, these provisions do not rely on the definition adopted in the Bill. Section 111 relies on the term 'birth parent' as defined in the *Surrogacy Act 2010*; and section 146 amends section 250 of the *Adoption Act 2009* and refers to the term 'birth parent' as it is used within that Act.

The definition of 'birth parent' means that anyone who possesses the anatomical capacity to conceive and gives birth, including a trans man or non-binary person, can be accurately identified as on their child's birth certificate with the most appropriate parenting descriptors.

The registry will retain information about the identity of the child's birth parent based on the notice of birth which is supplied by a responsible person (generally, the hospital). A child will be eligible to apply for that information should they wish.

These changes maintain the accuracy and integrity of statistics in relation to births in Queensland and provide Queensland parents with legal recognition consistent with their gender identity in their everyday family life; while also acknowledging the importance of woman-centred care and making clear that women who identify as a 'mother' will continue to be able to have this recognised on the births register and on their child's birth certificate.

### 3. Parenting descriptors

Of the individuals who commented on the amendments to allow any combination of the parenting descriptors 'mother', 'father' and 'parent', the large majority of were in support. The LGBTI Legal Service (Sub 363) made two recommendations in relation to this aspect of the Bill.

Submitter	Comment
Individual (Sub 51)	More options for gender markers and options for any people who are direct parents of a child to be named correctly on the birth certificate would be great!
Natalie Osborne (Sub 177)	Strongly believe in affirming the multiplicity of genders and family structures of people living in Queensland.
Che Bishop (Sub 211)	I also support the changes that are proposed to birth and death certificates, so that they more accurately represent family structures and the identities of deceased people.
LGBTI Legal Service (Sub 363)	Recommend that: <ul style="list-style-type: none"> <li>• the Bill clearly articulate changes to parentage details can subsequently be made to a child's birth certificate; and</li> <li>• once a child has attained 12 years of age, their consent must be required to change parentage details on their own birth certificate.</li> </ul>

#### > Department response

With respect to the queries raised by the LGBTI Legal Service, changes to parentage details already recorded on the births register or on a child's birth certificate will be made via the corrections power in clause 107 of the Bill.

Clause 107(12) requires that the registrar must publish a policy about how the registrar exercises their discretions under this power.

The parameters applying to exercise of the corrections power, including whether consent of a child above a certain age should be required for a change to parentage details on their birth certificate, will be considered as part of development of this policy.

The development of this policy will be informed by equivalent policies in other jurisdictions such as Victoria.

#### 4. Recording parentage details

A small number of organisations expressed concerns that a child's birth certificate may reflect something other than biological parentage.

Submitter	Comment
Adoptee Rights Australia (Sub 297)	Aligning birth certificates to the lived identity of social parents denies the genetic truth of the child at birth. The presumed rights to be identified as a parent of a child should not trump the human and legal rights of a child to know their genetic identity.
Family Voice Australia (Sub 314)	Birth certificates should protect the right of children to know their origin by listing their biological mother and father.
Fair Go for Queensland Women (Sub 327)	Birth certificates are a legal record that belong to the child, not the parent. There is no factual reason that a male can or should be recorded on a birth certificate as a child's mother, as this is not possible and doing so will have flow on impacts upon others that are not reasonable such as, for example, in the case of sex-linked genetic disease.

#### > Department response

The registry will retain information about the identity of a child's birth parent based on the notice of birth which is supplied by a responsible person (generally, the hospital).

The Bill carries over from the BDMR Act the existing requirements for access to information that relate to obtaining information about a child's biological parents from a closed entry following a transfer of parentage.

For example, in the case of adoptions, there is an information access framework established under the *Adoption Act 2009*. This requires a person to obtain authorisation from Adoption and Permanent Care Services within the Department of Children, Youth Justice and Multicultural Affairs.

With respect to surrogacy arrangements and cultural recognition orders, there is a prescribed list of persons who may access information from the closed entry.

The Bill does not prevent adopted children from being able to find out information about their biological parents.

The Bill does not change the presumptions of parentage that enable a birth to be registered by a parent (or parents). Rather, the changes relate to the parenting descriptor which can be adopted by persons who are legally recognised as a parent of a child.

Allowing parents to be recorded on their child's birth certificate using a parenting descriptor that best reflects their parenting role is consistent with a number of other jurisdictions which provide more flexibility in how parents may be recorded. For example, the ACT, Victoria and New South Wales enable various combinations of mother, father and parent.

DJAG refers the Committee to the submission of Rainbow Families Queensland, that note that any suggestion that a birth certificate should only reflect a person's 'biological father' and 'biological mother' ignores the reality that:

- Many Queenslanders already do not have their biological father correctly recorded on their birth certificate, and paternity is not always known, may be unclear or is contested. Aside from DNA testing every parent on the registration of a birth, it is not possible for the register to ever be entirely accurate in this regard.
- Since the advent of assisted reproductive technology, the assumption that all children have a biological father, and a biological mother who is also the person who has carried the pregnancy, is false, even outside of rainbow families. Examples can include:
  - where person uses an anonymous donor, and therefore is unable to provide the name and details of the sperm donor in order to complete the 'father' details;
  - where one parent carries the embryo created from the egg of another parent and the sperm of a donor, so for the purposes of the law is a 'mother' but has no biological connection to their child; and
  - where a surrogate either births a child that is biologically connected to them (traditional surrogacy) or has no biological connection to them (gestational surrogacy), and the child is that of their intended parents.

From a human rights perspective, DJAG notes that the QHRC in its submission state that ensuring that parents recorded on a child's birth certificate can be registered as 'mother', 'father', or 'parent' promotes the right to protection of families as a fundamental unit in society. The approach in the Bill provides better recognition of all kinds of families in line with Queensland's human rights obligations.

DJAG further refers the Committee to the departmental response in relation to the definition of 'birth parent' outlined above.

#### 5. Limit on number of parents

A small number of organisations expressed concerns that the Bill only allows two parents to be listed as parents on birth certificates and that this ignores the social reality of blended families with more than two parents.

Submitter	Comment
Just.Equal Australia (Sub 183)	We do not support proposed section 12(1)(b), which provides that: 'not more than 2 people in total may be registered as the child's parents (however described).' This provision fails to reflect contemporary reality, where there may be more than two parents who are responsible for a child and who wish to be recorded as such.
Equality Tasmania (Sub 307)	We are also concerned the Bill only allows two parents to be listed as parents on birth certificates. This ignores the social reality that more than two parents can care and have responsibility for a child. It is not in the best interests of a child for the family not to be fully recognised on their birth certificate.
LGBTI Legal Service Inc. (Sub 363)	Clause 12 of the BDMR Bill in its current form restricts parentage to a maximum of 2 people in total. We submit that this does not reflect modern family dynamics and we therefore recommend that there not be a cap on the total

	number of parents to a child as recorded on their birth certificate.
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### > Department response

DJAG notes that no other Australian jurisdictions provide for this in their legislation.

