



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 JE Hunt MP (virtual)
Mr JM Krause MP

Staff present:

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

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

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 24 JANUARY 2023

Brisbane

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The committee met at 8.36 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Births, Deaths and Marriages Registration Bill 2022. My name is Peter Russo. I am the member for Toohey and chair of the committee. I respectfully acknowledge the traditional custodians of the 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 here today are: Laura Gerber, the member for Currumbin and the deputy chair; Jonty Bush, the member for Cooper; and Jon Krause, the member for Scenic Rim. Jason Hunt, the member for Caloundra, and Sandy Bolton, the member for Noosa, are attending today via videoconference.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction 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 that people turn their mobile phones off or to silent mode.

CHAIR: I now welcome Professor Patrick Parkinson, via videoconference.

PARKINSON, Professor Patrick, Emeritus Professor of Law, University of Queensland (via videoconference)

CHAIR: Professor, thank you for being here. I do not think I need to ask the professor to refrain from using unparliamentary language, swearing or using offensive terms, even though he may wish to at times. It is pretty important that you do not do that. People fall into the trap of doing it when they are quoting someone else. If you refrain from doing that it would help our process at this end. Please be careful about the naming of persons who may not wish to be identified. Can you be super careful about identifying individuals? Err on the side of caution and not mention names, please, if that is at all possible. I now invite you to make an opening statement of about five minutes. Obviously, the longer your opening statement goes the shorter the time we get for questions. It is up to you which way you want to manage that.

Prof. Parkinson: Thank you, Chair. My thanks to the committee for allowing me to address you on this very important bill. I begin by saying that I have no problem with having some reforms in this area to allow people who identify as trans or gender diverse to register their identity without the need for complex and risky surgeries. I have made proposals at the end of my submission for exactly how to do that without adversely affecting other people. However, the Queensland government has quite mysteriously, to my mind, chosen the most radical expression of a self-ID law that is possible. Seemingly, it has ignored all of the problems that are inherent in the approach it has taken.

I want to focus on two objections to this bill. The first is that it provides recognition of gender identity by altering birth certificates. Birth certificates are matters of historical record. Apart from babies born with intersex conditions—and it is very rare that their sex is ambiguous—babies are born either being boys or girls. Later in life, perhaps during troubled teenage years when they are exploring their identity, they may adopt a gender identity that is incongruent with their natal sex. These days this is very common for teenage girls who decide they are transgender, fluid, non-binary or just queer, but they do not cease to have a sex. They do not cease to be girls. They still menstruate. They can still fall pregnant if they have unprotected sex. They are still prone to specifically female health problems such as endometriosis. They have both a sex and a gender identity with which their sex is incongruent. This bill allows the gender identity to displace their sex as a matter of law and that, with respect, is madness.

The second major problem with this bill is that it changes a person's sex for all legal purposes in Queensland law. If this bill is passed, the registered non-binary teenager will be, in law, neither female nor male. What does that even mean from a legal perspective? I cannot tell you and I can assure you that the department cannot either. Just ask them.

The legislation is going to have particularly adverse consequences for women and girls. While some people who choose to register a change of sex under this legislation will be people who have long lived as being of a different sex to their birth, it seems inevitable from the experience of other countries that many mentally unwell men will also seek recognition of a trans identity through this legislation rather than as a matter of careful medical diagnosis.

Most mentally ill men, of course, represent no threat at all to women's safety, but encountering them in what is meant to be a female-only space, including a space where women may undress, could be deeply upsetting for many women and girls. I think particularly of the minority cultures within our society for whom this will be a dreadful concern. Women might properly describe these men as 'creepy'. Unfortunately, there is the possibility that some mentally unwell men may be more dangerous than this. Even if there are not many who change their sex on their birth certificates by registration, the wider harm from self-ID laws is that it becomes very difficult to object to any man in a women's changing room or toilet facility since they might have a legal right to be regarded as female. Women's rights to bodily privacy will be seriously eroded. You cannot get that back once you agree, as a parliament, that your sex can be changed by nothing more than registration.

This is a big issue for women and girls and there is no way of getting around that. The bill takes the most extreme approach possible to this problem by wiping out exemptions for single-sex spaces that currently exist in the Anti-Discrimination Act 1991. There are no proposals on the table to extend those exemptions to sex characteristics, which will become a ground for unlawful discrimination under this. Women's gyms will be able to be sued for unlawful discrimination on the basis of sex characteristics. Their current exemptions will not allow them to exclude a female by registration who is anatomically male. The same applies to women's refuges. The law will not permit females by registration to be excluded from women's wards in hospitals, female changing rooms at public swimming pools and all other single-sex facilities. There will also be the same impacts on women's sports. It will be unlawful, under this bill, to discriminate against any legally registered female based upon their sex characteristics, that is, that they are anatomically male.

It may be that the government has simply not thought through all the consequences for anti-discrimination law and other legislation by making these changes to birth certificate law. The department has said as much. In response to my submission and many others, including the Law Society and the Queensland Human Rights Commission, it says in effect, 'Yeah, we haven't thought through any of this. We'll do it later. Pass this bill now not knowing all the consequences and then we will think about the consequences and come back to you.'

With the greatest of respect to the Department of Justice and Attorney-General, that is not how mature governments make laws. You think through all the consequences before you bring a bill into parliament and not after. You think through: what are the conflicts between trans' rights and women's rights? Which rights of women are you going to abolish and which are you going to protect by exemptions? Parliament needs to know and the public needs to know as well.

CHAIR: Thank you, Professor.

Mrs GERBER: Thank you, Professor, for your written submission and for submitting it within the short period that you had to complete it. It is very comprehensive and very helpful. You mentioned that your written submission covers off some of the ways that the objectives of part 5 might be achieved without running into some of the issues that you have already discussed just then and that are in your written submission. Can you summarise that for us, please? In your view, what are some of the objectives in allowing the LGBTIQ community to have gender identity within legislation?

Prof. Parkinson: Certainly. First of all, you pass a law about a gender recognition certificate; you do not change birth certificates. You leave birth certificates where they are. You have a sex and a gender identity. You register the gender identity. Secondly, you have some sort of screening process in terms of mental health and criminal history. Thirdly, you are very clear about what this applies to. It can apply to photographic identification on driver's licences and it can apply to other aspects of Queensland government law, but you work through very carefully what it cannot apply to. That is where you have to work through the issues with women's interests, the multicultural society in which we live and the adverse consequences. What that means is that you have a more modest law that allows some flexibility because nobody will be sued for discrimination but many men who have transitioned will pass as women and will go into women's facilities and nobody will worry about that. However, we have not completely upended the law to provide better support for this very small number of people.

Ms BOLTON: Professor Parkinson, your submission was very extensive. Can you elaborate on your concerns in relation to the effect of descriptors such as ‘genderqueer’ or ‘non-binary’? That is on page 10 of your submission.

Prof. Parkinson: Science knows male and female. It also knows intersex. About one in 50,000 babies are born with ambiguous characteristics that eventually get sorted in some way into being either male or female in terms of reproductive capacity. But science knows nothing, as scientific fact, about being genderqueer or non-binary. These are social identities—psychological, one may say—but they are not medical ones. To say that you can change your sex on the basis of being genderqueer as opposed to saying, ‘I have an identity which is genderqueer’—those are two completely different things.

Mr KRAUSE: Thank you, Professor, for your submission. I want to ask about some of the legal ramifications that you raised about registered sexes on birth certificates being changed. Do you have any concerns that, if the system is established the way that the bill is set out at the moment, it could be subject to abuse by some members of the community?

Prof. Parkinson: Yes. A lot of this debate has been about whether trans people could be sex offenders. My answer is, no, not any more than anybody else in the community. That is not the issue. The issue is that once you accept self ID you allow anybody to say that they are a sex other than what they are. We have a significant problem with mental illness in this area. If you look at the research on the numbers of teenage girls going to gender clinics, so many of them are on the autism spectrum, so many have serious mental health issues. This can be so with males as well. The risk is that when you just open the doors wide and say that anybody can identify as another sex then you open the door wide to those who are mentally ill who may be sex predators or, as has happened a lot in England and elsewhere these days, people who say, ‘I’m male but I am a lesbian and, therefore, you should have sex with me as a lesbian’, which seems to be one of the manifestations of this mental illness.

Ms BUSH: Professor, I have a couple of questions but, before I do that, can I clarify: your submission and your appearance this morning infer that you are representing on behalf of UQ. I was of the view you were no longer with UQ; is that correct?

Prof. Parkinson: That is a very good question. I continue as an emeritus professor at the University of Queensland. When any academic appears, they are appearing in a personal capacity and not representing the university to which they belong.

Ms BUSH: Professor, you have probably read some of the submissions that we have received. I think it would be fair to say that there is a lot of opinion in what we have received, which is absolutely the process. As a professor, could you unpack for the committee the spectrum of credibility? When we are looking at evidence and information there is a spectrum of credibility. Maybe you could take a moment to explain that? Obviously at one end you have opinion and media reporting and at the other there is peer reviewed articles.

Prof. Parkinson: On the issue of transgender identification, there is a huge amount of medicine and science, medical and scientific literature, on these issues. The bill is premised on the idea that we are born in the wrong body or people could be born in the wrong body. There is actually not much evidence for that. It appears overwhelmingly that for those who are now identifying as trans, gender diverse or queer there are psychological factors. The peer reviewed research is showing us that family dysfunction, childhood adverse experiences like sexual abuse, disordered attachments—these mental health issues are predominantly driving the numbers of young people, in particular, who are seeking to alter their bodies through medical clinics. There is now a very serious worldwide debate about these issues and whether we should medicalise these young people at all.

On the other hand, you have a data-free body of advocacy that says that we should respect trans human rights, which of course we should, but it does not engage with that scientific literature at all. It relies largely, I think, on emotion and appeals to human rights for quite radical changes to the law of our society. I hope that is a sufficient answer for now.

Ms BUSH: Yes, certainly it is a good start. You would accept that there is overwhelming evidence that would be in conflict with most of your submission, though.

Prof. Parkinson: No, absolutely not. I have spent a long time examining the overwhelming evidence for the positions that I have put forward to you.

Ms BUSH: On page 11 you say that the evidence is clear that ‘while being transgender is not a mental illness, and is no longer classified as a disorder in the DSM, some mentally very unwell males are likely to seek to be recognised as female in law and may have expanded opportunities to threaten the safety and well-being of women and girls’. I will not speak to the inferences that are made at the Brisbane

end of that statement, but can you point me to the evidence? Essentially it implies that there is evidence linking predatory behaviours and a desire to access female-only spaces. I am interested in the evidence to support that statement.

Prof. Parkinson: I made it very clear in my submission that I was not suggesting that those who have long identified as trans are in any way mentally ill nor are they at higher likelihood of being sexual predators. None of that is true. But once you take away any checks, any medical diagnosis, any scrutiny, then you open the floodgates to anybody. That is when anybody who may be quite seriously mentally ill or have other predatory intentions could manipulate the new openness. The evidence of this is all over the world. We have seen the numbers of sexual assaults in women's prisons. We have seen a variety of other consequences. There is a very good website by Holly Lawford-Smith in Melbourne called 'No conflict, they said'. You can read through the many anecdotes of the adverse consequences that come from a law like this. That is what I am relying on. Open the floodgates and remove the barriers and you have no way of controlling who will adopt a change of sex.

