LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mr JM Krause MP
Ms K Richards MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Ms K Longworth—Assistant Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 JANUARY 2023

Brisbane

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The committee met at 10.25 am.

CHAIR: Good morning. I declare open the public briefing for the committee's inquiry into the Births, Deaths and Marriages Registration Bill. My name is Peter Russo, the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share.

With me today are: Laura Gerber, the member for Currumbin and deputy chair; Sandy Bolton, the member for Noosa, who is appearing via teleconference; Jonty Bush, the member for Cooper; Kim Richards, the member for Redlands, who is substituting for Jason Hunt, the member for Caloundra; and Jon Krause, the member for Scenic Rim.

The purpose of today's briefing is to assist the committee with its examination of the bill, which was introduced into the Queensland parliament on 2 December 2022 and referred to the committee for consideration. Only the committee and invited witnesses may participate in proceedings. Witnesses are not required to give evidence under both, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that under the standing orders the public may be admitted to, or excluded from, the briefing at the discretion of the committee. I also remind committee members that departmental officers are here to provide factual and technical information. Any questions about an opinion or policy should be directed to the Attorney-General or left to debate on the floor of the House.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my directions at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn your mobile phones to silent mode.

BOURKE, Mr Greg, Director, Strategic Policy, Policy and Legal Services, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Assistant Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General

CHAIR: I now welcome witnesses from the Department of Justice and Attorney-General: Mr Greg Bourke, Director of Strategic Policy, and Mrs Leanne Robertson, Assistant Director of Strategic Policy and Legal Services. I now invite you to brief the committee, after which committee members will have some questions for you.

Mrs Robertson: Firstly, I too would like to acknowledge the Jagera and Turrbal people, the traditional custodians of the land on which we meet today, and pay my respects to elders past and present.

The Births, Deaths and Marriages Registration Bill 2022 repeals and remakes the existing act. While the bill includes a number of changes, the most extensive occur in part 5. Part 5 establishes a new legislative framework to strengthen the legal recognition of trans and gender diverse individuals which is largely consistent with the approaches taken in Victoria and Tasmania. Queensland is one of only three remaining Australian jurisdictions to have not yet progressed reforms to improve the legal recognition of trans and gender diverse people in this area. Several countries around the world have also adopted models of gender recognition based on principles of self-determination including Argentina, Denmark, Colombia, Ireland, Malta, Norway, Belgium, Brazil, Luxembourg, Pakistan, Portugal, Uruguay, Chile, Iceland, Switzerland and New Zealand.

The point that I want to make here is twofold: firstly, Queensland is not alone in making these changes; and secondly, in every jurisdiction that has introduced similar reforms in Australia the evidence indicates the system is working as intended. I will use this opportunity to provide some contextual background to the approach taken in the bill and the foundational policy that sits under the framework of part 5 itself.

The submissions opposed to the framework start from the position that sex is separate and distinct from gender. However, the bill itself 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. In doing so, it conflates the concepts of sex and gender. This is also consistent with how the law already treats the terms 'sex' and 'gender'. The legal understanding of these terms needs to be divorced from a scientific perspective. I note that similar comments were made by representatives from Equality Australia at the public hearing last week.

Collapsing the terms 'sex' and 'gender' is consistent with the approach advanced by the Queensland Human Rights Commission in its report *Building belonging: Review of Queensland's Anti-Discrimination Act*, the approach of other Australian jurisdictions that have made changes in this area, and the way that the courts and common law have evolved over time. The approach taken acknowledges that sex as recorded on birth certificates is a social marker of identity, not simply a marker of biology. In this way, the bill reflects changing expectations of being able to accurately describe a personal identity beyond the rigid demarcation of two binary sexes.

I also thought I would use this opportunity to clarify a couple of other matters coming out of the hearings. To be clear, the bill does not propose any changes to the way the Registry of Births, Deaths and Marriages collects or records information at birth. Sex is recorded on the register at the time of a child's birth, and this information is provided by way of a notification of birth to the registry and subsequent birth registration application by the parents. If a person alters their record of sex at a later point in their life, the record of the person's sex at birth is not deleted from the register.

A number of submissions raised concerns that the introduction of pathways that will enable children to alter their record of sex will lead to the medicalisation of gender-questioning children. Gender affirmation does not automatically mean that a person will undergo medical intervention. While some trans and gender diverse persons, including children, may view medical procedures as necessary to their wellbeing and the only path to their gender identity realisation, the department understands this necessity is not felt by the entire transgender community. The contention in submissions that the bill, if passed, will fast track the medicalisation of children, with respect, misstates the purpose of the bill.

Some submitters at the public hearing raised the need for an audit of Queensland legislation. I wish to provide some context to the audits which have taken place in other Australian jurisdictions and, in particular, their timing. The Tasmania Law Reform Institute produced an audit of Tasmanian legislation in June 2020—nine months after amendments to Tasmania's birth certificate laws commenced. The passage of legal gender recognition legislation in the ACT occurred in 2014. It was not until 2019 that the ACT government commissioned Equality Australia to conduct an independent and comprehensive legal audit of ACT legislation and regulations.