#### Birth registration

##### 1. Application by one parent

A small number of organisations had queries about, or recommended expanding, the circumstances in which the registrar may accept a birth registration application lodged by one parent alone.

Submitter	Comment
Queensland Law Society (Sub 34)	Support the registrar's ability to accept an application completed by only one of the parents but are concerned the examples in clause 8(2)(b) are too narrow. Recommend amending to recognise situations where a child is born in Queensland and only the birth parent is in Queensland, with the other parent overseas and not practically able to sign the application within the timeframe. There are a number of humanitarian entrants in this category.
Multicultural Australia (Sub 197)	Support the amendment proposed by clause 8(2) of the Bill but note that the examples provided are narrow and, while they should not be interpreted in an exhaustive or limiting way, may in practice impact interpretation. Recommend amending Clause 8(2)(b) to expressly recognise the situation where a child is born in Queensland and only the birth parent is in Queensland, with the other parent overseas and not practically able to sign the application within the required timeframe, or alternatively provide this scenario as an example to this section.
Aboriginal and Torres Strait Islander Legal Service (Sub 342)	It is not clear whether the registrar would accept an application for birth registration by the mother alone, where the mother has travelled from a remote community to a larger hospital to give birth.

### > Department response

DJAG notes that it is important that both parents be given the opportunity to sign the birth registration application for their child, where possible. If the registry accepts an application signed by only one parent, the other parent is effectively deprived of their legal right to participate in the naming of the child and, subject to clause 10 of the Bill, of their right to be named (or to object to being named) as the child's parent.

Accordingly, acceptance of applications signed by only one parent requires proper consideration of the full circumstances of the application.



All other Australian jurisdictions allow the registrar to accept an application for birth registration from one parent where it is not practicable/impracticable (NSW, VIC, SA, Tasmania), “impossible, impracticable or inappropriate” (SA and NT), or “not reasonably practicable or appropriate” (ACT) to obtain the signature of or consult with the other parent.

No jurisdiction specifically provides for the situation contemplated by the Queensland Law Society or Multicultural Australia in their legislation.

However, DJAG submits that the Bill, in its current form, is broad enough to encompass such a situation. This is based on the ordinary meaning of the word “unable” as being “not able to do something” (Macquarie Dictionary). DJAG considers this would include where someone is not able to do something within a specified time.

DJAG further notes that clause 9(3) allows registration of birth to occur after the time specified in clause 9(2)(a) and (b) if the registrar is satisfied the birth happened.

## 2. Timeframe for birth registration – general

The Aboriginal and Torres Strait Islander Legal Service (Sub 342) would like to see the time limits for birth registration increased by at least 30 days to provide more time for mothers from remote and regional areas to register the birth of their babies. They further submit the Committee should consider whether the late birth registration offence could be dispensed with.

### > Department response

DJAG notes that the standard birth registration timeframe of 60 days ensures that accurate statistical data may be supplied to the ABS and other statistical agencies within a reasonable time following birth. Extending the existing timeframe may impact upon the functions of entities that rely on registry birth data. 60 days is the standard birth registration timeframe across most Australian jurisdictions, including New South Wales and Victoria.

Additionally, the Bill (and existing BDMR Act) permits the registry to accept a birth registration application outside of the 60-day timeframe.

While it is an offence for a child’s parents to not submit a birth registration application, noting it is a human right in Queensland for a child to have their birth registered, the registry does not penalise parents for applying to register their child’s birth outside of the 60-day timeframe. The proposed draft Regulation formalises this position by removing the prescribed fee for lodging a late birth registration application.

The registry acknowledges that it has received feedback that a perception exists in some First Nations communities that parents may be fined for submitting a late birth registration application, and that this perception may contribute to lower birth registration rates in those communities. The registry is employing education campaigns to address this misconception as part of its Closing the Registration Gap project, which seeks to increase birth registration rates among First Nations peoples.

The Bill maintains the offence in relation to registering a birth outside the prescribed timeframes. This is consistent with the approach of all other jurisdictions.

## Issues impacting the intersex community

### 1. Timeframe for birth registration – variations of sex characteristics

A small number of organisations, while generally supporting the provision of additional time to register a birth where variations of sex characteristics have been identified, recommended the timeframe should be longer or that there should be no time limit at all.

Submitter	Comment
Intersex Human Rights Australia (Sub 113)	Any deadline for birth registration will lead to a spike in the prevalence of forced or coercive medical interventions aimed at making infants' bodies conform to social expectations for female or male bodies.
Equality Australia (Sub 356)	Welcome the provision of additional time for parents of children born with variations in sex characteristics to register their child's birth.
Sisters Inside Inc. (Sub 362)	Support the need for greater flexibility and time for the parents of children who are born with the apparent characteristics outside the binary norm. Instead of 180 days to register the child's birth, Sisters Inside request this timeframe to be increased to 24 months.

### > Department response

Findings from interstate law reform bodies all indicate that parents of children who are born with apparent characteristics outside the binary norm face complex issues arising from birth registration decisions that must be made within short timeframes.

In acknowledgment of the need for greater flexibility and time, the Bill will allow a parent of a child with variations of sex characteristics to register the birth of the child within 180 days (six months) after the birth, compared to the current requirements of 60 days.

The collection of statistics and information about births and deaths is vital for the establishment of legal identity and social inclusion, and the effective delivery of health services.

The imposition of timeframes in relation to registering births helps ensure that these statistics are collected as close to contemporaneously as is reasonably practicable.

It was necessary, therefore, to select a timeframe for registering the births of children born with variations of sex characteristics. The timeframe of 180 days was selected after consideration of submissions from stakeholders during consultation on the Bill.

In addition, for children born with variations of sex characteristics, the registry will not be seeking to penalise parents who choose to delay registration beyond the 180-day timeframe, particularly if that delay relates to unresolved concerns over what sex to register for their child.

### 2. Framework in relation to deferrable surgeries

A small number of organisations recommended the Government progress reforms to end unnecessary medical treatments modifying the sex characteristics of intersex people without their consent.