CHAIR: This will be the last question.

Ms BUSH: Finally on that, your statement implies that there is no scrutiny in place by agencies that run female-only services. Have you engaged with those particular services and spoken to them about their onboarding and intake procedures? Where is that opinion coming from?

Prof. Parkinson: The issue is not female-only services under the existing law. The issue is that a women's refuge will not lawfully be allowed to discriminate against a female by registration who seeks access to that facility. That would be discriminating—

Ms BUSH: I am sorry but the question is: have you engaged with those services to get their views before writing your submission?

Prof. Parkinson: No. I did try to engage with Women's Legal Service. They have not replied.

CHAIR: That brings to an end this part of the program. Thank you for your evidence today, Professor, and for your written submission.

Prof. Parkinson: Thank you.

WIGGINS, Jeremy, Chief Executive Officer, Transcend Australia (via videoconference)

CHAIR: I now welcome Jeremy Wiggins, the Chief Executive Officer from Transcend Australia, via videoconference. Good morning, Jeremy. During your evidence today we ask that you please refrain from using unparliamentary language such as swearing or offensive terms. This sometimes comes in when witnesses are repeating something they have heard or read, but it is unparliamentary so I ask you to be conscious of that, please. I also ask you to reconsider speaking about and naming persons who may not wish to be identified in the public space. If you were intending to do so I am trying to get ahead of you, although I am not suggesting it is the case. I invite you to make an opening statement of about five minutes after which the committee members will have some questions for you.

Mr Wiggins: Thank you so much. I really appreciate the invitation to speak to you today. Transcend Australia is a national organisation that works with families, parents and carers who have transgender, gender diverse and non-binary children. We have been supporting families across Australia for 10 years. We very much appreciate the invitation to speak to you today.

The families that seek support from us, especially those based in Queensland, have expressed to me the critical importance of the law providing a more accessible and modern way to ensure identification documents reflect the identity of their trans children. In the case of the communities that we serve, the birth certificate is often the only form of identification able to be used for children under 18. We have received requests to advocate for Queensland families that have children under the age of 18 but also from families that have trans children who are over 18. I am speaking on behalf of those families and the trans young people of Queensland who want the right to update their identity documents to simply be able to live their lives. These requests come from a deep desire for Queensland to join the chorus of other Australian states and territories that have already undergone birth certificate reform.

Families in Queensland are currently facing complex situations such as trying to enrol their children into junior community sports, such as swimming or basketball, or even just trying to enrol their children into school with documentation that does not match who they are. This causes immense distress for families and, in particular, for vulnerable trans young people who just want a fair go to participate fully in life and to enjoy the same activities as their peers. It is highly important at this stage in a young person's life that they feel nurtured, affirmed and accepted for who they are. Without a birth certificate listing the sex that aligns with their gender identity, it jeopardises their safety and privacy and restricts their ability to be a whole person living in the world participating in life.

We feel the current draft of the bill includes appropriate provisions and necessary checks and balances to ensure an application to amend the sex listed on a birth certificate is a legitimate application. I would like to ensure this committee hears from the people who it matters to the most—a family with a young trans child. It is their voices that are so rarely heard or listened to, and I would appreciate your attention to their experience. This is from the parents—

We just want our daughter to grow up. We just want her to thrive and survive—to go to school, have hobbies, have friends and live her life; to grow up safely, accepted and respected by the community of Queensland she so loves. This bill makes that easier for her and other kids just like her. It stops her from being procedurally outed against her will by a birth certificate that does not accurately reflect her gender. It's not everything but it's a start. Thank you for seeing our children and showing them they have a place here as themselves, a place they belong—here in Queensland.

This is from the brother—

I wish we didn't have to do this. All any of us want is to just be who we are and it should be easy. It's easy for the rest of us. I want it to be the same for her. I want her to be seen for who she is and to be safe. I don't want her to be bullied. Not everyone may be ready to accept her, but it's not really their business. I just want the government to see her as I do—as my sister—and if that means giving her a proper certificate then she should have that.

This is from the daughter who is trans—

I was born a girl. I have always been a girl and I will always be a girl. My family and friends love and support me for who I am. I am proud of who I am, but every time I see my wrong name I feel a shock and I flinch. It's wrong. It's not who I am. It's not who I ever was. I was so happy the day our Medicare card changed and I could go to the doctor with the right name. It also felt so good the day my birth certificate was updated with the right name but it also really hurt to see that it still had the wrong sex. I knew that the school was still going to see that. I didn't join a sports club because they would have seen it. I am getting ready for high school and I know they will see it too. I want my birth certificate to not just have the right name on it but the right sex. I am female. I want to be seen for who I am and who I always have been—just like all the other girls. Please make this change to help me and the other young trans people like me who have less support. Help us to just be ourselves. Thank you for listening to me.

I would like to thank that Queensland family for sharing their story and to all the other Queensland families who have shared their stories with us. I would also like to thank the parliament for this opportunity to give feedback on the bill through our submission and through this hearing. I look forward to seeing this bill progress. Thank you so much. I am happy to take questions.

Mrs GERBER: Thank you, Jeremy, and thank you for sharing those very personal accounts. There are many objections to this bill, but one of the more objective objections is that part 5 allows for an historical record to be changed. Some of the other proposals that have been put forward are that the historical record could remain and there might be another section in the birth certificate that allows for the change in gender or there might be a separate birth certificate altogether that allows for the historical record to remain and a new record to be created which the transgender person could then use moving forward. I am after your views on some of these other suggested ways to work with part 5.

Mr Wiggins: My understanding would be similar to when a new birth certificate is issued—

Mrs GERBER: Sorry, I missed that. There is a little bit of buffering, Jeremy. Do you mind repeating what you just said?

Mr Wiggins: Sorry, it is buffering for me too. Could you please repeat the question?

Mrs GERBER: Whilst there have been many objections to this bill, one of the more objective objections is that part 5 allows for a historical record to be changed. Some of the other proposals that have been put to the committee are that the birth certificate could contain another section that allows for change in gender or that a separate historical record could be created at a certain point in time that allows for the transgender person to be able to use that whilst also maintaining any historical record previously created. I am just after your views on the alternative proposals that have been put forward to try to maintain the objectives of part 5 but also the integrity of historical records.

Mr Wiggins: I appreciate you repeating the question. For trans people it is really important that the certificate is updated often without a history of a record before. It still poses a risk to trans people. It jeopardises them being outed against their will and having unnecessary history listed on the birth certificate.

Ms BUSH: I wanted to ask you to share with us some of the experiences and the issues and barriers that trans people experience when their birth certificate does not reflect their gender identity or contains their dead name. You have touched on that, but I wanted to give you the opportunity to share any other cases that might illuminate to the committee your views.

Mr Wiggins: I have a really clear example of how this plays out for a young person in Queensland. An example is when a student is doing their NAPLAN test and they get their one-time password code to log into the system and that is projected onto the screen in front of the entire class. They have all of their names listed and they have all of their details. It was projected onto the screen—so outing a young person in front of the entire class. That is one example.

Another example is trying to enrol a child into school and the school not necessarily having the skills or knowledge or capability to manage a trans kid being enrolled when the sex marker is not aligned with their gender identity. It would be far simpler for a family to be able to update the birth certificate to have the sex marker aligned with their gender identity to enrol the child into school rather than have to deal with a school that may not have the skills or be equipped to manage that process appropriately. It is also the original identification document, so it makes it challenging, for example, to get other documentation because it is based on that original documentation. There are many other examples but I hope that answers the question.

Ms BOLTON: I want to get some clarity because I am having trouble hearing some of your responses. The member for Currumbin spoke about the different options. After hearing some of the examples—you spoke of NAPLAN and putting details up on the screen—if the system were changed in terms of gender identification documents used by schools et cetera, would there still be an issue, say, with a gender identification certificate being utilised instead of a birth certificate?

Mr Wiggins: We still see it as an issue because we do not necessarily want there to be a separation between gender identity and the sex marker. For our community it is important that the two are aligned and recognised as equal and just. To have a separate identity document for the purpose of affirming a gender identity for a minority group—it seems as though it would be a discriminatory process to make a minority group get certain documentation unnecessarily, when we could just align it with similar legislation that has been passed in other states and territories where an application can be made to amend the sex marker on the birth certificate.

Ms BOLTON: Jeremy, I am not sure whether you have seen some of the submissions, but one of the concerns is with regard to separating the gender and sex and the definitions. You would have heard Professor Parkinson speak about what this means legally and what it does. Is there any option that can alleviate that argument and the discrepancy that sex as we are born is physical and gender is how we identify? Can you see any solution there?

Mr Wiggins: I think the solution is about respecting the self-determination of the individual and it being person centred. I am a citizen of Australia and I live in Victoria. The Victorian legislation removed the unnecessary requirement to have invasive procedures on reproductive organs and has similar caveats around having a stat. dec. or a supporting statement of someone who has known someone for 12 months and the sex marker is then amended to either male or female or a descriptor. To have a sex assigned at birth option and a gender identity that are different still will pose the same issues and risks to the safety of trans people.

CHAIR: That brings this part of the hearing to a conclusion. Thank you for your written submission and also for your attendance here today, Jeremy.

CALLANAN, Ms Bree, Senior Lawyer, Queensland Human Rights Commission

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

CHAIR: I now welcome the following representatives from the Queensland Human Rights Commission: Neroli Holmes, Deputy Commissioner, and Bree Callanan, Senior Lawyer. Good morning and thank you for being here. I invite you to make an opening statement of about five minutes. After that, the committee will have some questions for you.

Ms Holmes: Good morning, everyone. Before starting, I acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging.

The Queensland Human Rights Commission supports the passage of the Births, Deaths and Marriages Registration Bill 2022. 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—in particular, trans and gender diverse people and diverse families including same-sex families or same-sex parent families. In relation to changing the record of sex, ensuring fair and equitable access for transgender and gender diverse people to change their record of sex upholds rights protected by the Human Rights Act—the right to recognition and equality, and the right to privacy.

As stipulated in the Yogyakarta Principles, people of diverse gender identities should be able to enjoy legal capacity in all aspects of life without the need for surgery, hormone treatment or sterilisation as a prerequisite of legal recognition. The benefits of these reforms will ensure a person can engage with society in a way that limits exposure to stigma and discrimination and improves their participation in areas of public life, including work and education. The reforms modernise the law, aligning Queensland's laws with most other Australian jurisdictions and address potential human rights incompatibility in the current legislation.

In relation to modern family and parenting structures, 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. Currently only one parent may be listed as mother or father which does not reflect the diversity of contemporary parenting arrangements, including same-sex parented families. A current definition at birth also means that those who do not identify as a mother, including trans or gender diverse birth parents, must be registered in a role that does not match their identity or the way in which they present to the community. The approach in the bill provides better recognition of all kinds of families in line with Queensland's human rights obligations.

We do have a couple of small recommendations in relation to the bill. We think that the bill should be passed subject to the following: following the passage of the bill, an audit of Queensland legislation should be completed to identify occurrences of terms 'sex', 'gender' and other gender specific language such as 'woman', 'man', 'sister' and 'father' to ensure equal recognition and treatment of trans, gender diverse and intersex people in Queensland laws. That is something that is currently happening in other states, including Tasmania. We do think it would be appropriate for the committee to seek some clarification from Queensland Corrective Services about why the approval process for change of sex for restricted persons is necessary and justifiable, and how these provisions will work in practice. That is outlined in a little bit more detail in our submission. Thank you for the opportunity to speak to the committee today. That is our opening presentation.