The bill, as you note, commences by proclamation. This acknowledges that there are a range of implementation activities which will need to be undertaken. The department notes that it is intended that individual agencies will consider their own portfolio legislation to determine whether changes are required because of the bill. Any resulting amendments are a matter for each agency to manage. Chair, thank you again for the opportunity this morning to address the committee. We are happy to take questions.

Mrs GERBER: I am going to start with something that has come up a fair bit during the committee process and hearings. I am interested to know whether or not DJAG has found any evidence of men identifying as women entering women's spaces or entering women's spaces and committing an offence in any jurisdiction. How much investigation has DJAG done in relation to any of those occurrences?

Mrs Robertson: Thank you for the question.

Mrs GERBER: I realise it is big. If you need some time or if you want to come back at the end of the hearing, you can do that as well.

Mr Bourke: The departmental response to submissions canvassed a range of research the department considered from Scotland, New Zealand, Tasmania and Western Australia, as well as some expert evidence given by the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity. Scotland did an extensive piece of

work, including considering a range of literature, and did not find any evidence supporting a link between women-only spaces inclusive of transgender women and cisgender men falsely claiming a trans identity to access those spaces.

The New Zealand Department of Internal Affairs did an extensive consideration as part of their reforms passed in 2021 and found no evidence to suggest that self-identification processes would lead to more predatory men entering women's facilities. The UN Independent Expert on protection against violence and discrimination concluded—

> … in the 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 women as an opportunity to perpetrate gender or sexual-based violence.

They further noted—

> 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, and addressed, through appropriate, evidence-based preventative … mechanisms which … do not include arbitrary obstacles to legal recognition of gender identity.

There were analyses undertaken. You also have the reviews undertaken by the Western Australian Law Reform Commission and the Tasmania Law Reform Institute. These issues are ventilated when these reforms are considered. Those law reform bodies concluded that there was no particular evidence to indicate that particular risk forthcoming. The Tasmania Law Reform Institute particularly had the benefit of considering reforms post their commencement. It did not identify any particular evidence of misuse and it did consider the issue of women's spaces.

We have looked to the evidence we could identify and determined equally—and I think New Zealand makes this comment—that it overstates the use of the birth certificate in entering particular spaces, whether it be bathrooms or whatever, and that the link to falsifying it on a birth certificate and men entering those spaces is not a link that has been established. I think I have taken that as far as I can take it.

Mrs GERBER: Another issue that arose during the public hearings relates to same-sex schools. There is a concern that this bill will override the current exemption that is in place in relation to same-sex schools. I would like the department's response in relation to that. I am not sure if you were present for the oral submission from Associated Christian Schools.

Mr Bourke: At the outset, and acknowledging anything within the context of the Anti-Discrimination Act, it is worth keeping in mind that we do have the *Building belonging* report that has been published. It makes 122 recommendations for categories of reform to Queensland's discrimination law. The government has published an interim response and a more detailed, fulsome response is forthcoming. Equally, as part of our written response, we did refer to the Queensland Human Rights Commission's *Trans @ School* guide in terms of how they engage in the issue.

In *Building belonging*, the QHRC, the gatekeepers of the Anti-Discrimination Act, do make it clear that they take a beneficial interpretation to sex already, where sex to them does mean both biological sex at birth and the sex in accordance with the person's gender identity and that in fact the *Trans @ School* guide acknowledges that—

Mrs GERBER: Sorry, can I just bring you back to the substance of my question. Will this bill override what is currently in place? Can you talk us through what it will change? Schools currently do not have to make an application. There are exemptions currently under the Anti-Discrimination Act. Does this bill override that? That was essentially the crux of what was unknown.

Mr Bourke: I am giving context to the way the QHRC already interprets the exemption. They read sex beneficially already to be inclusive and published a guide—

Mr KRAUSE: What does the bill do, Mr Bourke?

CHAIR: Do not interrupt him, please.

Mr KRAUSE: We have asked the question twice already.

CHAIR: Just let him finish. If you want to follow up you can ask further questions after that.

Mr Bourke: The bill has an effect provision which provides that, once a child's sex is altered, they are taken to be that sex for the purposes of, but subject to, all Queensland laws. That has to be read in conjunction with the way the QHRC already interprets the single-sex exemption as published in its guide. When there are complaints, they interpret sex beneficially as an attribute already under the act.

Mrs GERBER: But this enshrines it in legislation. It does create a difference.

Mr Bourke: The effect provision solidifies it, yes, but if a matter went to them they are already very clear on the record about how they interpret the sex-protected attribute under the act. Yes, the effect provision reinforces that interpretation they are already applying in the way in which a trans student can access a single-sex school.

CHAIR: There was evidence—I do not know if you had the opportunity to hear it or read it—from Carinity College at the hearing last week.

Mr Bourke: Yes.

CHAIR: Are you able to expand on their concerns?

Mr Bourke: It is an individual matter for each particular school. I think their concerns were about particular male-bodied students coming within a school. There is obviously a remit within the Anti-Discrimination Act to seek particular exemptions. I would refer to the way in which the current exemption is interpreted. The guidance provided by the QHRC is that it is inclusive of trans students, and that is how they would conciliate a complaint today.