Submitter	Comment
Intersex Human Rights Australia (Sub 113)	The Bill does not address the prevalence of forced or coercive medical interventions aimed at making infants' bodies conform to social expectations for female or male bodies. Queensland should enact reforms to protect children's right to bodily integrity, in line with the 2021 Australian Human Rights Commission report, <i>Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics</i> and developments in the ACT and Victoria.
Equality Australia (Sub 356)	To protect intersex children from so-called 'normalising' procedures on their sex characteristics, the Queensland Government should commit to further legislative reform that protects intersex people from unnecessary medical treatment without personal consent.
LGBTI Legal Service (Sub 363)	Request that clear protections be introduced to ensure that deferrable and irreversible medical treatments are not performed on intersex infants and children unless and until they can provide free, full and informed consent, except in cases of absolute medical necessity.

### > Department response

This issue is outside the scope of the Bill.

### Issues impacting the adoption community

A small number of individuals expressed their disappointment that the Bill does not respond to long-standing calls by adoptees for better access to information about biological parentage, and for the introduction of an 'integrated birth certificate' acknowledging both the biological identity and current legal identity of an adopted person.

Submitter	Comment
Darryl Nelson (Sub 28)	Integrated birth certificates, such as are available to NSW adoptees, should be made available in Queensland; inaccurate details should be able to be addressed by DNA proof or by an affidavit to the department rather than a court matter; for those adults who want to discharge their adoption and access their true birth certificate, this should be allowed without the need of a full discharge Supreme Court case as in Victoria.
Kylie Cameron (Sub 29)	Adoptees have been fighting to have their birth certificates registered with original birth parents and birth names and the government promised support and now the LGBTIQ communities are being given the right to do this before them.
Shane Bouel (Sub 31)	I am happy for the Trans & LGBTQIA+ community to be acknowledged and given the rights that they deserve but am perplexed as to why the adoptee community is not afforded the same rights in the Bill.

Chris Mundy (Sub 125)	While other states have introduced “integrated birth certificates” to record both historical biological origins and subsequent adoption information, Queensland remains defiant in this regard and refuses to make any changes to BDM legislation.
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### > Department response

The Bill carries over from the BDMR Act the existing requirements for access to information that relate to obtaining information about a child’s biological parents from a closed entry following a transfer of parentage.

For example, in the case of adoptions, there is an information access framework established under the *Adoption Act 2009*. This requires a person to obtain authorisation from Adoption and Permanent Care Services within the Department of Children, Youth Justice and Multicultural Affairs.

With respect to surrogacy arrangements and cultural recognition orders, there is a prescribed list of persons who may access information from the closed entry.

The Bill does not prevent adopted children from being able to find out information about their biological parents.

An integrated birth certificate framework is not included in the Bill.

### **Implications for correctional environment and ‘restricted persons’ changes<sup>48</sup>**

#### 1. Opposition to ‘restricted persons’ amendments

QLS, Sisters Inside, LGBTI Legal Service Inc and Multicultural Australia do not support the inclusion in the Bill of a requirement for restricted persons to seek permission of the chief executive Queensland Corrective Services (QCS) before applying to register a change of sex or issuing of a recognised details certificate. These stakeholders recommended these amendments be removed.

Sisters Inside sees the need for equitable roll out of the Bill for all trans and gender diverse people.

Multicultural Australia does not consider that this amendment is justified.

### > Department response

The purpose of the requirement for a prisoner or a released prisoner (restricted person) to obtain the Queensland Corrective Services (QCS) chief executive’s approval prior to altering their record of sex on the register or requesting a recognised details certificate reflecting an altered sex is to:

- provide an opportunity for the welfare and safety of trans and gender diverse individuals to be assessed and balanced against the safety of the community and of the environment that the person resides in;
- prevent secondary gain or unlawful activity; and
- prevent the registration of a change of sex that will cause harm to a victim of crime.

<sup>48</sup> The responses in this section, excluding sub-heading 11., have been provided by Queensland Corrective Services.

The additional layer of decision making does not necessarily mean the individual will not be able to legally apply to change their sex on the register and/or receive a recognised details certificate. Rather, it provides an additional layer of administrative decision making while the individual is in QCS custody (not including a prisoner on parole) or being supervised in the community as they pose a serious risk of committing a serious sexual offence.

The requirement supports a key objective of the Bill by providing an appropriate set of checks and balances to ensure that the process is legitimate, and the safety of victims, the correctional environment and the community is upheld.

The process is intended to protect and promote the human rights of individuals, victims and the broader community.

## 2. Compatibility with human rights

QHRC sought further detail about why the additional process for prisoners is necessary and justifiable, including how the community and victims may be negatively impacted by a prisoner changing their record of sex.

QLS raised concerns that the requirement for restricted persons to seek QCS approval to apply for a change of sex is a breach of the right to equality before the law.

Multicultural Australia does not consider that the amendment is compatible with sections 15 and 25 of the *Human Rights Act 2019*.

### > Department response

The requirement that a prisoner or released prisoner obtain the permission of the QCS chief executive prior to applying for a change of sex provides an appropriate set of checks and balances to ensure that the change of sex process is legitimate, and the safety of victims, the correctional environment and the community is upheld.

In some circumstances, there is the potential for the registered change to be harmful or offensive to a victim. For example, it is conceivable that a prisoner registering a change of sex to female, who has been convicted of serious sexual offences against women, may be distressing to those victims. The new process ensures this can be considered, as and where it is appropriate.

Ultimately, this process serves to protect and promote the human rights of individuals, victims and the broader community.

The statement of compatibility addresses both section 15 (right to equality) and 25 (right to privacy) and provides justification for the limitations imposed on these rights.

## 3. Criteria furthers dangerous stereotypes

QLS raised concerns that the criteria for deciding an application made by a restricted person feeds stereotypes that trans and gender diverse people seek to change their sex or gender to further unlawful activity and are more likely to be sex offenders. QLS is concerned this approach casts undue suspicion on an individual's motives for stating a particular sex or gender.

## > Department response

The requirement that a prisoner or released prisoner obtain the permission of the QCS chief executive prior to applying for a change of sex provides an appropriate set of checks and balances to ensure that the change of sex process is legitimate, and the safety of victims, the correctional environment and the community is upheld.

The criteria are comparable to an equivalent process enacted in Victoria under section 47P of the *Corrections Act 1986* (Vic).

### 4. Conflict with existing QCS policy

QLS argues that the requirement is at odds with the existing QCS policy regarding trans and gender diverse prisoners, which recognises the distinction between biological sex and gender, but sets the default position as accepting (at face value) a person's expressed gender identity and requires a risk-management approach to be taken in relation to accommodating those prisoners (with a preference for housing in a prison aligning with their expressed gender).