Mrs GERBER: In your submission you raise a query in relation to anatomical capacity and the explanatory notes' reference to anatomical capacity. Can you elaborate on that for us? I know it was submitted only last week, but did you happen to get a chance to have a look at DJAG's response?

Ms Holmes: No, we have not had a chance to look at DJAG's response yet, unfortunately. Our query was just trying to understand how that provision would work, and we thought that was appropriate for the committee; that if you were seeking clarification yourselves, to get that clarification. Unfortunately we have not had a look at DJAG's response, but I think it is elaborated in our submission.

Mrs GERBER: I will leave it there. I will give you some time to look at it.

Ms BOLTON: In your submission on page 5, you state that the bill will ensure the birth register contains information that is as accurate and complete as possible. However, Adoptee Rights Australia argue that aligning birth certificates to the lived identity of social parents denies the genetic truth of the child at birth. Do you have a view on how this can be addressed?

Ms Holmes: I am not quite sure what the argument is there. Can you explain it a little bit more what they are saying? An adopted child, is it, or an adopted parent?

Ms BOLTON: Basically saying that, yes, aligning the birth certificate to the lived identity of the social parent—so if that has changed—denies the genetic truth of the child at birth. They are basically saying that the genetic truth will not be available to them if these changes go through. How do you see this can be addressed within this bill because ultimately it does not?

Ms Holmes: They are trying to trace back their genealogical record; is that what they are trying to do?

Ms BOLTON: Yes, they want to retain the genealogical record.

Ms Holmes: And trying to work out their ancestors et cetera, doing a family tree or something like that; is that the proposition?

Ms BOLTON: Basically, yes. If suddenly we change from having 'mother', 'father', and also how they identify as in if their birth certificate is changed from female to male or vice versa, that the actual genetic truth of who they are can be lost. If this bill is to go through, how then will it be addressed?

Ms Holmes: I do not know if birth certificates ever have been a source of genetic truth, to be honest with you. I think the people that are listed on birth certificates are ostensibly who you understand your parents to be, but I think we find in historical record that that is not always an accurate record. I think there are plenty of examples around at the moment with people doing those genetic searches that reveal, 'Oh, there is a bit of a surprise in the family tree.' You think your birth certificate says something and it can actually not be reflective of who your genetic origins might be, so I do not know if there has ever been an accurate record. I actually do not know if it is a real problem. I am trying to understand where the issue is coming from. If you are trying to understand who your birth parents are, I think the record will show that to a degree, but I think it would be a question to put to the Registry of Births, Deaths and Marriages or DJAG, for that intricate questioning. I wonder if the birth record has ever been as accurate as people hope and wish it had been.

Ms BUSH: Neroli, I am interested in your recommendation 4a around doing a comprehensive audit of the current legislation. You have mentioned Tasmania went that way. Can you speak to that a little bit more and to the benefits of that—obviously, Queensland and Tasmania are quite different states—and whether that would work here?

Ms Holmes: The legislative record is quite old. All our pieces of legislation in Queensland have been passed over many generations in times before we had a more nuanced understanding of sex and gender. Throughout the legislative record, there will be a whole list of terms that are both gendered and sex-based terms. If you go through the record, it may be appropriate to check where those names are listed or those terms are listed, to reflect with modern and contemporary understanding of these issues, whether that legislative record is still working the way it should be, should those terms be amended or changed to reflect what was intended in that legislation, and to reflect the new realities and understandings that we have. I have not been through the legislative record, but I am sure there are lots of instances possibly in succession law or the Property Law Act or the Health Act, or myriads of other acts where there is boy/girl, brother/sister, mother/father, female/male—there will be multiple occasions where these terms were interchangeable and understandable at the time, but when we have a more nuanced understanding of sex and gender, that it might be appropriate to go through to make sure that the legislative intent is still clear in those records as statutes.

Ms BOLTON: Neroli, when we are speaking about the volume of aspects that need to be looked at, whether it is in legislation, whether it is to do with records or police, it is very extensive. Has there been any estimate because I have not seen any in either DJAG or submissions regarding what volume we are talking about should this bill go through—the work and how many years to change not only the differentiation between sex and gender, but to make sure there are no unintended consequences that we often see?

Ms Holmes: I do not actually know myself. That would again be a question for DJAG or Parliamentary Counsel. I imagine it would be not a small task, but a task that could be systematically and appropriately dealt with over a period of time. As each piece of legislation is renewed, it could be relooked at, that could be checked, but there could also be a project to go through and systematically have a look at the legislation books and make sure they are updated.

Mr KRAUSE: Ms Holmes, thank you for submitting to us this morning. In relation to the process by which people's birth certificates can be changed through statutory declaration accompanied by a supporting statement, and given the Human Rights Commission's role as the safeguard of the Human Rights Act and the anti-discrimination laws in Queensland, and the impact of this bill being that anyone who changes their gender and sex on their birth certificate will benefit from all the rights in Queensland law, have you given any consideration as to how the system has the potential to be misused or abused by some parties and what safeguards should be put in place for that, if any, given the commission's role to safeguard everyone's human rights?

Ms Holmes: Yes, and we do take that role very seriously. The changing of the record of a person's gender or sex through the birth certificate we do not think will have a big impact on any of those issues. I know some submissions have said that. We have had the gender identity attribute in the Anti-Discrimination Act since 2002 which has prohibited people discriminating against people on the basis of their gender identity, ie if they are a transgender person in relation to all the things that we have covered in the act—work, goods and services et cetera.

We have had complaints made by transgender people when they have been discriminated against when trying to access services or go about their business, or to get work. The protection for the transgender people has already been in the bill since 2002, but they still have had the problem of their birth certificate not reflecting who they are. We have not experienced any problems that have been suggested by people that transgender—a male to female person—is inappropriately accessing services. They have the right to access services just like anybody else in society. If they need a DV service, they should be able to access a DV service. If they need a health service, they should be able to access a health service. If they wish to go to school or work, just like everybody else, they have the right to work.

It has not caused a problem where people have felt the need to obtain an exemption that has already been permitted under the Anti-Discrimination Act, and there is one example with the Women's Legal Service obtaining an exemption in relation to having only females work in the Women's Legal Service when dealing with victims of sexual assault. That means that men cannot work with women in the Women's Legal Service with victims of sexual assault, but it does not exclude transgender women from that service.

I do not think there has been any issue with that occurring. We have not seen any safety issues. A couple of submissions that I did read alluded to cases overseas, but in Queensland, as far as we are aware, there have been no issues in the 20 years since gender identity has been a recognised attribute under the Anti-Discrimination Act. Certainly if there was an issue arising, we would have identified it and tried to deal with it.

Ms BOLTON: Neroli, you have just said that basically since 2002, within the act, already those regarding their gender identity have not been discriminated against, or you are unaware of. If that is the case—

Ms Holmes: No, I said they have been discriminated against, but there have been no examples of inappropriate accessing of services by people who have mal-intent.

Ms BOLTON: Okay, but they have already been accessing all services and you are unaware of where they have been rejected except for that one case regarding a male—

Ms Holmes: No, that is not what I said. Sorry, what I was saying is that there have been plenty of cases of discrimination against people who are transgender, but there have been no instances of people complaining that transgender people are accessing services that they should not be accessing. People have been denied access to services and certainly have brought complaints to us and there have been cases through the tribunals about that. It is still an ongoing problem. In terms of people saying, 'This person should not be accessing our services. It is inappropriate. It is wrong', we have not heard cases of that happening.

Ms BOLTON: Thank you for that clarification.

Ms BUSH: There have been some submitters who have inferred or stated that the bill has been rushed and introduced without consultation. Given your significant role in Queensland and what you do, could you give us some background to this debate and this issue and the conversations that have been occurring in this space?

Ms Holmes: The bill has been talked about for the last 10 years. We have been making submissions about the Births, Deaths and Marriages Registration Act since about 2010, I think. It has been an ongoing discussion. It has been an ongoing source of quite a lot of angst for transgender people and same-sex parents to try to update the Births, Deaths and Marriages Registration Act.

It has been a very long and extensive period of consultation across the whole community. Our commission has done at least three submissions to the department of justice about this issue over the years. I think there has been an extremely long period of consultation leading up to this bill where many people have had an opportunity to try to put their point of view across to try to create the legislation that is necessary for the 21st century.

Ms BUSH: To clarify, Queensland is one of the final jurisdictions looking at implementing this reform. Obviously other states have gone before us.

Ms Holmes: I think so. Queensland is following on behind quite a few of the other states that have already changed their births, deaths and marriages acts.

Mrs GERBER: I just wanted to clarify: whilst the subject matter of this debate has been extensively talked about, would you not agree that the actual drafting of this bill differs from previous consultation models and that the time frame for which stakeholders had to be able to consider the actual clauses and content of this bill was quite short and some stakeholders found it vastly too short to be able to adequately respond?

Ms Holmes: That is not unique to the bill amending the Births, Deaths and Marriages Registration Act. We have had a plethora of legislation come through over the new year period that a lot of stakeholders are looking at. We are trying to grapple with a lot of legislation. The concepts in the bill have been discussed for a long time. Every bill that comes before the committee always needs finessing and debating. We are glad the committee process allows that to occur. We would have liked longer for this one, but we would have liked longer for a couple of other bills before the parliament at the moment. I think we are talking to you about another bill this afternoon and a couple more later this month. There has been quite a raft of legislation coming through. I do not think the Births, Deaths and Marriages Registration Act is unique in that regard.

Mr KRAUSE: You mentioned just a couple of questions ago that you have been making submissions about this for some years—I think since 2010 you said?

Ms Holmes: It is in our submission 2010 or 2012. I am not quite sure of the date, but we have made at least three submissions previously.

Mr KRAUSE: Was that as the Anti-Discrimination Commission before the Human Rights Commission?

Ms Holmes: Yes.

Mr KRAUSE: I just wanted to clarify that.

CHAIR: There being no further questions, I thank you for your attendance today and thank you for your written submission. Thank you for the work you do.

CORNFORD-SCOTT, Ms Angela, Chair, Succession Law Committee, Queensland Law Society

FOGERTY, Ms Rebecca, Vice President, Queensland Law Society

THOMPSON, Dr Brooke, Senior Policy Solicitor, Criminal Law Committee, Queensland Law Society

CHAIR: I welcome representatives from the Queensland Law Society. Good morning, thank you for being here.

Ms Fogerty: Thank you for having us. We appreciate the opportunity.

CHAIR: Would you like to make an opening statement of up to five minutes after which the committee will have some questions for you?

Ms Fogerty: Thank you for inviting the Queensland Law Society to appear at the public hearing on the Births, Deaths and Marriages Registration Bill 2022. In opening, I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place—Meanjin. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagera nations and pay deep respects to all elders past, present and emerging.

The Queensland Law Society welcomes the introduction of the bill and its objectives to strengthen the legal recognition of trans and gender diverse people and to better recognise contemporary family and parenting structures. The bill proposes a new framework for the registration of a sex descriptor where a person may register a sex descriptor of male, female or any other self-chosen sex descriptor. The ability to register a self-chosen sex descriptor allows trans and gender diverse people to self-identify and to have this self-identification acknowledged in the register.