Mr KRAUSE: Mr Bourke, the evidence we heard from Associated Christian Schools was that at the moment they understand they have an exemption from elements of the anti-discrimination laws in Queensland at the point of enrolment. They expressed concerns about the changes being brought in by this bill and whether that would be maintained or if they would be required to apply in the future for another exemption to the QHRC or to whatever authority they need to apply to. You are here briefing us about this bill. Can you tell the committee whether or not the exemption that is presently, as we have heard from the Associated Christian Schools, in place at the point of enrolment will be maintained into the future under this bill, or is that situation changing?

Mr Bourke: *Building belonging* is the blueprint for future Anti-Discrimination Act—

Mr KRAUSE: Do not go to that report, please. I want you to answer in terms of what is in the bill before us today.

Mr Bourke: I think I took it as far as I could in my previous answer. We know how the Queensland Human Rights Commission interprets the exemption. I appreciate that Carinity College and Associated Christian Schools may take an alternative view and see sex more biologically centric, but we have clear guidance from the Queensland Human Rights Commission as to how they interpret the single-sex exemption already. They have a conciliation process and they manage matters. The effect provision further solidifies that so, if a child altered their record of sex, for the purpose of, but subject to, Queensland laws they would be of that sex. The bill solidifies the approach the Human Rights Commission already takes if it were ever to be involved in matters determining that single-sex exemption.

Mr KRAUSE: Was the evidence Associated Christian Schools gave us, which is that they do at the moment enjoy an exemption at the point of enrolment, incorrect?

Mr Bourke: They do enjoy an exemption at the point of enrolment. Their interpretation of it, if challenged before the Human Rights Commission, may be a matter for conciliation. Ultimately, they are enjoying the way they interpret the exemption to be. We are providing evidence as to how the Human Rights Commission gives guidance to schools about the extent of what the exemption protects at the moment.

Mr KRAUSE: So it would be subject to challenge perhaps in the future?

Mr Bourke: I cannot pre-empt that, but it may well be. Again, the Anti-Discrimination Act is in a state of flux. While I appreciate your question was to not focus on that, we have to be alive to the fact that we have 122 recommendations and that Anti-Discrimination Act is quite an old act and has had an extensive review by the Queensland Human Rights Commission where they solidify their interpretation of 'sex' in that report in terms of the way they beneficially interpret it and ask for that to be further enshrined in the new Anti-Discrimination Act.

Ms RICHARDS: So there will be more to come.

Mr Bourke: Exactly. I think all of those issues will be worked through. They make a clear recommendation in their report that a new Anti-Discrimination Act needs to be mindful and interact cohesively with the Births, Deaths and Marriages Registration Act as it is going forth now. When they were developing their report, they were aware that work was happening in the birth certificate space, but it had not actually been introduced or considered by parliament, so they were mindful of that interaction needing to work cohesively.

Ms BOLTON: The Queensland Law Society reported in their submission that previous drafts of the bill had different concepts of 'gender' and 'sex'. Can I ask why was that changed for this bill?

Mr Bourke: Yes, through our consultation drafts—and every drafting of a bill is a journey and you evolve and develop your understanding and thinking—I think our written response acknowledges that we have had regard to that kind of multifactorial understanding of 'sex' as the High Court have enumerated it and as the Queensland Human Rights Commission have enumerated it in *Building belonging*. Particularly stakeholders raised as part of that phase during the development of the bill that a distinction between biological sex and affirmed gender could actually propagate a culture of discrimination against trans and gender diverse people and that would be used as a tool to exclude or otherwise reduce the rights, and that much of the trans exclusionary advocacy efforts fundamentally align to that distinction to erode rights. It would also create a two-tier system between those who undergo sexual reassignment surgery and those who have not.

I think it is important to acknowledge that it would be inconsistent largely with the way every other Australian jurisdiction has managed these reforms. If you look to both Victoria and the ACT, theirs are framed quite similarly to the bill as introduced—that a person alters their record of sex. The Northern Territory and South Australia both acknowledge a change of sex or gender and kind of leave the issue a tad unresolved. Tasmania do it a little bit differently. I know some discussions have been had about the Tasmanian reforms. The Tasmanians require a sex to be recorded at birth but then for a person to register a gender at a later point in life. However, they have an interpretive provision in their act that largely then brings them back together—so, essentially, once a person registers a gender in accordance with their framework, it is taken to be their sex for the purposes of all other references throughout the Tasmanian law. While it separates it at the start, it largely brings it back together at the end. The net effect of that is that essentially that is then taken to be their sex across other Tasmanian laws. We had a look at those jurisdictions as well. Ultimately while a matter for government, the bill, as introduced, reflects an approach that frames it as an alteration of the record of sex.

Ms BOLTON: To go back to stakeholders, we heard at the public hearing that consultation had been undertaken for many years. How were local community groups, even MPs, informed or engaged prior to when we were presented with this bill? That can be taken on notice as to when there were notifications.

Mr Bourke: I think it is worth acknowledging that throughout 2018 and 2019 there were a series of three discussions papers released on the review of the Births, Deaths and Marriages Act. The first discussion paper extensively canvassed legal recognition opportunities for trans and gender diverse people, and that was open to the entire community. This review has been a longstanding one. There was significant volume, and I think that is reflected in some of the written material which we have already provided.