## > Department response

The additional layer of decision making does not necessarily mean the individual will not be able to apply to legally change their sex on the register and/or receive a recognised details certificate. Rather, it provides an additional layer of administrative decision making while the individual is in QCS custody (not including a prisoner on parole) or being supervised in the community as they pose a serious risk of committing a serious sexual offence.

QCS is committed to the safety and wellbeing of prisoners and is committed to respecting the right to equality, diversity and inclusion for all people.

QCS will continue to manage trans and gender-diverse prisoners on an individualised case-by-case basis through a multi-disciplinary approach.

QCS policies and practice procedures related to trans and gender diverse prisoners are regularly reviewed and will be updated prior to commencement of the Bill.

### 5. Suggested amendments

If the provisions are not removed, QLS recommend the starting point for any application by a restricted person should require the application to be approved by the chief executive unless there are exceptional circumstances to warrant its denial. QLS also recommended the chief executive should be obliged to take all reasonable steps to mitigate any risk such that the application can be approved.

QLS also recommended that the Bill should be amended to include a requirement for reasons to be provided to a prisoner if an application is refused.

## > Department response

### 6. Management of prisoners that have recorded a change

The QHRC has queried how the changes to record of sex will have an impact on QCS decision-making in relation to currently detained prisoners and prisoners who may be

detained in the correctional environment after changing their record of sex. The QHRC notes this is unclear in the material with relation to new section 27AB.

In particular, the QHRC has sought information about whether these matters are intended to be settled through creating new policies, practices, and procedures, and how QCS will develop these in consultation with stakeholders.

### **> Department response**

QCS is committed to the safety and wellbeing of prisoners and is committed to respecting the right to equality, diversity and inclusion for all people.

QCS will continue to manage trans and gender-diverse prisoners on an individualised case-by-case basis through a multi-disciplinary approach.

QCS policies and practice procedures related to trans and gender diverse prisoners are regularly reviewed and will be updated prior to commencement of the Bill.

#### **7. Updates to practice and procedures**

The LGBTI Legal Service Inc notes that QCS's existing policy for the management and placement of trans and gender diverse prisoners requires consideration of 'whether the prisoner has undergone or is undergoing a medical or surgical procedure'. The LGBTI Legal Service Inc recommends this requirement be removed as it is outdated and conflicts with the Bill.

### **> Department response**

QCS policies and practice procedures related to trans and gender diverse prisoners are regularly reviewed and will be updated prior to commencement of the Bill.

#### **8. Risks to safety of prisoners**

Sisters Inside raised concerns about the safety trans and gender diverse people in custody and claimed this cohort often experience gendered violence and abuse at the hands of other people in prison and correctional officers.

### **> Department response**

Safety is the number one priority for QCS and is an essential consideration informing decisions about management and supervision of a trans or gender diverse prisoner in the custody of QCS.

#### **9. Prisoner access to gender-affirming healthcare**

Sisters Inside raised concerns that trans and gender diverse people in prisons that do not align with their gender identity face barriers in accessing safe, appropriate and uninterrupted gender-affirming health care.

### **> Department response**

QCS manages trans and gender diverse prisoners on an individualised case-by-case basis through a multi-disciplinary approach.

Case management of trans and gender diverse prisoners includes case conferences with representatives from QCS, Queensland Health or a specialist health provider, support agencies, a psychologist or counsellor, a cultural liaison officer where appropriate, and the prisoner.

Queensland Health is responsible for the provision of health care to prisoners in the custody of QCS.

#### 10. Concerns about the safety of other women in prison

Many submissions raise concerns about the safety of women in certain spaces, including women's prisons. These submissions raise concerns about women's safety from individuals who seek access to these areas to align with their gender identity. The submissions argue this will put women at risk and given examples of sexual violence committed against women in prison by trans prisoners.

Submissions perceive that the Bill will require the accommodation of any persons who identify as female in female prisons.

#### > Department response

The Bill ensures that any prisoner that wishes to apply for an alteration of sex or for a recognised details certificate will first need to obtain the permission of the QCS chief executive.

In making the decision whether to approve a request to apply for an alteration of sex or a recognised details certificate, the QCS chief executive will be required to consider the range of factors prescribed in the Bill.

If a prisoner or released prisoner is approved to apply for an alteration of sex or a recognised details certificate, they may then proceed with their application to the Births, Deaths and Marriages Registry.

While the prisoner will then be legally recognised as their preferred sex, QCS retains the authority to determine the most appropriate custodial facility in which to accommodate the individual. This is clarified in the Bill, with the insertion of new section 27AB into the Corrective Services Act.

#### 11. Persons in criminal proceedings

Fair Go for Queensland Women (Sub 327) submit there must be provision to ensure that individuals charged with offences are not able to self-identify as transgender in the wake of being charged.

#### > Department response

The framework for 'restricted persons' in the Bill is broadly consistent with that adopted in Victoria. No other Australian jurisdictions restrict access to the process for alteration of sex.

#### **Change of name framework**

##### 1. 12-month residency requirement

The Queensland Law Society and Multicultural Australia both note that the requirement for a person to have been resident in Queensland for 12-months prior to apply for a change of



name is problematic for humanitarian entrants, noting this requirement disrupts a person's settlement journey or can compound the trauma a person may have experienced through their refugee journey.

Submitter	Comment
Queensland Law Society (Sub 34)	Recommend reducing this requirement for humanitarian entrants or expressly noting it as an exceptional circumstance under clause 26(2) for adults (and clause 28 for children).
Multicultural Australia (Sub 197)	Support the inclusion of the specified exceptions but request that clause 26 is amended by the removal (or significant reduction to three months) in the residency requirement or by inclusion of an exception for humanitarian entrants.

### > Department response

DJAG notes the current BDMR Act requires that the overseas born subject of a change of name application must 'ordinarily reside in Queensland' but does not define 'ordinarily reside'. The registry has, through its published Change of Name Policy, effectively defined the term 'ordinarily reside' to mean 12 consecutive months of residency in Queensland. The Bill establishes this as a legislative requirement.

The purpose of the 12-month residency requirement is to limit opportunities for a person to create multiple identities in different places by requiring evidence of an ongoing connection to Queensland before they may apply to register a change of name.

This position is consistent with the laws in NSW, WA and the NT, and the policy in Tasmania, Victoria and SA, which also require evidence of 12 months' continuous residency before a person born outside Australia may register a change of name in the jurisdiction.

It is noted that WA also requires the person to be an Australian citizen or permanent resident. While this approach was considered during the development of the Bill, it was rejected in favour of the less restrictive 12 months' residency requirement.