Whilst we support the underlying policy objectives, members of some of our legal policy committees have expressed concerns about the lack of certainty around how the framework will operate in practice. Members of our Criminal Law Committee have queried how the law will apply where a person is required to be subject to an invasive search. Members of the Succession Law Committee have noted some uncertainty in the area of wills and estates.

Our key recommendation is that an audit should be conducted of all Queensland legislation that refers to sex and gender. This would allow for a comprehensive review of unintended consequences. This recommendation has been made by other submitters.

I am joined today by Angela Cornford-Scott, Chair of the Succession Law Committee and an accredited specialist in succession law, and Dr Thompson, a senior policy solicitor of the Law Society. We are happy to take any questions.

Mrs GERBER: I was hoping that you might be able to talk the committee through some of the practical examples that your policy committees—the two committees you just raised—may have encountered in relation to unintended consequences? Is there anything that you can elaborate on in that regard?

Ms Cornford-Scott: I will speak in relation to the succession committee. The concern that we have in relation to the effect of sections 47 and 58 is the interpretation of a will, particularly when we are looking at class gifts—gifts to daughters, gifts to sons, gifts to nieces, gifts to nephews. We think it should be clarified in the legislation as to when that sex should be recognised.

Under the legislation as it is currently drafted, once that certificate is amended then that sex changes. For the purposes of the construction of the will or the interpretation of the will then that creates some uncertainty. The position at law generally is that the beneficiaries are identified at the time the will is made, obviously because the will maker knows who they are talking about at that point. If this changes that law then that does create some uncertainty for the public at large who are preparing wills but also for practitioners who are executing them. Our concern would be that it could give rise to issues of construction which would have to go before a Supreme Court judge.

Mrs GERBER: There was another policy committee that mentioned some unintended consequences.

Ms Fogerty: I can probably speak to that. For criminal lawyers the issue is, for instance, invasive strip searches. Certainly the Criminal Code, the Police Powers and Responsibilities Act and the associated regulations require that invasive searches of a prisoner or a person under arrest be performed by a police officer who is the same sex as the person to be searched. What the bill does not do is clarify for us what that means if the person to be searched self-identifies in a way that is not male

or female and what that means for the agency that is undertaking the search. Is the focus to be on self-identification and being searched by a police officer who, for instance, identifies as the same gender as the gender diverse person being searched or is it an anatomical construction?

Mr KRAUSE: Would you be able to comment on where the potential unintended consequences are in relation to invasive searches? Could you elaborate a little further about where the risks might be, whether it is on the officer involved or the people subjected to the searches?

Ms Fogerty: The risk is more to do with ensuring the dignity of the person being searched and the appropriateness of the search.

Mr KRAUSE: What about the legality of it on the part of the officers undertaking it?

Ms Fogerty: That is an issue. I had not thought of that. I think that would be an issue. We can develop that on notice if required.

Mr KRAUSE: That would be appreciated.

Dr Thompson: I can probably add to that. In the explanatory notes in relation to that provision the example given is the surrogacy act and the use of the term 'birth mother'. Anyone reading that act and term would take that to relate to the anatomical capacity of a person. It could be a transman who can give birth. You would fall under that definition. It is not so clear what the relevant criteria is when we look at some of those other areas like invasive strip searches and whether the relevant criteria is the person's registration—what sex they have registered in register—or whether because by its very nature a strip search involves a person revealing intimate parts of their body whether the relevant criteria would be the person's anatomical capacity.

Ms Fogerty: That is why we recommend that an audit be undertaken to clarify the relationship of this act to other acts where sex and gender are important to construction.

Mr KRAUSE: Just touching on what Ms Cornford-Scott said in relation to succession, it certainly does create some uncertainty. In relation to the audit in relation to unintended consequences, can you see anything of a nature of transitional provisions in the bill that will guard against these given that this bill is now before the House and it will be in effect before such an audit is undertaken?

Dr Thompson: I have gone through the DJAG response to submissions and noted that they have stated the bill will commence by proclamation which is supposed to give the relevant government departments some lead-in time to work through these issues. I think there has been some consideration of that particular issue, but we would still recommend that a comprehensive audit be undertaken of all the relevant pieces of legislation that use the terms sex and gender noting that this was done in other jurisdictions as well.

Mr KRAUSE: Prior to proclamation?

Dr Thompson: Yes, as I understand it. The Tasmanian Law Reform Institute did a comprehensive review. The South Australian Law Reform Institute produced a 150-page report going through each piece of legislation that uses these terms. I think it was recommended by the Western Australian Law Reform Commission and the ACT Law Reform Commission as well.

Ms BOLTON: You have noted on page 4 of your submission that previous consultation drafts of the bill contemplated distinct separate concepts for sex and gender but that this bill now diverges from that approach. What do you see are the impacts between what the draft of the bill contemplated and what we are actually inquiring into now?

Dr Thompson: The previous draft of the bill that we saw, which proposed a gender registration framework, followed the Tasmanian approach more closely. I understand that a number of stakeholders identified there would be certain issues arising out of a gender registration framework. This bill removes that distinction and proposes an alteration of sex framework. We think that, putting aside any issues relating to the distinction between sex and gender and the debate on that issue, we need to look at this more closely in terms of how it applies in different areas. That really goes to the heart of our recommendation about the need for an audit.

Ms BOLTON: This morning we heard that there has been consultation on this for the last 10 years even though I was totally unaware of it. That 10 years would have given plenty of time for an audit before a proclamation, as you said previously. Has anyone brought it up in that process?

Ms Fogerty: I think the reality is that an audit needs to be assessed against the terms of the actual bill that is under consideration. Certainly the discourse has been going on for some time, and the Queensland Law Society has been welcome to be part of that discourse, but we are talking about the specific terms of this bill.

Ms BUSH: A lot of my questions have been answered but I do want to come back to comments made around policing. You might not be able to comment on this, but what is the current QPS practice? Is it a matter of them having to sight a birth certificate prior to conducting those types of searches or is it a self-report? If a person identifies as a woman are they taken to be a woman in practice?

Dr Thompson: My understanding is that the Police Powers and Responsibilities Act uses the term sex. In order for a person to be searched by someone it must be a person of the same sex, and I believe that refers to the sex that is on their birth certificate, which would be the sex you have at birth or whether you have undergone a medical intervention to change your sex. This bill proposes changes to that framework, but again we do not know how that is intended to apply in practice.

Ms Fogerty: It is a significant issue in that all of us who practice as part of the criminal law community have seen an increase in the number of people interacting with police who identify as trans and gender diverse. It is important from the perspective of the police to have that clarity.

Ms BUSH: Do you have examples from your committee of trans men or women who have requested that a search be completed by a particular gender and that request has not been able to be fulfilled?

Ms Fogerty: I do not have examples where it has not been able to be fulfilled. The current policy of the Queensland police is to, as much as possible, facilitate a trans person being searched by a trans police officer, but that is obviously going to be subject to the operational requirements of police at that time.

Mrs GERBER: You may or may not be able to answer this question, but it pertains to the debate around sex and sport. A number of submitters have raised concerns in relation to community sporting groups not being able to apply their own local laws, let's call them, in relation to determining whether or not a transgender person can compete in a certain sex category of sport. If part 5 is to become law, would that open up certain sporting groups or community sporting organisations to being sued if they choose to apply their own sporting codes when they are assessing whether or not a transgender person can play in a certain sport?

Dr Thompson: When I read the DJAG response to some of those issues raised, it is essentially the intent of this bill that when a person registers a sex they are taken to be that sex according to whatever instance that then applies in, but we do still have the Anti-Discrimination Act, we have the ability to apply for an exemption. I think these issues were canvassed in more detail in the Queensland Human Rights Commission's report, but we certainly know that issue is not settled. We would expect the exemptions process to be robust and evidence based.

Mrs GERBER: Do you think the time frame for consultation on this bill has allowed that to happen appropriately and for there to be the appropriate safeguards, checks and balances that other submitters have talked about, including the Human Rights Commission, in relation to safeguarding rights?

Ms Fogerty: We are always going to want more time.

Dr Thompson: I think we would probably repeat the statements made by the Human Rights Commission previously. There is a lot of legislation out at the moment for consultation. This one is obviously of interest to the broader community, and you can see that by the number of submissions that have been received. It is clear that people would have liked more time to consider the bill.

Mrs GERBER: Including DJAG, which says in their submission that they have been impacted by the short time frames in preparing a response due to the volume of submissions received. I think that speaks volumes about the truncated time frame.

Ms BOLTON: No further questions, thank you, Chair.

Ms BUSH: The member for Currumbin has raised this so I will go there. In relation to sport, would you agree with the view that this is an issue that the sporting sector has been working through in practice for a long time and it will not be resolved through this bill either way?

Ms Fogerty: Yes, I would agree with that and note that nothing changes the reality of the sporting sector and community organisations to comply with the Anti-Discrimination Act and laws that are already in place.

Mr KRAUSE: Just on the succession law point, as the bill stands at the moment if someone has made a will leaving an inheritance to a daughter or son and then a change of sex is registered, would that disinherit someone or take them out of the scope of a will as it stands at the moment without any other change to the legislation?

Ms Cornford-Scott: No. The legislation says specifically that the change of sex will not affect their entitlement. If it is an obvious entitlement, and certainly if a will refers to a child by name, you are not going to have an issue. The issue is where you have a reference to a gift by class. If you have someone who was not previously identified as a daughter but was previously identified as a son, their gift as a son will not be affected. But now they are also getting a gift as a daughter, so that would affect the interpretation of the will in that regard.

Mr KRAUSE: Can you say that again? Did you just say that in that example their entitlement as a son would not be affected but they would also obtain an entitlement under the newly registered sex?

Ms Cornford-Scott: Correct. I believe that is in our submission as a specific example of how we would see it would work.

CHAIR: That is because in the will they are identified as a class.

Ms Cornford-Scott: Correct.

Mr KRAUSE: I wrote down your words previously, Ms Cornford-Scott, and when you said it it creates some uncertainty that it is quite true.

CHAIR: There being no further questions, thank you for your attendance and your written submission. It is very fulsome, as always.

**TWYFORD, Mr Luke, Chief Executive Officer and Principal Commissioner,
Queensland Family and Child Commission**

CHAIR: I now welcome the Principal Commissioner from the Queensland Family and Child Commission. Good morning and thank you for being here. We invite you to make an opening statement.

Mr Twyford: Thank you, Chair. I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. Commissioner Natalie Lewis is not able to be here today and I tender her apologies. However, she joins me in advocating on behalf of the young people I will talk about. Commissioner Lewis and I share a view where every Queensland child is loved, respected and has their rights upheld. After speaking with young Queenslanders, my view is that the proposed changes in this bill are a step towards achieving this vision.

I would like to start by acknowledging that I do not have a lived experience of the issues raised by this bill and I do not profess to be an expert in the medical, legal or social fields that underpin aspects of this conversation. However, I am here today with one clear purpose: to amplify the voices of young Queenslanders most affected by this issue. Those young people have shared their lived experiences with me and described, sometimes in painful detail, the harm caused as a result of the existing system. The main message I have heard is a simple line that states, 'No-one knows you better than yourself.' It is a clear concept. The hurt and the trauma that can arise when a government or a society does not accept your identity and forces another upon you is clear.