Ms BOLTON: I appreciate that. However, I would like to know when MPs, who are obviously a stakeholder on behalf of their communities, were notified, going back even to 2018 and 2019. It can be taken on notice. I would appreciate that. At the moment there is a review going on in the UK regarding implementation of similar Scottish laws. Are you aware of a report called the Tavistock? I could not quite clearly hear our previous witness, but is DJAG aware of that report and the impacts to children that it refers to?

Mrs Robertson: Chair, there are a couple of questions that Ms Bolton has raised.

CHAIR: Yes, I know. Sandy, out of respect to the people who are having to answer your questions, can you please ask one question at a time? I will give you the opportunity to ask follow-up questions.

Ms BOLTON: Wonderful.

Mrs Robertson: I will deal with the first question, which I think was about—Ms Bolton, please correct me—basically at what time were MPs advised in relation to the reform. As Mr Bourke has outlined, those 2018 and 2019 discussion papers were public consultation processes at that point. Then government considered the feedback in relation to those and worked through proposals and had some targeted consultation with stakeholders, not MPs—I acknowledge that. What government ministers do and what members of government do is a matter for them. I cannot comment on that. Then the bill was introduced and now we have the parliamentary committee process. I cannot, Ms Bolton, indicate what ministers of government might have done in the process of development more generally, but that is the public consultation process and the process as we understand it to be. I will turn to my colleague to see if he can address the technical question. If he cannot, we will take that on notice.

Mr Bourke: In relation to the Tavistock report, the department is aware and monitors those international developments. I think that goes to some of the submitters who raised issues around gender-questioning children and the approach for handling that. Within Queensland, we have the Queensland Children's Hospital Gender Clinic and Queensland Children's Gender Service, which provides that support. Numbers have been increasing for that service, and that has been reported in the media. The impact of that report on the management and treatment of gender diverse kids would be outside our portfolio responsibilities, but we are aware of that Tavistock inquiry.

Ms BUSH: Good morning, Leanne and Greg. Thank you particularly for your written response, which I found quite useful for some of the questions that I had. One of the outstanding questions I have, though, is in relation to issues raised by Multicultural Australia around having people to wait 12 months of residency before they can make an application. I want to understand the rationale behind that a little bit more.

Mr Bourke: It is worth acknowledging that the registry applies a 12-month residency requirement at a practical level now under the requirement that someone be ordinarily resident. It is largely moving what is set at a policy level into a legislative requirement that is broadly consistent with all other jurisdictions, noting that some take it further and actually require permanent residency or Australian citizenship. Essentially, the basis of it is to require that connection to Queensland so that there are some attachments to the jurisdiction before they seek that change of name and to limit opportunities for a person to create multiple identities in different places. Of course, there are exceptions built in, one of them being an exceptional circumstances determination by the registrar and that would have capacity to consider the individual case-by-case circumstances of a humanitarian entrant and the basis of what that might be. The registry would consider those each on an individualised basis. It was really elevating what was applied practically into a legislative requirement and is quite consistent with most other jurisdictions that do set that 12-month residency requirement. I think the exceptions are important to be able to balance the competing interests there.

Ms BUSH: I think it was certainly the humanitarian issue that piqued my interest. I guess the only way to strengthen that would be to work that in as an explicit example.

Mr Bourke: That would be more covered by regard to whether their matter is exceptional—the potential trauma or whatever it might be that the humanitarian entrant is perhaps coming for and the basis of their request, and that the registry would be able to determine that on each individual instance. No-one else has an explicit humanitarian entrant exception. I know in a couple of instances Multicultural Australia has called for explicit examples. That is not really consistent with other jurisdictions, but you have the capacity within the existing limbs or exceptions that we do have to have regard to that matrix of circumstances that a person might be under.

Mrs GERBER: I have a question around the operation of this act in relation to children. Before I do, I want to seek a point of clarification in relation to the time line that you just gave, Leanne, around consultation. That time line seemed to indicate that the bill had been consulted on since 2018. I wanted a point of clarification if it was substantially different.

Mrs Robertson: If I created that impression, I apologise. Discussion or issues papers for particular questions were posited or put out in the public arena. The consultation on the draft bill did not actually occur until 2022 with targeted stakeholders. That was the process. I apologise if I created—

Mrs GERBER: What was the date in 2022?

Mr Bourke: There was a round table in October 2021 on policy proposals as has been refined and then consultation on a bill in May and June 2022.

Mrs GERBER: On a bill but not this bill?

Mr Bourke: No. The changes are made responding to stakeholder feedback, yes.

Mrs GERBER: That was the clarity I was seeking, thank you.

Mrs Robertson: I apologise if I gave the wrong impression.

Mrs GERBER: In relation to the application of this bill to children, there has been a lot of submitters who are concerned. I want to know from the department what process does this bill propose for a child to change their sex marker if they are between the ages of 12 and 16, and then between the ages of 16 and 18, specifically talking about whether or not parental consent is required, specifically looking at the processes that the child would have to undergo as proposed by the bill.

Mr Bourke: I will start with the 16- and 17-year-olds.

Mrs GERBER: I said 16 to 18. Is it 16 to 17?

Mr Bourke: An 18-year-old would be treated under the adult framework. Sixteen and 17-year-olds are essentially positioned within the framework that an adult would apply under. A 16-year-old—no parental consent required—would be able to make an application under part 5 to alter their record of sex with a statutory declaration from them, accompanied by the supporting statement from an adult who has known them for 12 months or longer. That would be the pathway for 16 and 17-year-olds. That is consistent with both Tasmania and the ACT which have opened that up to 16 and above. With regard to 12 to 15-year-olds, both parents can make the application together. There are specific scenarios contemplated in the bill where one parent would be able to apply directly to the registrar.