Safeguards are built into the process which will enable the registrar to still register a change of name, where the person has not met the 12-month residency requirement, if:

- the registrar is satisfied there are exceptional circumstances for accepting the application;
- the application relates to a marriage or divorce; or
- the registrar is satisfied that the application is for the purposes of protecting the person or another person associated with the person (for example, from domestic violence).

These measures ensure there is appropriate discretion for the registrar to still process a change of name, where appropriate. Depending on the circumstances of a particular case, this may include a humanitarian entrant.

#### 2. Re-registration of relevant event

The Queensland Law Society (Sub 34) submit that the requirement to make an application to re-register the person's relevant event after an application to register a change of name is an unnecessary administrative step that will require people to pay additional fees, and

recommend the registrar should be required to re-register the person or child's relevant event upon successful change of name registration.

### > Department response

Clause 36 enables a person who has registered a change of name, or had a change of name noted, to apply to the registrar to re-register their birth entry.

Clause 36 is a rewriting (without substantive change) of the existing section 14(3)(b) of the BDMR Act.

DJAG notes that re-registration of an event is unnecessary and undesirable in most circumstances where a person has changed their name. This is reflected by the fact that this process is currently seldom used.

Generally, persons who change their name want their birth certificate to include details of the change, as it allows them to produce the certificate to update their identification documents and to provide linkage between their old and new identity. A re-registered event does not include notations about the prior name changes, and therefore could not be used to establish linkages between the person's identities over time.

Re-registration is only requested in circumstances where the individual has specific reason for wishing to obfuscate/hide their name change/s. As the service is optional and generally undesired, it is appropriate that it be subject to an application process and fee, rather than being mandatory and free.

Regarding circumstances where a change of name is made to support a person's alteration of sex, the registry expects that such name changes will generally occur at the same time as the alteration of sex application (as per clauses 39, 42, and 45). The automatic outcome of an alteration of sex application is the re-registration of the relevant event, and so an applicant in those circumstances would not need to make a separate re-registration application under clause 36.

### Certificates

#### 1. Opt-in approach to sex information on a birth certificate

A small number of organisations and individuals welcomed the inclusion of provisions allowing individuals to choose whether to have sex information displayed on their birth certificates, while the Queensland Law Society queried the implications of this.

Submitter	Comment
Queensland Law Society (Sub 34)	Query how the absence of a sex descriptor on a birth certificate will be managed in verification of identity processes (for example, the Land Titles Practice Manual requires witness to undertake further steps to verify identity where the person executing the document does not appear to be of the same gender as the registered owner).
Just.Equal Australia (Sub 183)	Welcome the provisions which make the inclusion of sex on birth certificates opt-in only.
Equality Tasmania (Sub 307)	Welcome the Bill's provision allowing a choice for the inclusion of gender on birth certificates.

Sisters Inside (Sub 362)	Pleased to see the 'opt-in option' included in the Bill to ensure that gender doesn't have to be listed on a birth certificate. This is overwhelmingly a good thing as it allows for people's gender not to be listed on their birth certificate.
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### > Department response

As noted above, the Bill is to commence by proclamation. This is to provide a sufficient implementation lead-in time for all agencies to review their policies and procedures.

The inclusion of a person's sex on their birth certificate is a matter for the individual (in obtaining a certificate under the Bill, the person will choose as to whether they would like their sex information recorded on the certificate).

As part of implementation, clear guidance will be developed to ensure the community is aware that in certain circumstances, the provision of sex information on a birth certificate will be required in interactions with government and other agencies, and that a birth certificate that does not include this information may not be accepted.

#### 2. Inclusion of previous name

The UQ Ally Action Committee (Sub 322) recommend that a person who changes their name be able to receive a birth certificate without a notation of any previous names. A birth certificate without notations is necessary to allow a trans or gender diverse person to present the document without being forced to disclose their trans identity.

### > Department response

DJAG notes that the Bill already enables a person who has altered their sex to obtain a birth certificate that does not reference their previous name/s.

Following a successful application to alter their record of sex, their birth entry is re-registered. The re-registered entry produces a certificate that states only the person's new name and sex descriptor. While the re-registration process does involve a notation to be made against the registration on the registry's systems regarding the superseded name and sex information (clause 43(5)(ii)), that notation will not appear on the person's birth certificate unless they (or another eligible person) specifically request it (clause 113(3)(b)).

The purpose of providing the option of a notation of former name and sex descriptor on a birth certificate is to allow the person to demonstrate a link between their current and former legal identity. This enables them to update other identification documents and accounts. As part of implementation, the registry will explore whether other linking documents are required to support trans and gender-diverse persons to update their legal identity documents after changing their sex descriptor.

#### 3. Retention of previous record

Jigsaw Queensland Inc. (Sub 128) note it is vitally important that any process of registering and updating changes in status ought not to involve the erasure of documentary evidence of past identity, statuses and relationships. Their submission states there should remain an effective documentary trail of evidence connecting a person's current and past identities and this should be available to all close relatives.

## > Department response

Where registers are amended, whether this be in response to an adoption, alteration of sex, change of name, or correction to the register, the former details are retained – either in the form of a closed entry or via notations on the relevant entries. This ensures that past information is not lost.

Particular provisions in the Bill regulate who may access particular types of information or certificates, for example clause 113 in relation to obtaining information about the sex of a person from the registrar. The registry also maintains a detailed *Certificate Access Policy* which sets out guidelines for the exercise of discretion by the registrar relating to who may obtain information or certificates. This policy will be reviewed as part of implementation activities associated with the Bill.

### Registry operations

#### 1. Streamlining and procedural changes

Multicultural Australia (Sub 197) supports procedural changes, including reduction and simplification of information requirements for registration, the introduction of a discretion for the registrar where the inclusion or removal of certain information on a certificate may cause significant distress; the increase in flexibility in the notification and application process.

Further, Multicultural Australia recommends:

- establishing online portals which offer inbuilt translation or simplified English;
- increasing available support, through culturally informed and sensitive workers and interpreter services, at Registry offices for persons from culturally and linguistically diverse backgrounds to complete registration documents; and/or
- establishing a channel for facilitated referrals by Registry staff to agencies to support culturally and linguistically diverse community members to obtain appropriate information and complete the application process.

## > Department response

DJAG notes that this recommendation does not relate directly to the Bill, but rather to the implementation of the registry's online services.

Phone calls to the registry are managed in the first instance via Smart Services Queensland (SSQ). SSQ can provide customers with over the phone assistance with form filling. Further, where it is identified that a customer has limited or no English, SSQ will commence a conference call with Language Loop, which will supply a NAATI accredited interpreter to support mutual understanding during the conversation. The registry is continuously seeking ways to improve its services and thanks Multicultural Australia for its feedback.