The proposed changes in this bill can be framed as administrative. They primarily relate to how a person is recorded in a database. It is about enabling a person to change their record of sex. For most people, a birth certificate is a simple way to provide identity and it is presented without concern or second thought. For many young transgender and gender diverse people, however, it is not straightforward and it is not easy. Young Queenslanders have told me that an incorrect sex marker on identifying documentation is a constant reminder of an identity that is not them. It raises fear—fear of prejudice, of violence, of bias and of having to explain their life situation to strangers. Individuals know themselves better than anyone else and they deserve to have documentation that accurately reflects who they are. The current system does not allow this and this is causing harm.

New surveys have shown that gender diverse young people experience poorer mental health and increased levels of discrimination. Almost 6,000 young people from across Queensland responded to our Growing Up in Queensland 2020 survey, with two per cent identifying as gender diverse. This survey revealed some concerning trends. Seventy-seven per cent of gender diverse participants indicated they had been treated unfairly because of their gender. This compares to only 27 per cent of female participants and 10 per cent of male participants, meaning gender diverse people experience discrimination seven times more than their male counterparts. Only 23 per cent of gender diverse participants felt a sense of belonging to their community. That is half when compared to 50 per cent of female participants and 65 per cent of male participants who felt like they belonged. Similarly, 5½ thousand young Queenslanders expressed their views in Mission Australia's 2022 youth survey within which 4.3 per cent identified as gender diverse. I was concerned to see that almost 66 per cent of gender diverse young people were very or extremely concerned about their own mental health, at double the rate of their peers. Almost 43 per cent of gender diverse young people were very or extremely concerned about suicide, which is four times the rate of their peers.

I spoke to young people specifically and directly this week in relation to what this bill would mean to them. One of them said, and I quote: 'It will mean fewer young people committing suicide.' It was a confronting statement and a confronting conversation. Young people said that this change will deliver significant benefit to the mental wellbeing of transgender and gender diverse people. They described how some in the community believe that the decision to become transgender is something that happens overnight or suddenly, but instead they spoke to me about long, painful journeys of self-doubt, of fear and of discrimination. They said it is a mentally challenging journey that takes a long time, sometimes a lot of money and for them this legislative change will make a world of difference. They went on to say that transgender people living in Queensland face a constant risk of violence. It is seen as though there is something wrong with them and they feel it. They said constantly advocating for their own right to exist puts them under a ridiculous amount of stress. They said that changes in this bill would represent a community saying, 'I believe you and you have the right to decide who you want to be.'

Young people said making a self-identification process easier should not be seen as a threat to those it does not affect. The direct impact is that life would be easier for them, less stressful and less oppressive for transgender and gender diverse people. Having a birth certificate that does not align

with a person's gender means young people may be forced to out themselves when performing normal, everyday tasks such as applying for jobs, registering for school or university, applying for a passport or opening a bank account. Young people said that, in these situations, people in the community feel entitled to an explanation about that young person's history. Interacting with people who do not have an understanding about gender diversity can lead to vulnerability. The personal cost of continually explaining their situation can be a painful, never-ending process of coming out.

In closing, the primary purpose of a birth certificate is to provide verification of a person's legal identity. An administrative change that allows transgender and gender diverse people to accurately state their legal identity will give them control over who they are and will greatly improve their lives and mental wellbeing. I would like to finish by acknowledging the young people who had the courage to speak with me about their painful journeys this week. I encourage the committee to consider this bill through the eyes of those who it most profoundly affects. Thank you.

Mrs GERBER: Thank you, Mr Twyford, for your submission. I want to put to you the same proposal or situation that I put to other submitters in relation to the argument around historical record. It has been proposed that another way that part 5 might be achieved whilst maintaining the integrity of the historical records is to insert a different section in the birth certificate to allow for a different identification of sex or for there to be a whole separate birth certificate that the transgender person can use. What are your views on that, specifically in the context of young people and how that might impact them?

Mr Twyford: I think historical records, where they are and who has access to them, would be the defining feature in whether the young people I spoke to might support that as an option. Ultimately what I heard was that young people were looking for an ability to be treated the same—not to have separate documentation or different documentation but to have documentation that we all have for them to indicate who they are and who they feel that they are. A historical record that was not publicly available and was not used by other people might go some way to addressing the fear and the discrimination that I have just outlined, that it is the public documentation and the presentation of documentation that causes anxiety and pain.

Ms BOLTON: We have brought this point up before. Some of the difficulties that submitters are presenting relate to sex and gender being two very different things. One is anatomical and the other is what you relate to. From the commission's point of view, can you tell us how you see either the differences or why there is not a difference?

Mr Twyford: That is a very good question. I think quite a complicated answer would be necessary and it might be beyond my expertise. What I have tried to outline in my presentation is the experience of young people who, if I frame it within the context of your question, are born a sex and identify as a gender and have quite a profound understanding of the differences between those things. Ultimately, what we hope for in the Queensland Family and Child Commission is that more young people, more children and more families are treated with love and respect and have their dignity upheld. Wherever we are discussing differences, I think there is opportunity for fear and discrimination to creep in.

Ultimately, I think there is a distinction—and it comes out in many of the submissions and from the people who have presented today—trying to link someone's birth sex with someone's presence in the room and trailing through the thought processes of those submissions as to how we give precedence or predominance to treating someone before us. Do we place greater priority on the sex that was applied to them at their birth, to their gender that we interpret from what we see or to the gender that they have chosen for themselves and proclaim to be? I think at its essence there is a complicated navigation required for policymakers and government in this situation around how we navigate each of the priority needs of different parts of our society, be it a births, deaths and marriages register; be it young people who are anxious and self-harming because of their treatment. I think this is a very important discussion. I believe that is probably the best answer I can give in terms of my own interpretation of how to balance someone's sex at birth and how someone chooses to identify in terms of their gender.

Ms BUSH: Some of the arguments that have been put forward in the submissions are that the advancement of a trans person's rights might actually take away from the rights of other cohorts. Based on your conversations with young people who are cis, male or female and who do not identify as trans, how important to them is it that their peers are able to have their gender identity recognised?

Mr Twyford: Critically important and life-affirming in the sense of living in a community and a society where you feel like you do not belong, where you are questioned and have doubts thrown around who you are and what you are and prejudicial words used about you. I think that is a devastating Brisbane

way for young Queenslanders to grow up in Queensland. I do think, and I have touched on it briefly in my submission, that there is a link between fear and risk in some of the current debate. It is okay to be afraid of things we do not understand but we need to logically work through what that fear is and where it is coming from and be very cognisant that size of fear does not relate to size of risk. I did put in my submission that there is no evidence that transgender or, indeed, any gender is more dangerous to children than any other gender. I think an important point to make in the discussion overall is that there is a difference between levels of fear and levels of risk.

Mr KRAUSE: You mentioned in your opening statement that one of the submissions said—and I am paraphrasing here—that people should not be afraid of something that does not impact them. Is it your submission to the committee today that the changes in this bill will not have any impact on members of society other than those people who go through the process to change their birth certificate?

Mr Twyford: I touched on that in two points in my opening statement. I will have to check how I read it out. One was a direct quote from a young person who was talking about how this bill predominantly impacts their lives and that other people who are not going through the process of changing their sex marker are only indirectly impacted by that change. I do stand by the distinction the young person is making that, unless you are applying to change your sex marker, that part of this bill has limited—and probably indirect—impacts on the rest of society. That is not to not acknowledge or belittle the submissions that have been made by people with very strong views—and in many cases, legitimate views—from their own perspectives around the impact of this bill. But when I balance the stories of young people self-harming and attempting suicide because of the failure of documentation to reflect and represent who they are with other impacts that that change in a sex marker would have, I do think there is a direct and an indirect distinction.

In closing, I did reference that I encourage the committee to see this bill and enter this debate through the eyes of those whom it most profoundly affects. In my eyes, that is the young people who have made representations to me around the positive impacts this bill would have on them.

Mr KRAUSE: Just going back to my question, it is not your submission that there will be no impact on others but that it will be indirect or limited.

Mr Twyford: Indirect or limited.

Ms BUSH: Some submitters have raised a concern that the bill could create a slippery slope towards young people rushing into gender reassignment surgery. I am interested in your views and comments on that.

Mr Twyford: I did ask a young person about that point. Under the current system there is a requirement to undergo that surgery before having your identifier made. In their eyes—and I think I agree with the logic—that might be encouraging people to have surgical procedures for the very reason of having their identity record changed. I think that argument can work both ways for the system currently in place and for the system post the bill. What we need to do and consider is what are the processes and protections that are in place around the young person making that decision. The bill does outline steps around responsible adults making decisions in a court process that might apply. I think the concern can be addressed by the procedures and protections that are in place in the bill.

CHAIR: Jason, do you have a question? I take it by the silence that that is a no.

Ms BUSH: Just to come back to that, are you aware—you may not be—whether in other jurisdictions where this type of legislation has moved ahead there have been any upticks in gender reassignment surgery or upticks in regrets of young people around changing birth certificates?

Mr Twyford: No, I am not aware.

CHAIR: There being no further questions, thank you for your attendance today and your written submission.

DASH, Ms Rose, Chief Client Officer, Multicultural Australia

JUNG, Ms Erika, Program Manager, Humanitarian Settlement Program, Multicultural Australia

PHILLIPS, Ms Emma, Research and Advocacy Manager, Multicultural Australia

CHAIR: I invite you to make a statement of about five minutes duration. We have been asking people to refrain from using unparliamentary language such as swearing or offensive terms. I know that you would not do that per se, but in quoting someone else sometimes there can be unparliamentary language so we ask you not to quote someone if they are using unparliamentary language. We also ask witnesses to consider not naming other persons who may not wish to be identified in a public space. I do not know if you are intending to do that, but if you are, if you could just respect that, please. You have five minutes or so to address the committee, after which we will have some questions for you.

Ms Dash: I would like to begin by acknowledging the traditional owners of the land which was and always will be Aboriginal and Torres Strait Islander land. We pay our respects to their elders throughout all time. We walk together in solidarity of the shared pain of the past and shared hope for the future.

Thank you for the opportunity to provide a submission to this important inquiry and for the invitation to give evidence at this public hearing. I make this opening statement on behalf of myself and my colleagues. As Queensland settlement service providers for migrants and refugees, Multicultural Australia works closely with diverse multicultural communities in Queensland from new and emerging communities to more established communities with our major offices in Brisbane, Toowoomba, Rockhampton and Townsville and community hubs located at multiple locations across the state. We provide support services across Queensland for between 5,000 to 6,000 clients each year through a range of programs including refugee, humanitarian support, employment and youth programs.

As the committee will appreciate, our experience providing settlement services has given us direct insight into the ways in which Queensland's life registration system does not appropriately accommodate the specific experiences and requirements of humanitarian new arrivals and refugees. Our submission draws on our experience supporting new humanitarian and refugee communities that have been impacted by the residential requirement in relation to the registration of adult and child name changes and trans and gender diverse refugees who have experienced barriers from the restrictions pertaining to applications to change the sex on their birth registration. Our submission also notes the current prescriptive requirements under the BDM Act that can exclude or impose hardships on vulnerable community members, including refugees and humanitarian arrivals. Our submission is primarily focused on highlighting these issues and proposing reforms that we consider would appropriately address these issues. The second part of our submission offers our perspective on issues arising from the operation of the BDM Act that impacts the broader community.