Mrs GERBER: Even if the other parent disagrees?

Mr Bourke: The scenarios are particularly where the other parent has passed, you are the only parent on the birth certificate or you have an order from the Family Court which provides you with sole parental responsibility—that is in relation to major long-term decisions for the child. If that order is place, granting you that sole parental responsibility, you would have a straight pathway to the registrar. There are also provisions in the bill that provide for a dispensation framework whereby you could go to the Childrens Court as a preliminary matter where—

Mrs GERBER: When you say 'you', are you referring to the child?

Mr Bourke: The parent. The supportive parent would be able to go to the Childrens Court as a preliminary matter. A supportive parent could seek a dispensation order that would dispense with the other parent's consent. That might be where you have made all reasonable inquiries to contact them and you just cannot. It might be where the child was the result of a sexual offence or it might be otherwise where it is in the child's best interests to dispense with the other parent's consent, and the Childrens Court would have the scope to consider that. There might be a range of psychological harmful reasons that that might be there. If you have that dispensation order as the supportive parent, you would move away from the court process and then go back to the registry.

Any application to the registry needs to be accompanied by an assessment, by a developmentally informed practitioner. We specifically prescribe under the draft regulation who the developmentally informed practitioners may be. That captures a broad range of supports that may meet a child, depending where their transition journey is, from psychiatrists to counsellors to guidance officers to a speech pathologist. There is a broad range of supports. Essentially, that assessment is a determination or assessment by that practitioner that the child understands the meaning and legal implications of the alteration.

Mrs GERBER: A 12-year-old child?

Mr Bourke: Absolutely, yes. We have evidence that children can feel this deeply at earlier ages. Essentially, that safeguard applies to any application to the registry—you need to provide that assessment. Those are all the ways in which you can get direct to the registry. You then have a scenario where there may be a supportive parent and a non-supportive parent, and the dispensation framework is not open to you. That matter would be a contested matter before the Childrens Court where the Childrens Court has the determination to make an order directing the registrar to accept the application if they consider it to be in the best interests of the child. That could be taken by a supportive parent.

The final component is the one that the ACT have provided for recently in legislative amendments that they put forward, and we had regard to that, in that a 12 to 15-year-old would be able to navigate if they go to the Childrens Court on their own, where there are no supportive parents or persons with parental responsibility, to seek an order from the court to order the registrar to alter their record of sex.

Mrs GERBER: The ACT is the only jurisdiction that has done this?

Mr Bourke: The ACT did reforms back in 2020 that established those kinds of differing pathways. They are the only jurisdiction that has specifically moved there. We are not envisaging a huge number of kids. It is a significant process to undertake. We are in conversations with Legal Aid Queensland and other legal service providers. Through implementation we would make sure there are appropriate referrals, pathways and supports for a child that might take on that process.

Mrs GERBER: Are you in consultation with parents?

Mr Bourke: We had a session with a parent support group, yes, indeed.

Ms RICHARDS: Presumably parents would play a role within the Childrens Court process.

Mr Bourke: There is capacity for the 12- to 15-year-old child to make a submission to the court that they would be so adversely affected that their application should not be served on the parents, and the court makes that determination. There are a range of factors for them to have regard to in that

space. The child is able to make a submission to that effect. It might be because potentially there was violence or whatever it might be that that child particularly may have suffered. There is scope for the child to make that submission. If the court determines that they would be adversely affected then they would waive the service of that application to the parents. However, they may equally say, 'No, you have not made out the grounds of adversely affected,' and they would provide the child with notice of that. The child would have 28 days to consider whether or not to proceed with the application, knowing that their parents would clearly be a respondent and involved in the application.

Ms RICHARDS: To confirm, it would be the judiciary making that decision in terms of the eligibility in that process?

Mr Bourke: Yes.

Ms RICHARDS: Can you confirm again that for anybody aged 12 to 15, outside of going through that Childrens Court process, if they are an individual with no supporting parents, they require a health practitioner's assessment and parental consent?

Mr Bourke: Yes.

Ms BOLTON: With the ongoing concerns and some confusion coming in with submissions and also from people within our community, including sporting and other groups, what is the department proposing to do to assist these volunteer organisations to manage the potential impacts of this legislation—for example, education guidance and also financial assistance if needed for exemptions?

Mrs Robertson: The bill, as we have said, commences by proclamation to enable implementation activities to occur. The nature of that education activity and the scope of it is still under consideration about what we will actually do in that space. I am just not quite sure in relation to your question regarding exemption.

Ms BOLTON: My apologies. At the hearing the other day, in regard to concerns around applying for exemptions, the actual facility said there were costs associated with applying for exemptions.

Mr Bourke: Do you mean under the Anti-Discrimination Act?

Ms BOLTON: Correct.

Mr Bourke: Yes, there is a QCAT process attached to that.

Mrs Robertson: I am trying to understand the sorts of exemptions that—

CHAIR: Sandy, correct me if I am wrong but, in relation to sporting clubs who have rules in relation to who can participate in a particular sport, there seems to be a cost associated with applying for exemption. Is that correct, Sandy?