#### 2. Fees to alter a person's own record of sex

A small number of organisations and individuals called for fees to be waived in relation to changes of name and alterations of sex for trans and gender diverse people.

Submitter	Comment
Amnesty International Australia (Sub 36)	Changes to name and gender marker fees should be waived in full to ensure there are no further barriers for

	those seeking to access the benefits of the legislative changes.
Jason Fernandez (Sub 283)	Amending a gender marker should be free; cost should not be a barrier to living authentically.
Equality Australia (Sub 356)	It is important that application fees do not present a financial barrier to updating gender and changing name. Trans and gender diverse people be charged no more than the operational cost of updating their gender marker and changing their name, if they are to be charged for this service at all – whether through changes to the regulation or by implementing a policy to guide the registrar’s discretion on fee waivers.

### > Department response

The registry has developed a fee waiver policy and considers fee waivers on a case-by-case basis having regard to the circumstances of each applicant.

The Bill and Regulation ensures there is a clearer legislative basis and support for existing practice in relation to the waiving of fees.

However, subject to passage, the registry will explore other options, including charging only one fee where a trans or gender diverse person applies for a change of name and alteration of sex as part of one application. This is consistent with the approach taken by the Victorian registry.

#### 3. Fee waiver

A small number of organisations called for fee waivers to be extended to various categories of applicants.

Submitter	Comment
Transcend Australia (Sub 182)	As it currently stands, section 18 of the Regulation does not provide the Registrar with sufficient clarity to encourage the waiver of application fees for unsupported minors. Section 18 should be amended to include a specific right for unsupported minors to make a fee waiver application.
Multicultural Australia (Sub 197)	Support changes to formally implement waiver of fees for certificates for disadvantaged groups and First Nations peoples. The categories of persons recognised as eligible for a waiver of fees should be extended to humanitarian entrants.
Aboriginal and Torres Strait Islander Legal Service (Sub 342)	Culturally appropriate and effective communication of the proposed fee and fee waiver changes to Aboriginal and Torres Strait Islander communities will be crucial to fully realising the objective of improving under-registration of births, should the Bill and Regulation be enacted.

## > Department response

DJAG notes the examples of community engagement activities to support disadvantaged groups listed in page 4 of the Explanatory Notes is not exhaustive.

Section 18 of the Regulation provides that in deciding whether to wholly or partly waive a fee the registrar may have regard to—

- whether the applicant is experiencing financial hardship;
- whether the provision of the service or thing applied for would improve the applicant's circumstances; and
- whether, in the registrar's opinion, waiver of the fee is otherwise desirable in the circumstances.

These factors are broad and wide-ranging and enable the registrar to consider the applicant's particular circumstances (including situations where the applicant is an unsupported minor or a humanitarian entrant).

Specifically highlighting a category of applicant in the Regulation is not considered necessary. Rather, further details about the exercise of the registrar's powers and situations where this may be most appropriate are best dealt with in an updated operational policy.

Nonetheless, DJAG notes that the regulation tabled by the Attorney-General is only a draft.

Subject to passage, DJAG will consider the issues raised by these stakeholders as part of further refinement of the regulation and as part of implementation activities.

### **Anti-Discrimination Act issues**

#### 1. Amendments progressed in the Bill

Views of submitters in relation to the amendments the AD Act made under Part 12 of the Bill, were varied. Organisations and individuals were generally supportive, however two organisations expressed concerns with the definition of 'gender identity' and the new protected attribute of 'sex characteristics'.

Further, Associated Christian Schools submits that section of the AD Act should be retained, in respect of sex workers being able to work with children.

<b>Submitter</b>	<b>Comment</b>
Intersex Human Rights Australia (Sub 113)	The enactment of protections on grounds of sex characteristics will benefit people with innate variations of sex characteristics, and we warmly welcome the provisions.
Multicultural Australia (Sub 197)	Support the changes proposed by Part 12, Division 3 of the Bill to accelerate reforms by amending the definition of 'gender identity' in the AD Act and to introduce a new protected attribute of 'sex characteristics' to provide protections for members of the intersex community.
Women's Action Alliance Canberra (Sub 292)	Urge the committee not to add 'sex characteristics' to the AD Act.

LGB Alliance Australia (Sub 313)	Do not support the definition of 'gender identity' that is being inserted into the AD Act. The definition includes the wrong assertion that sex is "assigned" at birth.
Queensland Human Rights Commission (Sub 360)	Commend the government for moving quickly to implement some of the recommendations in the <i>Building Belonging</i> report that relate to gender-diverse and intersex people.
Associated Christian Schools (Sub 361)	Section 28 should be retained in respect of sex workers being able to work with children. Section 28(1)(b) provides a sufficient limitation on the application of this exemption (specifically that the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case, including the person's actions).
Queensland Family and Child Commission (sub 359)	Repealing the exemption in the AD Act that allows discrimination in the area of working with children, recognise that a child's importance, value and safety can exist in all family types, and that there is no evidence connecting a person's gender to their ability to keep children safe.

## > Department response

The insertion of the new definition of 'gender identity' and new protected attribute of 'sex characteristics' into the AD Act implements recommendations 22.1 and 28.1 of the Building Belonging report.

The definitions adopted in the Bill align with international best practice understanding of 'gender identity' and 'sex characteristics' including the 2007 Yogyakarta Principles: *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*<sup>49</sup> and the 2017 Yogyakarta Principles Plus 10: *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics*<sup>50</sup>.

They are also consistent with the definition adopted in section 213G of the *Public Health Act 2005* as part of 2020 reforms to prohibit the practice of conversion therapy by health service providers (for gender identity) and align with actions taken by Victoria, Tasmania and the ACT (for sex characteristics).

In relation to the omission of section 28 of the AD Act, the QHRC does not consider this exemption is necessary to protect children's rights, when the existing mechanism of the blue card system (under the *Working with Children (Risk Management and Screening) Act 2000*) is in place.

The QHRC further conclude that it is incorrect and offensive to suggest that people are a risk to children solely because of their gender identity or lawful sexual activity and there is no

<sup>49</sup> (2007) *The Yogyakarta Principles: Principles on the application on international human rights law in relation to sexual orientation and identity*, [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

<sup>50</sup> (2017) *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

justification to retain the exception because it is redundant and stigmatising and may not be compatible with the *Human Rights Act 2019*.

## 2. Broader implications for the Anti-Discrimination Act

A number of submitters expressed concerns or posed queries about the specific impacts of the 'effect provisions' on the AD Act.