Multicultural Australia has recently been awarded Rainbow Tick accreditation after successfully meeting 26 criteria across six standards in order to work towards a more welcoming and inclusive space for LGBTQIA+ people. This is a significant milestone for our organisation and reflects our strong commitment to supporting our clients and communities as well as our workforce to feel safe and respected in their identities. As stated in our submission, reclaiming identity can be a key settlement priority for new arrivals, many of whom have experienced torture, trauma and persecution as a result of their identity in their country of origin. Obtaining identity documents that correctly reflect their identity is a critical part of the settlement journey and trauma recovery.

As outlined in our submission, we are broadly supportive of the bill. In particular, we support: the strengthening of legal recognition of trans and gender diverse people beyond the medicalised model to reflect their lived identity; the recognition of diverse family and parenting arrangements; the introduction of recognised detail certificates; and procedural changes that will simplify and align registration requirements which are currently onerous, particularly for people who speak English as an additional language.

We offer these key recommendations for the committee's consideration: amending clause 8(2)(b) of the bill to expressly recognise in the text of the section, as an example, the situation where a child is born in Queensland and one birth parent is overseas and unable to sign the application to register the birth within the required time frame, which has had quite a significant impact on some of our families that arrive. In relation to name changes for both adults and children and sex changes for adults, we recommend: removing or reducing to three months the residential requirement, including an

exemption for humanitarian entrants; procedural and access to justice recommendations, including further reducing and simplifying the information requirements for registration; introducing a discretion for the registrar in circumstances where inclusion or removal of certain information on the certificate may cause significant distress; increasing the flexibility of the notification and application process; and formally implementing fee waivers for disadvantaged groups, including refugees and other humanitarian entrants and First Nations persons.

We wish to emphasise the importance of ensuring there is adequate community education about all changes to the registration framework, especially those that have significant relevance for culturally and linguistically diverse communities. My colleague Ms Jung can speak to a case study that helps highlight the ways in which the current requirements are experienced as barriers for our clients and communities. With the committee's consent, I will now hand over to her to present these case studies.

Ms Jung: Thank you for the opportunity to present the case study. Multicultural Australia supported a highly vulnerable client who arrived as a refugee from Iran. Prior to her arrival in Australia our client, who is transgender, experienced significant ongoing physical, psychological and sexual abuse from her family and others in her community. The client lives with significant trauma from these experiences and is still awaiting surgery in relation to some of the injuries she sustained as part of this abuse. Our client was ultimately rejected from her community due to her transgender identity and initially sought refuge in Turkey before arriving in Australia as a refugee. Our client arrived in Australia with a male name. She was given a birth record at birth that recorded her legal name notwithstanding that she did not identify by that name, did not identify as male and presented in all respects as female, having accessed hormone therapy treatment over a number of years. Due to the cost and her physical and emotional injuries, our client has not yet accessed surgical intervention to reflect her change of gender.

Our client sought assistance from a community legal centre to apply to change her name to her female name. This process was ultimately successful; however, our client was unable to correct the record of her gender in the registry or to have her self-identified gender noted on her name change certificate. Our client has experienced significant trauma as a result of her failed attempts to obtain any official documents reflecting her gender. For this reason, the proposed amendment permitting name and sex changes to be made simultaneously and without gender reassignment surgery would be very beneficial. As a related point, we note that our client has experienced failures when seeking to change her name on her uni card, which points to the need for a review and alignment of related systems.

Mrs GERBER: One of the recommendations in your written submission is that there be further engagement, consideration and consultation in relation to the terminology of sex and gender in the bill and related legislative instruments. I am after an expansion on that? What would you like in terms of further consideration, consultation and engagement?

Ms Phillips: We are probably not the experts to speak in any depth to this. I can give as an example of terminology in the bill the definition of sex descriptor as either male, female or any other descriptor of sex and then the examples given are more associated with gender. I have had the opportunity to read the submission by the Queensland Law Society which goes into that in depth as well as other submissions. We are simply noting that and we recognise that there may be some implications for other pieces of legislation as well. We wanted to draw that to the committee's attention.

Ms BOLTON: In terms of the example of a client given previously, would the trauma and stress that she has undergone been alleviated by the option brought forward earlier of a gender identification certificate instead of amending the actual birth certificate?

Ms Dash: Without being able to ask the client the question, I think that would be us making an assumption on that. I would say that for a lot of clients experiencing the barriers to the current system everyone will have their own perspective on what would satisfy that. At the moment though what we are finding is because of, firstly, the 12-month period in which they have to live in Queensland to even change their name as well as sex is quite a significant barrier and perpetuates the trauma they have experienced offshore as well. As an organisation we refer to them as what they self-identify their name and sex to be and other agencies do not. That is a constant reminder.

In terms of a system it should be whatever system will be capable of being able to allow that person to live to the identity that they self-identify as and ensure that the systems that they are interacting with and accessing are able to accurately reflect that in an ongoing way. When you are settling in a new community you are setting up everything from scratch. You are doing your bank account, Centrelink, school registration, ID documents and filling out many different forms. It perpetuates the trauma at this point. I am not sure if I answered that question well.

Ms Jung: For many of our clients and community members even the gender identification certificate is a foreign or unfamiliar system to go through as well.

Ms Phillips: I understand this has been a focus of interest this morning. What is paramount is the safety of the client in terms of the documentation that they have in their possession and are required to show in an external facing way. We absolutely appreciate the importance of an accurate historical record—I note submissions from, for example, Jigsaw Queensland and FamilyVoice Australia that have spoken well to the need for there to be a need for a historical record, and we absolutely appreciate that—but in terms of the safety of transgender people I think it is important that they are not required to have two separate certificates that might reflect different information about their gender. We would propose that there are other ways in the back end of the registry where that can be achieved—that is, a historical accurate record maintained with appropriate safety settings in terms of the privacy and confidentiality of the information while having any documentation published in terms of the lived experience of gender.

Ms BUSH: You proposed amendments to clause 8(2)(b). I wanted to see if you could expand on that a little more.

Ms Phillips: What we have proposed in our submission is 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 and the other parent is not practically able to sign the application within the required time frame. We noted that there are a number of humanitarian entrants in that category.

In clause 8(3) there is the exemption created but on our reading of that that will only be activated once a discretion is exercised under clause 8(2). We have noted in our written submission that there are examples provided but they do not really align with the circumstances of our clients. In practice the administrative decision-making on this section would be significantly improved if there was either a rewording of that section or an example provided to reflect the situation that many of our clients have found themselves in.

Ms Dash: An example of that would be that a client many years ago gave birth to a child where the father was overseas and missing. On the application it is asking for the father's name but no examples or explanations as to what the exemption criteria would be and would that fit under that. There is significant trauma and stress purely to settle in Australia and then you have just given birth and you have to try to figure out if there is a way to register the birth of your child without any clear examples of if that could be exempted. What happens is clients then come to services or seek legal advice to understand if there is a way around that. While we are not assuming there will be an exhaustive list of different examples, in simplified English the ways of getting an exemption would be helpful for the cohorts that we support.

Ms BUSH: You have also made some comments in relation to the proposed requirement to be a resident for 12 months prior to making an application to change name. Could you expand on your views in that regard and why you have included that in your submission?

Ms Dash: In the current act there is no specified length of time; there is a minimum requirement. In practice though it has been a requirement for anyone born overseas to have lived and proved that they have lived in Queensland for 12 months before changing their name. For a lot of our clients when they arrive there is possibly an error on the documents that they have been given or the naming conventions that are quite common in their country of birth and country of origin do not reflect or enable them to integrate here and they would like to choose to change their name. There are varying and differing circumstances. However, what happens is that because of this 12-month criteria they have to wait and set-up all the systems of settlement—as I explained before there are different systems—in that incorrect name and then change their name 12 months on.

The other challenge to that is that the intensive settlement support that they receive through the Humanitarian Settlement Program happens within that initial 12-month period. At 12 months they are about to graduate that program and go into a less intensive stream. If there are any barriers to that then they are having to come back to do that. It is not just to change your name but then to change your name with all the other systems that you have set up.

What we would recommend is either abolishing that and just enabling that exemption for humanitarian entrants to do that on arrival and be able to provide the reasons behind that or at least give a three-month window if you need to provide some kind of minimum requirement. That would enable them to be able to set up their life in Australia.

CHAIR: We cannot hear Jason so I will ask his question. Your submission talks about the term 'birth' being outdated. Would you be kind enough to expand on that part of your submission?

Ms Phillips: I am looking for where in our submission we have made that reference.

Mrs GERBER: If I might help, it is on page 7. I have just done a word search for you. It is under 'Recognition of contemporary family and parenting structures'.

Ms Phillips: I believe the act birth is defined along the lines of expulsion from a mother's body. I am not able to speak to that in too much detail at the moment. My reading of that section is that it certainly is not reflective of current understandings of the different ways that a child can be brought into the world. It was on that basis that that point was made.

Mrs GERBER: I just wanted to touch on the aspect of the bill that Multicultural Australia does not support. You said to delineate between prisoners and restricted persons and other persons in the rights and conditions attached to the application to register a change of sex. I just wanted you to expand on why you do not support that amendment and any further details you can give to the committee around your recommendation there. It is on page 9 of your submission. It is No. 1 and is under the heading 'Multicultural Australia does not support the following proposed amendments'.

Ms Phillips: Again, this was not a point of core focus for our submission but is something we are concerned about that would impact potentially some of our clients and communities. More broadly as a human rights concern we wanted to flag that for the committee's attention. I think there are other organisations—for example, Sisters Inside and the Queensland Law Society—that can speak to this and have greater experience in this space directly. We were concerned that on our reading of that provision that it is discriminatory and there does not appear to be any reasonable basis upon which to make that delineation.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your submission and thank you for your attendance.

KOOPMAN, Professor Peter, Private capacity

CHAIR: I now welcome Professor Peter Koopman, Emeritus Professor at the University of Queensland. As you may have heard previously, I have asked people to be careful about the use of unparliamentary language. It normally occurs when a witness is quoting another individual rather than them being unparliamentary. If you are thinking of identifying any individual who may not wish to be identified could you be conscious that we are in public. You have been here for a short time so you have seen the process. We ask that you make a five-minute opening statement after which committee members will have some questions for you.

Prof. Koopman: I am an Emeritus Professor at the University of Queensland. I have been with the University of Queensland for over 30 years now as an academic, but the views and opinions that I am about to express are my own and not necessarily those of the University of Queensland.

Let me say at the outset that I have no problem personally or professionally with the concept of gender self-identification. I personally believe—and I think there are a lot of people in this room who would agree with me—that people do have a right to control their own destiny, that they have a right to a bright future, that they have a right to live as they want to live free of discrimination, prejudice and so on. That is not a problem for me. I believe that people should be able to live their lives as they will.

You will perhaps have read my submission. It is a very focused submission and it centres around my professional expertise, which is that for the bulk of my research career of over 40 years I have been concerned with the biology of sex, so I feel that I am well qualified to talk to the committee about the specific difference between sex and gender. I know that this is well appreciated amongst the committee, but I cannot stress enough that sex and gender are very different concepts and that it does not help anybody to try to conflate those two concepts and pretend that they are the same thing, because they are not.