Ms BOLTON: Yes, correct.

CHAIR: I understand the basis of your answer, Mrs Robertson. Basically the department is still working through—

Mrs Robertson: The issue of an education campaign is still being worked through. In relation to any assistance for any exemptions that may be considered necessary—I am assuming this is an exemption under the Anti-Discrimination Act. I will get my colleague to talk in relation to sporting associations more generally. That might give some assistance. Certainly, the issue of financial assistance has not been considered at this point.

Mr Bourke: The sport exemption is a nuanced one already. Participation of trans people in sport predates this bill. There is a range of guidelines and other material supported, and gender identity is mentioned as a particular factor that an organisation can have regard to in determining participation in sport. The Australian Human Rights Commission and others publish a range of material to help sporting organisations, particularly at that level where it is about participation and engagement, to manage trans inclusivity. The QHRC has considered that sports exemption in *Building belonging* and determined that it should stay as is and that it is operating, balancing competing rights and interests. I think that is probably as far as we could take it in the context of sport, but these are issues sporting clubs already grapple with and manage on a day-to-day basis.

Mr KRAUSE: Going back to the issue of 12 to 15-year-olds and the pathway for going through this process, Mr Bourke, you referred to a number of health professionals or practitioners who may be able to assist in that. I cannot remember all of them but one of them was a speech pathologist. Firstly, can you go through that again, please, in terms of the practitioners or professionals who would be able to give a supporting statement in relation to the 12 to 15-year-olds? If you could be quite comprehensive in that, that would be appreciated.

Mr Bourke: The scope of who are developmentally informed practitioners are set under the draft regulation that the Attorney tabled. I will read through the exact list. The list, as prescribed, includes: a medical practitioner; a person registered to practise in the psychology profession; a person registered

to practise in the occupational therapy profession; a person who is eligible for practising membership in the Speech Pathology Association; a person registered under the national law to practise in the nursing profession in the registered nurses' division; a person who is a member of the Australian Association for Social Workers; a person who is employed by a school as a school guidance officer, and we specifically have regard to the Department of Education qualifications for who may constitute a guidance officer within state schools. That is a person who holds full registration under the Education (Queensland College of Teachers) Act, and then they must have completed either a masters course at a tertiary education that includes studies in guidance counselling, mental health or psychoeducational assessment; that could be generally or preliminary registered as a psychologist or they could have completed a four-year psychology program accredited by the Australian Psychology Accreditation Council. Those are specific requirements that the Department of Education set around who they employ as school guidance officers. There is also then a person who is registered on the Australian Register of Counsellors and Psychotherapists.

There is a broad range of supports acknowledging that each child's transition is different—it may be medical; it may be social. They may meet professionals in a range of different settings. That list has had regard to the statement of care and standards for gender diverse kids that is set in Australia and also equally a set of standards internationally. Balancing the factors of making sure that this framework is accessible to rural, remote and regional areas, we have had to cast the net wide in terms of the professional groups that are caught and that can provide that assessment in relation to the child.

Mr KRAUSE: It is a very broad range of practitioners for what is, I am sure in many cases, quite a complicated scenario for the individuals involved. How would you respond to concerns that have been raised that the people involved in providing those supporting statements are not adequately skilled and equipped with the knowledge to make those supporting statements, especially in relation to quite very young people?

Mr Bourke: Just because you are listed as a professional group does not mean that the professional feels—the professional has responsibilities both under their professional standards and ethical responsibilities to undertake an assessment. The list is provided to be clear when you are within scope, but just because you are within that professional group, managing gender-questioning children might not be within that professional scope of responsibility, and they may make a referral elsewhere. They may say, 'This is at the higher end, or there is a range of different issues that this child is experiencing.' For example, they could refer the child to the gender service where there is a range of different services. It is acknowledging the diversity of children. In some instances, some of those professions might be more than capable to make that determination. We have had regard to that.

Obviously this a draft regulation. We are open to going back out again for consultation prior, if the bill was passed, to further test it. We did test it as part of consultation last year. Peak bodies for a range of those organisations said, 'We have practices and processes for managing gender-questioning children and we are more than ready to step up to the plate.' I guess it would be determined on the particular circumstances of a child if a professional felt, for lack of a better term, out of their depth, or whatever it may be, and that is incumbent on that professional. We have attached certain professions that are outside that registered national law, like the particular peak bodies or registers that provide that extra level of quality assurance for those particular professional groups.

Mr KRAUSE: I want to ask one specific question and I am going to choose a speech pathologist. I have great respect for speech pathologists. My family has utilised them. I have a cousin who is one. In formulating that regulation, how are the skills of speech pathologists assessed as being capable of giving such an advisory statement about a legal change in sex for a young person?

Mr Bourke: That they would have the capacity and that they are in tune to the developmental needs of children, if that is their practice of care, and that they were well and truly within a professional group that could make that assessment. Again, it does not mean all speech pathologists would, but a speech pathologist who works in this particular area may feel more than capable. That is something medical professionals engage on a daily basis—a child's competency, a child's understanding and meaning of things. Speech pathologists are—

Mr KRAUSE: Does the draft regulation narrow it down to those who have particular skills, or does it just list 'speech pathologists'?