Submitter	Comment
Prof. Patrick Parkinson AM (Sub 56)	<p>Sex is a protected attribute under the AD Act. What then happens to provisions that allow for discrimination on the basis of sex if this legislation is enacted? There are exemptions in the AD Act on the basis of sex in various places.</p> <p>Clause 47 needs to be read in conjunction with changes that Part 12, Division 3 of the Bill will make to give effect to recommendation 28 of the <i>Building Belonging</i> report.</p> <p>That recommendation was concerned solely with the protection from discrimination of that very small number of people who have intersex conditions or disorders of sex development. However, in the Bill, the definition of 'sex characteristics' is very widely drawn.</p> <p>Unless relevant exemptions are enacted or otherwise applicable, an organisation running a single sex facility, or a women or girls' sporting competition will be discriminating on the basis of sex characteristics were it to exclude a natal male person who has an amended birth certificate indicating a female sex, but who has a penis and testicles.</p>
Women's Forum Australia (Sub 304)	The exemption in section 111 of the AD Act which allows participation in sports to be restricted to either males or females will likely be rendered meaningless by the Bill.
Associated Christian Schools (Sub 361)	With respect to the proposed Bill, our concern primarily relates to how the changes will operate with respect to the existing section 41 of the AD Act (exemption for discrimination by single sex, religious etc. educational institutions).

Extending the topic of the conflation of sex and gender, a number of submitters commented that the Bill will erode the rights of women through the erasure of the distinction between biological sex and gender.

Submitter	Comment
Prof. Patrick Parkinson AM (Sub 36)	The Bill will have an adverse effect on women and girls generally. The Bill will make it unlawful, for example, for a women's gym to exclude natal males who have registered a female sex (and whose birth certificate will now declare them to be female), because this would involve



	discriminating against them on the basis of their sex characteristics.
Women's Action Alliance Canberra (Sub 292)	The bill unnecessarily sets up a conflict of rights, privileging the rights and interests of a relatively small group at the expense of essential protections for women and girls, while also risking safeguards for vulnerable children.
Women's Forum Australia (Sub 304)	Under the Bill, women as a sex class are effectively erased along with all the corresponding protections and rights afforded to them on the basis of sex (including single-sex exemptions currently in force under the AD Act).
Feminist Legal Clinic Inc. (Sub 317)	Gender ideology is the Kraken lurking in the ocean of human rights law. Its tentacles have captured everything meaningful and true about humans and dragged it into a vortex of male entitlement. Who benefits from a legislative regime that allows male people to be legally recognised as female and usurp the hard earned sex-based rights of women and girls at their whim? Certainly not women and girls.

A small number of submitters expressed concerns about the impact on the operations of single-sex and religious schools. Contrary to this, the LGBTI Legal Service expressed concerns that the Bill does not go far enough in relation to children who identify with a particular gender but whose parents are yet to, or do not wish to, formally amend the relevant child register.

<b>Submitter</b>	<b>Comment</b>
Associated Christian Schools (Sub 361)	Where schools operate wholly for students of a particular sex, they should have the ability to refuse applications based upon the birth sex of an applicant not being the sex for which the school operates. Similarly, where a student alters their sex during enrolment, any adjustments for the student will need to take into account that the school will still operate wholly for students of a particular sex (for example, the school may not have, and should not be obliged to have, a uniform for the opposite sex).
LGBTI Legal Service (Sub 363)	This limitation is especially apparent in circumstances of school placement for children whose recorded sex in the relevant child register is different to that which a school accepts for enrolment.  A child or their parent(s) should not be required to formally "prove" their sex by way of a record in the relevant child register to obtain something as fundamental as education.  The LGBTI Legal Service therefore recommends that clause 47 of the BDMR Bill be amended to expressly provide that a child be entitled to attend a single-sex

	<p>school for the sex by which that child identifies, regardless of what the “record” reflects.</p> <p>In the alternative, a further provision could be introduced into the BDMR Bill that affords the clear and basic protection that schools cannot constrain a child from enrolment based simply on their recorded sex.</p>
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Some submitters called for a range of other amendments to the AD Act to be progressed as part of the Bill.

Submitter	Comment
Intersex Human Rights Australia (Sub 113)	The definition of ‘discrimination’ should be updated in line with the recommendations of the QHRC.
Just.Equal Australia (Sub 183)	Call on the Queensland Government to progress reforms to provisions which allow religious schools and other religious organisations to discriminate against employees, as a matter of priority.
Equality Tasmania (Sub 307)	Concerned about the absence of provisions that fully protect LGBTIQ+ people from discrimination in and by faith-based organisations, and the absence of provisions, similar to section 17(a) of the Tasmanian Anti-Discrimination Act, which prohibits behaviour which offends, humiliates, intimidates, insults or ridicules on a range of grounds including sexual orientation, gender identity and sex characteristics.

## > Department response

Issues raised by submitters in relation to the AD Act need to be considered alongside the comprehensive review of Queensland’s anti-discrimination framework recently undertaken by the QHRC.

The QHRC’s Building Belonging report makes 122 recommendations across 46 categories of reform which seek to modernise anti-discrimination law in Queensland, including the introduction of a new Act to protect and promote the right to equality and eliminate discrimination and sexual harassment to the greatest extent possible.

The Building Belonging report recommends five key pillars of reform:

- Eliminate discrimination: The introduction of a new Act to protect and promote the right to equality and eliminate discrimination and sexual harassment to the greatest extent possible.
- Refine the key concepts: Ensure the legal tests for discrimination respond effectively to the problems they are seeking to address and are easy to understand and apply.
- Shift the focus to prevention: Promote compliance by shifting the focus to preventing discrimination and sexual harassment before it happens.
- Improve the complaints system: Reorientate the dispute resolution process to ensure it is flexible and efficient, and to enhance access to justice.

- Increase protection: Ensure all people who require protection under the Act are included, and that coverage of the law extends to all contexts and settings where unfair discrimination occurs, subject to reasonable exceptions.

The Queensland Government has tabled an interim Government response to the Building Belonging report<sup>51</sup> and indicated a further Government response to the recommendations will be released.

#### ‘Sex’ as an attribute under the *Anti-Discrimination Act 1991*

Implications for references to ‘sex’ in the context of Queensland’s anti-discrimination framework will be further considered as part of the Government’s response to and implementation of the Building Belonging Report.

In particular, recommendations 22.2 and 22.3 of the Building Belonging report acknowledge that a new Anti-Discrimination Act should make reference to sex and/or gender in a way that is complementary with Queensland’s birth registration laws; and that the new Anti-Discrimination Act and its Explanatory Notes should clarify that all references to ‘sex’, or a ‘particular sex’ include both people of a sex that was assigned to them at birth, and people whose gender identity aligns with that sex.