Sex has a very specific scientific and biological meaning that is essentially fixed. It is a fundamental description of a person's state that is as fundamental as describing your species as being *Homo sapiens*, human beings. It is not something you can alter. Obviously it is recognised that there are more than just two sexes. Some people are of indeterminate sex. That is a separate category. That is well recognised. Sex is a fundamental biological descriptor of an organism of a person as fundamental as their species, as fundamental as their height, their eye colour, their age or what have you.

Gender is something entirely different. It is a psychosocial construct. It is a much more fluid construct. It is open to self-identification. We all do that to some extent in the way that we dress, the way that we behave, our body language, our voice modulation. The things we do in society are very much reflections of our individual identification as men or women or boys or girls or whatever we may be. There is no problem, in my view, with gender fluidity, with people being a gender or choosing how they want to identify themselves. That is all fine, but a person's gender—how they choose to behave, to identify, to relate—is not the same as their sex. Their sex is a fundamental biological thing that is essentially fixed.

The key question in my mind is how to enshrine in law the person's right to identify with whatever gender they may feel they are. I think it is very important to understand that a birth certificate is entirely the wrong instrument for a person to express their identity. We rely on birth certificates for the most crazy things that are not fit for purpose of a birth certificate. A birth certificate is a historical record which is very important in a number of different research, academic and scientific spheres to be relied upon as a snapshot of what that person was at the specific time of their birth.

It seems very clear that there is a requirement for a different form of validation for people to register their chosen gender. I do not know why there is opposition to having a separate type of validation document. I, for example, am required to show a driver's licence to show that I can drive. It is not on my birth certificate. For some academic purposes I am required to show a certificate that indicates that I have a PhD. That is not on my birth certificate either. If we could just get around the idea that a birth certificate is a catch-all document of validation of how the person is at any point in time, I think we will have advanced the cause quite significantly.

Essentially my problems with the bill are, firstly, that it is too rushed. It is a much more complex area than can be settled in the short period of consultation that has been given. I do not think that the negative consequences have been thought through properly. Most importantly, I think here we have a great opportunity for Queensland to show some clarity, some leadership, some understanding of separating fact from desire. We should be able to create an enlightened document, a correct document and a document by which everybody wins—there are not some winners and some losers.

Really the point of my being here is to share my expertise, if that is possible, in the biology of sex for the benefit of the committee. Please ask me any questions you may have.

CHAIR: Thank you, Peter.

Mrs GERBER: This might not be a question you can answer. It might be more of a question for DJAG. What is the point of recording sex on a birth certificate?

Prof. Koopman: I do not know. What do you put on a birth certificate? In terms of a record, a human record—we keep records of humanity in some way: who is born, who dies, who has been on this planet, who they were. We keep all sorts of records and these are very important for research, anthropology, genealogy, science, genetics, law. All sorts of fields of human endeavour rely on records of who passed through this planet—where they came from and so on.

You could ask the question: what information is useful to have on a birth certificate? The fact that a baby was born, I think, is the most fundamental thing, but what else about that baby? What was their name? That is fraught because people change their names as life progresses. In principle, it should be possible to record the name an infant was given at the time of their birth as a starting point for a list of some information that could possibly go on the birth certificate.

Other useful things may include their height or weight. What do you put on a birth certificate? I do not know the answer to that. Gender is not one of those things. It is not something that a baby has yet.

Mrs GERBER: You cannot tell me why you would put sex on a birth certificate either.

Prof. Koopman: Not really. It is somewhat arbitrary. Humans do some strange things. You have to ask why we have separate toilets. I do not know the answer to that either.

Ms BOLTON: You spoke of an 'enlightened document'. As you would have heard earlier in the hearing, we have talked about a gender identification certificate versus a birth certificate that is accepted. One of the points brought up is that it discriminates when doing self-identification. Having that document again is discriminatory. If it were to apply to everyone, and we looked at the birth certificate as a birth record which could be held confidentially, do you believe that addresses what you have raised regarding sex and gender and the differences?

Prof. Koopman: Absolutely, I do. Again, you would have to ask why the question is being asked—what sex I am or what gender I am. There are certain circumstances under which gender may be a relevant question to ask. There may be certain circumstances under which what sex you are may be a relevant question to ask. There are some things in society where it does seem to be based on sex. Let's say a gynaecology clinic is founded on what reproductive organs you have. It is not whether you believe that you are a man or a woman for the purposes of gender identity.

There are other situations where what you have in your underpants is of no consequence to the question. A trivial example might be a women's only book club. That is a quick example off the top of my head. It is of no consequence what sex you are really in that circumstance. It is whether you are able to empathise and embrace the concepts of womanliness in a sufficient way or in an appropriate way for that organisation.

Ms BUSH: Peter, I did not capture the sentiment but you mentioned that we needed to re-do the legislation so that there are not winners and losers. Who are the losers in this legislation?

Prof. Koopman: There are 360 submissions. Probably up to half of them articulate disadvantage or negative unforeseen consequences arising from the bill as it is currently written. It is not really my job to—

Ms BUSH: It was your statement. In your view, what did you mean by that statement?

Prof. Koopman: One of the things that comes up time and time again is the concept of women's rights—hard fought for rights for women. In the apparent eyes of the writers, they need to satisfy certain criteria to be women. Those are not necessarily quite as arbitrary as the bill perhaps makes out in places.

Ms BUSH: In your view, women are the losers.

Prof. Koopman: Sorry?

Ms BUSH: Your view is that women are the losers under this bill.

Prof. Koopman: No. That would be putting words into my mouth. That is not it at all. I think the volume and nature of the opposition that is embodied in the many submissions that I have seen indicate that some people feel there would be winners and losers from this legislation. I think we can do better than that.

CHAIR: Some submissions have suggested that gender is a rigid and an immutable biological construct. Is this a historical or biological supported idea?

Prof. Koopman: I am not sure if I understood the question correctly. Gender is not a rigid biological construct at all. In fact, it is not a biological construct. It is how you feel you are, what you feel you are, how you feel as part of the society. That is fluid. Some people do not feel any gender. Some people feel aspects of both genders. They are perfectly entitled to those feelings. I do not really think that is the question. That is not biologically immutable. That is a psychosocial construct. That is under the control of the individual.

Mr KRAUSE: Professor Koopman, in other areas of debate in society there is often a call to accept the science of a matter. Does this bill accept the science regarding sex and gender?

Prof. Koopman: No. The key problem from my professional point of view is that the bill is flawed because it tries to conflate sex and gender—lump them together. They are not. They are totally separate concepts. It is convenient for some purposes to put them together. We as a society have a hopeless track record in understanding and keeping separate the concepts of sex and gender partly because 'sex' is a word that people tend not to want to use, so we have adopted 'gender' as a euphemism for 'sex'. It is the word you use if you do not want to say s-e-x. That has made us go backwards because now people think that gender is sex when it is not. They are separate. It is perfectly possible and I do not see why it needs to be unacceptable for people to have a sex that is incongruent with their gender identification, their gender outlook, their gender bearing.

Mr KRAUSE: Just out of interest, Professor, how many births per 100,000 are indeterminate or intersex?

Prof. Koopman: Intersex—I think it is about one in 25,000.

CHAIR: That brings this part of the hearing to a conclusion. Thank you for your written submission and thank you for your attendance today.

Proceedings suspended from 11.01 am to 11.22 am.

ALEXANDER, Ms Matilda, Patron, LGBTI Legal Service

CHAIR: Good morning and thank you for being with us. You may have heard me tell other witnesses to ensure that they do not use unparliamentary language. I am not suggesting that you would use unparliamentary language per se. It is in relation to quoting someone else. The other thing that we have been asking witnesses to be conscious of is identifying or naming persons who may not wish to be named. This is to prevent those things from happening from the committee's point of view. I invite you to make an opening statement of five minutes, after which committee members will have questions for you.

Ms Alexander: Good morning. I would like to firstly acknowledge the traditional owners of this land—Meanjin—and pay my respects to Aboriginal and Torres Strait Islander people throughout Queensland listening today. I acknowledge the continuous work of Aboriginal and Torres Strait Islander people from the LGBTI+, brother boy and sister girl communities and recognise their leadership in this space.

Thank you for inviting our service to appear at this public hearing. We note the importance of these changes to members of the LGBTI community. These are issues that do not affect all Queenslanders equally, and sufficient weight should be given to the voices of LGBTI people and particularly trans and gender diverse folk who stand to gain or lose significant rights from these changes. Accordingly, it would have been good to see more LGBTI and specifically trans voices on the list today.

The LGBTI Legal Service welcomes the introduction of this bill with minor fine-tuning recommended. On a personal level, this will mean that my kids' birth certificates, which currently read 'mother' and 'other' parent, can be changed so that their 'other' mother is not so quite literally 'othered' every time we use them.

The common law has long recognised the non-binary and flexible approach to sex and gender. I was at uni when I learnt about the Re Kevin case that allowed a trans man to marry a cis woman and this was at a time when same-sex marriage was still years away. The High Court in *AB v WA* has articulated that gender should not be regarded merely as a matter of chromosomes. It is partly a psychological question—one of self-perception—and partly a social question of how society perceives the individual. This proposed bill follows this line of reasoning and also adopts the practice that is now entrenched in many other states and territories.

These changes are not new or radical. These changes will not have unforeseen consequences. They will bring Queensland into line with other jurisdictions such as Tasmania, Victoria and ACT. These changes are a reflection of the recognition in broader society that our LGBTI community is no longer hidden in a closet. We cannot be ignored on paper or in real life. We are out here and demanding our rights.

The minor changes we are recommending today request the equal treatment of transgender people in custody so that we have a clear single process for transition regardless of where someone lives. We are also recommending clear protections be introduced to ensure the deferrable and irreversible medical treatments are not performed on intersex infants and children unless and until they can provide free, full and informed consent.

We also believe that a child should be entitled to attend a single-sex school for the sex by which that child identifies regardless of what the record reflects. Now is the time when the government needs to step in and protect our vulnerable LGBTI kids from discrimination and exclusion in education in order to ensure safe and accessible schools. We are also excited to see the first changes set in motion following the groundbreaking *Building belonging* report of the QHRC including protection for non-binary identities, definitions of sex characteristics and the removal of outdated exemptions allowing discrimination against trans people wanting to work with children, and gay and lesbian people seeking help with conception.

The LGBTI community thanks you for seeing us in these changes, for allowing us to express our true identities without unnecessary and harmful surgeries, for allowing our rainbow families to exist on paper as we do in real life. A birth certificate is so much more than a piece of paper. It is a formal recognition of identity and a ticket to more equal treatment. It is those of us whose identity has been closeted, explicitly wrongly recorded and offensively expressed who will benefit from these laws.

I remind you that 40 per cent of people voted against same-sex marriage, and at least that percentage of opposing submissions are made to you today. I urge you to listen to the voices of the folk whose rights and lives hang in the balance today—those who are directly and personally affected. Keep strong in your support for our LGBTI+ community. We thank you and we encourage you to pass this bill in parliament.

Mrs GERBER: Thank you for your very passionate opening statement. I appreciate your personal appearance today in addition to your written submission. I seek a point of clarification in your written submission. In recommendation 1 you recommend that once a child has attained the age of 12 years of age their consent must be required to change the parenting details on their own birth certificate. Is it currently 16? What is the current age when the child's consent is required or is it not required at all?