Mr Bourke: It lists 'speech pathologists' and then leaves it up to the professional group to make that determination.

Mrs Robertson: If I could point out also that clause 37 of the bill, which links into the regulation, actually says that the person has a relationship with the child. There has to be that ongoing relationship with the child in that sense.

Mr KRAUSE: I understand.

Ms RICHARDS: It is not like they will be able to go out and shop for a health practitioner to serve the purpose of—

Mrs Robertson: No.

Mr Bourke: Having an established relationship was a really important factor that we built into the definition—that there is that rapport and understanding with the child and that they feel equipped to make the assessment.

Ms BUSH: I wanted to come back to the issue of an audit of other pieces of legislation. Leanne, you responded a little bit in your opening statement to this. Did I hear correctly that upon proclamation there would be time for departments to complete their own audits and report back to DJAG? Is it intended that that audit will happen or not?

Mrs Robertson: It is a matter for each department to manage looking at their own portfolio legislation in the context should the bill be passed, as passed in that sense. As we have indicated, both this morning and in some written material, the other reviews certainly happened post those events, but it is a matter for them to manage. There is no reporting or gatekeeping by DJAG in that sense.

Ms BUSH: The audits that were completed in ACT and Tasmania did take place sometime later. Were they independent audits?

Mrs Robertson: It was the Tasmanian Law Reform Institute that did the Tasmanian audit, and the ACT audit was conducted by Equality Australia.

Mr KRAUSE: Mr Bourke, in relation to the 16- and 17-year-olds, there is a 12-month period of identification set out in the bill in relation to making application to the registry, I understand?

Mr Bourke: The supporting statement is from someone who has known you for more than 12 months.

Mr KRAUSE: Does that 12 months include time before someone is 16? Could an application be made on their 16th birthday looking back 12 months?

Mr Bourke: Yes, that that elder has known that person for 12 months.

Mr KRAUSE: You mentioned that there is a pathway for children aged 12 to 15 to go through this process without parental consent or accession to the process. It is my understanding that children of that age cannot legally smoke, buy a home, vote or fight in the ADF. Most banks do not give an ATM card to kids until they are 14 or maybe even a little bit older. I have heard evidence from some parents who have been through this process and their children have identified as another gender until a particular age at which point that gender identification has ceased. How does the department consider it to be a responsible course of action to give children this pathway, of proceeding on a path of changing their legal sex, without parental consent or input in light of all of those other contexts that I gave you about how we give responsibility to children in society and how we frame laws to protect children in society?

Mr Bourke: The Childrens Court is the safeguard to that process. Their fundamental paramount consideration is the best interests of the child. While there are those particular anecdotes that you have, there are equally ones where parents are dreadfully unsupportive of a child's transition and they may have moved out of home or whatever the scenarios may be. All of those factors would be considered by the Childrens Court in a determination of their best interests. The best interests test has regard to the evolving capacities of a child which grow as the child matures—13, 14 and 15.

I appreciate that children are not allowed to do those particular things. Legal recognition might be one of many pathways that is suggested or advocated for a child, acknowledging that the change on the birth certificate is not irreversible. It is not going down a particular medical transition or pathway; it is a social transition and a legal recognition such that it would not preclude a change at a later point, acknowledging that gender is fluid, particularly amongst young people. That is why there is an acknowledgement in the bill that you can make an application once every 12 months particularly.

Mr KRAUSE: This bill, though, is just not dealing with gender fluidity. It is dealing with registered sex. Do you see a difference between those two concepts?

Mr Bourke: We have acknowledged that sex is more than a biological marker—that it does have regard to that social identity and that the two terms have been collapsed for the purposes of the bill. I think Mrs Robertson made that very clear in her opening statement. We have collapsed the two terms in the same way—

Mr KRAUSE: You say the bill does not state any difference between the two concepts?

Mr Bourke: That is the foundational position taken in the bill.

Mrs GERBER: I want to go back to other Australian jurisdictions that have passed laws like this. Can you say how many people, broken down by each separate jurisdiction, have changed their sex, and then for those jurisdictions that collapse the two—so there are some Australian jurisdictions that keep them separate, such as Tasmania and then brings them together at the end and South Australia—

Mr Bourke: With respect, if you bring them together at the end then the effect is if you were altering your record of sex to be—

Mrs GERBER: I would still like it broken down by each jurisdiction.

Mr Bourke: In terms of numbers?

Mrs GERBER: In terms of numbers, yes.

Mr Bourke: We would have to take that on notice.

Mrs Robertson: We would have to take that on notice and see what we can get from the interstate registries.

Mrs GERBER: That would be really helpful.

Mr Bourke: Whether or not it is in annual reports or if we reach out at a practical level to registries whether or not they are comfortable with that data, we can see what we can get you.

Mrs GERBER: That would be helpful, thank you. The other thing that I wanted to get the department's view on is: have you done any research—because I could not see it in your response—on what recording sex on a birth certificate is used for in terms of data identification? Can the department talk about—

Mr Bourke: The opt-in approach taken in the bill is an acknowledgement that the inclusion of sex information on a birth certificate will be at the applicant's choice.