#### ‘Sex characteristics’ and sex-based exemptions under the *Anti-Discrimination Act 1991*

The Bill adopts a broad, inclusive approach to what constitutes a person’s sex, including that it should take account of the gender identity of a person. This position, as detailed earlier in the response, is reflective of changing expectations of being able to accurately describe a personal identity beyond a rigid delineation of two binary sexes.

What are the implications then for the AD Act?

The principal concern raised by submitters is that the Bill, in particular the framework for acknowledgement of sex in Part 5 and the effect of altering sex on the relevant register, will have a discriminatory effect on women and girls not only generally but through its interaction with the AD Act.

Sex-based exemptions in the AD Act which permit discrimination in certain circumstances or areas of activity on the basis of sex, will continue to operate under the proposed Bill. ‘Female only’ spaces will likewise be able to operate under these exemptions.

The concerns from submitters that advance the argument that the new definition of ‘sex characteristics’ will undermine these exemptions misinterprets the new definitions proposed under the Bill.

The attribute of ‘*sex characteristics*’ implements recommendation 28.1 of the Building Belonging Report and aligns with actions taken by Victoria, Tasmania and the ACT. It is designed to protect intersex people, who are currently included in the ‘gender identity’ attribute under the AD Act.

This definition aligns with international best practice understanding of ‘sex characteristics’, including the 2017 Yogyakarta Principles Plus 10: *Additional Principles and State*

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<sup>51</sup> Queensland Government (2022) *Interim Queensland Government Response to the Queensland Human Rights Commission’s Report, Building Belonging – Review of Queensland’s Anti-Discrimination Act 1991*, <https://documents.parliament.qld.gov.au/tp/2022/5722T1260-ED25.pdf>

*Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics.*<sup>52</sup>

However, it is noted that sex-based exemptions could not operate to allow discrimination against a person who was assigned as male at birth but who has registered as a female. This is indeed the very objective of the Bill – to affirm the alignment of a person’s sex and gender identity.

To assist in understanding this better an illustrative example is provided below.

If a person or organisation sought to exclude someone from a ‘female only’ gym on the basis that the person was assigned male at birth and has since registered as female, or that they have male bodied characteristics, this would constitute discrimination on the basis of gender identity insofar as it excludes trans women, or on the basis of sex characteristics insofar as it would discriminate against intersex people.

Where the restriction is focused on genitalia, it will still fall under ‘*gender identity*’ for trans women because they are being treated unfavourably on the basis of their individual experience of gender, which does not correspond with the sex assigned to them at birth. The fact that they are considered legally female by virtue of their registration does not undermine the definition of gender identity, as the use of sex in the definition of gender identity is qualified by ‘sex assigned to the person at birth’.

Nothing in the Bill prevents an organisation from applying for an exemption to discriminate on the basis of ‘gender identity’ and/or ‘sex characteristics’ under section 113 of the AD Act or prevents the Tribunal from granting such exemptions where it is justified, reasonable and supported by appropriate evidence.

DJAG notes that the genesis of many of the concerns raised by submitters regarding the perceived corrosion of women’s rights and of the protections attached to those rights, largely stem or arise from a belief or position that is fundamentally at odds from the foundational policy position taken in the Bill which adopts a broad, inclusive approach to what constitutes a person’s sex, including that it should take account of the gender identity of a person. This is seen in a number of submissions in submissions that emphatically state, that ‘*trans women are not women*’.

The foundational policy position adopted in the Bill is consistent with the *Queensland Women’s Strategy 2022-27*<sup>53</sup> which outlines the Queensland Government’s commitment to improving women’s safety, health and wellbeing. The reference to women, means all people who identify as women (including those who are transgender, intersex, gender diverse or gender fluid). The reference to girls, mean all children and young people who identify as girls, including those who are transgender, gender diverse and gender fluid.

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<sup>52</sup> (2017) *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>53</sup> State of Queensland (2022) *Queensland Women’s Strategy 2022-27*, <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/95357068-d24b-4565-a991-7b8be088ced9/queensland-womens-strategy-2022-27.pdf?ETag=c655247f0b2cb9f9295b45147ce05295>

### Single sex schools

The QHRC has published the *Trans @ School* guide for educators<sup>54</sup>, in partnership with the LGBTI Legal Service, Legal Aid Queensland, the Queensland Children's Gender Service, young people, parents and educators.

This provides guidance on matters that arise in the school environment and highlights that “[m]any private schools, including faith-based schools, are leading the way in accepting and affirming trans and gender diverse students.”

The Guide acknowledges that being supportive and inclusive of trans and gender diverse students should be embedded in the school's culture, and not just 'on show' in the presence of people who belong to the trans and gender diverse community.

In particular, the QHRC advise:

- Schools cannot impose conditions on enrolment or refuse a student's enrolment on the basis of their gender identity.
- Single-sex schools may rely on an exemption under the AD Act to refuse to enrol students not of the prescribed sex. This means that a student who has a gender identity that aligns with the gender of the school is entitled to enrol in that school. For example, a single-sex school for boys cannot refuse to accept the enrolment of a female-to-male trans student.
- However, a school may choose not to rely on an exemption under legislation if it finds it can accommodate student diversity without discriminating.

Further, the QHRC notes the single-sex exemption in the AD Act only applies at the time of an initial enrolment. To ask a student to leave a single-sex school on the grounds they have transitioned to another gender may amount to direct and indirect discrimination. These students have a right to stay, and their needs must be accommodated.

### Other reforms put forward

The Bill accelerates a set of discrete priority amendments identified from the Building Belonging report.

The additional reforms put forward in the submissions of Intersex Human Rights Australia, Just.Equal Australia and Equality Tasmania relate to the definitions of direct and indirect discrimination (Recommendation 3), as well as the operation of exemptions to discrimination for faith-based organisations (Recommendations 37-40). These issues will be considered as part of the Government's broader response and implementation of the Building Belonging report.

### **Statutory review**

The Queensland Law Society (Sub 34) submits that the Bill should be subject to mandatory statutory review, to be conducted no later than three years after the Bill commences.

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<sup>54</sup> Queensland Human Rights Commission (2020) *Trans @ School: A guide for schools, educators and families of trans and gender diverse children and young people*, <https://www.qhrc.qld.gov.au/your-responsibilities/for-schools-and-universities/trans-@-school>

**> Department response**

The inclusion or otherwise of a statutory review provision is a policy decision for Government.