Mrs GERBER: Sorry, maybe we are at cross-purposes with my question. I am talking about what that data point, that marker, is used for across all areas in terms of data collection. With sex on a birth certificate, has the department looked at—

Mr Bourke: Sex recorded at birth is used for a range of data and statistical purposes. The sex represented on a birth certificate and potentially altered—there are a range of ways other institutions and entities collect data and statistics, so we have a fundamental role in the registry in sharing information with the Australian Bureau of Statistics.

Mrs GERBER: That is what I am trying to delineate between.

Mr Bourke: That is the sex recorded at birth and we are not altering that process. That is still going to be a male or female registration at birth, and that information is used for broad statistical purposes. What is then altered or gone on to reflect on a birth certificate, that birth certificate is not being used for great statistical reasons. Other entities will collect data and information from their individuals. The Australian Bureau of Statistics has a data standard about how institutions should frame the collection of information from people about sex and gender. The information recorded on a birth certificate, when a person has that agency to express a gender identity, we are giving the agency to the individual to alter that record and have that lived identity reflect on the birth certificate.

Ms BOLTON: Further to the previous question, for all the agencies that require documentation showing gender or sex—however you want to use it—during the research and in putting together this bill and obviously the very long years, has it been ascertained in what aspects it is essential to know the sex or gender when applying for, say, a marriage certificate? I know that no longer do we have whether we are male or female or neither on our driver's licence. Can you point me in the direction of where that type of information, as in why it is required—I am not talking about at birth; I am talking about as we move through our lives—what agencies require that information?

Mrs Robertson: I do not think we have that detail, Ms Bolton.

Ms BUSH: Staying on that issue, a big issue in the submissions has been around conflation of gender and sex, particularly sex at birth. The utility of a birth certificate in today's day and age, for most people, is an identity document. I am curious in your consultation with the relevant stakeholders was that the theme that came through—the utility of that document? Forgetting the historical purposes, are people using it to describe their gender identity?

Mr Bourke: Yes, it is mainly used in that identity context and it is distressing and harmful where it reflects a marker that does not align with the way the person lives and presents to society. Sex at birth data is recorded and, if under the bill a person alters their record of sex, that record is not lost. It

is closed and locked down. A new entry is created and the person's entry is what is called under the act 'reregistered'. We are not losing the continuity of that existing entry about sex at birth, and there is a prescribed set of people who may be able to access that information. Largely, the very strong affirming feedback coming through stakeholder consultation was that it is used in that identity context and the distress and harm it causes for a trans or gender diverse person where it largely reflects a marker that does not align with their lived identity.

Mr KRAUSE: Mr Bourke, if a man changes their legal sex to become a female registered, how will they be treated in the prison system, as a male or female? When you mentioned Scotland, there has been a very interesting example lately which I am happy to table some media reports about.

Mrs Robertson: We are aware of the reporting of the Scottish case. I think it is fair to say that, in relation to the management of prisoners in Corrective Services facilities, at the end of the day that is ultimately a matter for Corrective Services having regard to a variety of matters which I am sure Greg was going to elaborate for me.

Mr KRAUSE: That is just what Nicola Sturgeon said until she intervened.

Mr Bourke: Placement decisions have regard to a number of factors. The QCS already has a custodial operations directive that says, to the extent practicable, they treat prisoners in line with their acquired gender, but placement decisions are obviously a multifaceted decision, individualised by QCS. Offending history would be a key factor that they would have regard to when making that determination.

Equally, there is a provision in the bill that qualifies, say, if a person was in a prison facility and then sought to alter their registered sex that there is a process of approval for that and that, despite any approval, that does not then flow on necessarily to any of the other decisions that the chief executive can make in relation to the security of the custodial environment. These are all matters for QCS to work through as part of this implementation lead-in.

There is no absolute answer to that question, but each placement decision has regard to a range of factors. All corrective services environments across the country have a set of factors that they consider in terms of security of the facility, the offending history and the preference of the individual in determining where to place. I am aware of that Scottish case. QCS will consider its own position and policies and procedures going forward. I think they have indicated that in the departmental response.

CHAIR: That brings to a conclusion this part of the hearing. I understand the deputy chair will read out the question taken on notice.

Mrs GERBER: My question was: across each of the other Australian jurisdictions that have passed laws like this, how many people, broken down by each separate jurisdiction, have changed their sex?

Mr Bourke: From inception to now? Some go back quite a bit.

Mrs GERBER: Yes, broken down by of each jurisdiction. Do you want me to start the question again?

Mr Bourke: No. I am saying that ACT made reforms back in 20—

Mrs GERBER: That is my question.

Mr Bourke: I am just clarifying.

Mrs GERBER: How many people, broken down by each separate jurisdiction, have changed their sex or gender, depending on the jurisdiction that conflates it, on their birth certificate?

Mrs Robertson: Chair, in relation to Ms Gerber's question, because we will obviously have to reach out to our counterparts to see what we can get, we may need a little bit of time for that.

CHAIR: We were suggesting responses to questions on notice to be back by 10 am on Monday, 6 February. If that time line is too short, can you communicate with the secretariat and they will negotiate with you?

Mr KRAUSE: Ask the minister for an extension.

CHAIR: The member for Scenic Rim has tabled three documents. I declare the public briefing in relation to the Births, Deaths and Marriages Registration Bill closed. Thank you for your attendance.

The committee adjourned at 11.31 am.