Ms Alexander: As far as I am aware, there is not a clear ability for a child to have their voice recorded in that way. I think this is an opportunity to look at the way we have done things. We have done birth certificates pretty badly for a long time now and this is an opportunity to look at all of those different aspects. Obviously when the child gets to be a certain age they get to have some more say over their own expressions of identity.

Mrs GERBER: In relation to recommendation 2, you talk about clause 12 and how, in its current form, it restricts parentage to a maximum of two people in total. You recommend that there be no limits on the parentage. Has any other Australian jurisdiction adopted that, which we could look at?

Ms Alexander: I can take that question on notice for you. Certainly it would make sense in terms of the way that our families are often taking effect. It might not just be for the LGBTIQ+ communities. There are other families where more than two people are participating, whether it is through surrogacy, step-parenting or a range of other different mechanisms.

Mrs GERBER: Is it okay for you to take that on notice?

Ms Alexander: Yes, that is fine.

Ms BOLTON: In your opening statement you made a comment—and correct me if I am wrong—that gender is much more than chromosomes. Through this hearing and also in some of the submissions there is a very definitive idea that sex, which is what is on the birth certificate, and gender are two very different things. Could you comment on that given that it has been basically agreed by so many in this conversation today?

Ms Alexander: That was not my quote. That was a quote from the High Court in relation to a trans man who wanted to change his birth certificate without undergoing unnecessary surgery. The High Court looked at that matter, which was a matter against the Western Australian Registry of Births, Deaths and Marriages. The High Court said that there is not a simple way; you cannot look between someone's legs. They used the term 'gender' but equally the term 'sex' would be applicable there. They are saying that there is not a clear-cut way that the High Court considered at that point. That was a number of years ago now and we have come to the position that we have come to now, which is a much broader recognition of sex and gender.

Ms BOLTON: As follow-up question, understandably and you are correct in saying that the submissions are probably fifty-fifty in support and opposition. I note that within the LGBTI community obviously there are opposing submissions as well including one from LGB Alliance, which basically stated that it damages the lesbian, gay and bisexual liberation movement. Can you comment on that from the aspect of legal services and your experience?

Ms Alexander: From our lesbian clients and my experience as a queer woman, I cannot see any damage that could be done to my life by allowing transgender people to have their recognition. In fact, this bill serves to benefit lesbians who are parents, for example, and queer women who are parents. I think with the LGB Alliance it is very notable that the 'TI' is missing. This bill in particular does give rights to the transgender and intersex communities that have been long fought for.

Ms BUSH: Matilda, the member for Noosa's question is probably where I was going to head. You have clarified that we have had submissions from people who identify as being lesbian or representing lesbian groups and who have alternate views. I guess your submission is that lesbians are not a homogenous group but that you do not identify risk in this bill for some of the issues around erasing women's rights.

Ms Alexander: No, not at all. I am a feminist myself and I have supported many women's organisations and women's rooms. I do not think that this does do that. It allows trans women to be also included and it allows all women. To say some women should be protected and some women should not be protected based on a range of largely irrelevant factors in that person—really, when they are coming to a service they need a service, regardless of whether they are a cis or a trans woman.

Some of the other submitters—Sisters Inside, for example—pointed out the lack of availability of services for gender diverse and trans folk and how important that level of service delivery is. Many Queensland women's services have been accessed by trans folk over the years and there has never been an issue that I am aware of. Certainly the DJAG briefing note went through quite a lot of examples, Brisbane

internationally as well, where this kind of fear that cis gendered men are going to start pouring into the women's services and demanding to be seen by saying that they are women is actually not what has happened in practice. That is not what has happened in other jurisdictions throughout Australia. It is not what has happened internationally. We are not groundbreaking here. We can look around the world. We can see whether or not these fears are well-founded and in my view they are not.

Ms BUSH: In terms of offering services, you would be completing risk assessments that take into consideration issues that are broader than just gender; is that correct? When you are looking at the composition of who to offer services to you are running a risk assessment that looks more broadly at a person's compatibility with the service rather than just looking at gender as being a safeguard?

Ms Alexander: Yes, certainly you would be looking at conflicts of interest and matters such as that and the potential for violence or whatever other issues are there. I think the idea that we can exclude any particular group of women is something that is well and truly in the past, including trans women.

Ms BOLTON: I have one last question. Earlier we heard of some options including a gender identification certificate instead of a birth certificate. We heard the reasons why that is discriminatory within itself. The member for Currumbin asked earlier why we actually have the birth sex on our birth certificates and what purpose does it serve. Would an option be that, if sex is not required on a birth certificate, it is just left off and everyone gets a gender identity certificate instead of a birth certificate?

Ms Alexander: My understanding is that this does allow sex to be left off the birth certificate. Certainly the draft of the bill did. I might have to go back and recheck whether that is the case here. You could opt in to have sex on the birth certificate or not. I could check that for you. Certainly a gender recognition certificate is something that we are strongly opposed to. Anything that makes trans people second-class citizens and does not give them the same documentation will out them. It will cause them physical danger. It will cause emotional danger. It will cause harm. We are strongly opposed to anything that will cause greater harm. This law is about remedying the harm that we have been through as a community for decades. This is a time to make things better for the LGBTI community. This is not the time to entrench and perpetuate difference and discrimination.

Ms BOLTON: What I was asking about was if we all had the same documentation that had our gender identity instead of our birth sex, for the purposes of registering at schools and for the different examples we have been given, then that would not be discriminatory as it would be the same for all of us.

Ms Alexander: If we all had our preference of how we wanted to be called, whether we all wanted to be called women, men, non-binary or whatever else. I do not know if I am quite understanding your question because my understanding is that the purpose of the legislation is to create a document where people can have a birth certificate that reflects their sex and gender—their identity.

Ms BOLTON: I think the confusion is that we have been talking about a birth certificate, which is a record of the physiological as in the sex that we are born with, versus the gender we identify with. I think that is where the words 'sex' and 'gender' are different. What if literally that birth certificate was instead a birth record of the sex we were born; however, everyone is issued with a gender identification instead of a birth certificate? Literally it is all the same and with the documents that you present there is no difference and it has the gender identity. I suppose I am asking: would that be a good solution that has been put forward? It is different to what the bill is proposing, which is to change the birth certificate.

Ms Alexander: I am sorry but I do not think I quite understand. Are you saying to change birth certificates to gender recognition certificates and have something separate that is a birth record?

Ms BOLTON: What we commonly know as the birth certificate would be a birth record but, instead of a birth certificate, we are all issued with a gender identification certificate for the purposes of everyday life in terms of going to school, getting our licences et cetera.

Ms Alexander: On licences you do not need to have gender. Why do we need to have gender on all of these things anymore? It is not relevant for driving a car. We have been talking about this and there have been discussion papers and consultations about this going on for I feel like close to a decade now. These proposals were all discussed. We discussed gender identity certificates and putting gender on and putting sex on all of these things. A lot of hard work has gone into this bill. All of the kinds of things that you are proposing have been well and truly ventilated through the consultation process. This is the answer, I think, that best addresses all of those needs.

Ms BOLTON: Thank you so much. Many of us have not been privy to what has been presented in the last decade. It has never been sent through to us. That is why we are asking these questions. Thank you.

CHAIR: Thank you for your written submission and for your time today. You recommended that the bill be amended to not restrict parentage to a maximum of two people. You asked to take a question on notice about whether there are other Australian jurisdictions doing this.

Ms Alexander: Yes, I can take that on notice. Wasn't there a question about the 12-year-olds?

Mrs GERBER: I am happy to put that to DJAG.

CHAIR: Please provide your response by 5 pm on 31 January.

Mrs GERBER: Matilda, if you cannot find it then, again, that is another question that I can ask DJAG.

Ms Alexander: Okay, thank you.

GROVER, Ms Sall, Founder and Chief Executive Officer, Giggle; and Petition Partner, Women's Forum Australia

WONG, Ms Rachael, Chief Executive Officer, Women's Forum Australia

CHAIR: You may have heard me say earlier that the committee asks that you refrain from referring to a quote by someone else that may contain unparliamentary language. I do not know if you were going to do either of these things, but please also do not identify a person who may not wish to be identified in the public space. I am trying to forewarn you against something like that. Can you make an opening statement of up to five minutes and then the committee will have some questions for you.

Ms Wong: Good morning and thank you for inviting us to appear today. My name is Rachael Wong and I am the CEO of Women's Forum Australia. With me I have Sall Grover, the CEO of women's networking app Giggle, who has herself experienced acute harm from laws that conflate sex and gender. She is here today to help represent all the Queensland women who have found themselves shut out of consultation on this bill. This bill has provoked strong emotions, with the Attorney-General outright dismissing women's concerns as transphobia. Not only do such comments embolden violence against women; I can assure you that if she had taken the time to actually meet and engage them in genuine dialogue without derision then it would be abundantly clear that there is no ill will towards trans people.

I believe those engaged in this process sincerely care about their fellow citizens' safety, wellbeing and dignity, that those who support this bill are truly wanting to improve the lives of transgender people, and that those who do not support this bill are deeply concerned about the harmful, far-reaching implications for all Queenslanders, but particularly for women and girls. While behind this bill may be the best of intentions, these implications have not been fully understood because if they had, this bill would not have been put forward in its current form.

With that said, I ask that you put yourselves in the shoes of our society's most vulnerable women who will be most adversely affected by this law. Opposition to this bill is not a face-off between women and trans people, but rather a universal recognition of the importance of single-sex spaces and the risks that biological males can pose to women and girls. The rationale for why we have single-sex prisons, bathrooms, changing rooms, sports and so on is based on an understanding of the biological sex differences between men and women and the value placed on protecting and progressing women's dignity, safety, fairness and equality. Single-sex spaces are particularly important for victims of male-induced violence and trauma.

Just because someone does not identify with their biological sex does not negate its existence. A law which allows anyone to change their legal sex because of a perceived gender identity is based on a falsehood. It enables any male to self-identify as a woman and access female-only spaces, services, sports, opportunities and even lesbian events, and undermines the very purpose of single-sex spaces. It disables critical sex-based data collection and it opens up loopholes for predatory men to exploit the system and gain unfettered access to vulnerable women and girls. This point was made recently by the UN in its critique of Scotland's similarly controversial bill which was deemed so problematic by the UK government, it has just used an unprecedented veto power to block it.

Despite the Attorney-General's claim that there is no evidence trans women pose an increased risk to biological women, the actual evidence tells a very different story. The reality is trans women are biological males, and in addition to data that they retain male patterns of violence, examples of women being harmed by them in female-only spaces abound. This past year we have heard of trans women raping women in female-only prisons, hospital wards and shelters. Sexual assaults by trans identified males in female-only spaces are becoming disturbingly more common, but even the violation of one woman should have been enough for self-ID laws worldwide to be abolished in an instant.

Self-ID laws affect the rights and safety of all women and girls. I have had mothers and fathers tell me their daughters hold on to go to the bathroom all day because they are too scared to use the school bathroom with boys. I have had women contact me saying that aged-care workers are required to dress biological men in female underwear and make-up as part of their sexual fetish, and I would strongly recommend that the committee read submission 273 in this regard. Then there are the mounting stories of female athletes who are losing out on places, awards and opportunities to biological males.

It is important to ensure that those who feel disconnected from their biological sex are treated with care and respect, but this cannot be achieved by removing hard-won rights and protections for women. Most of those deciding this bill will never be in a position of one of society's most disadvantaged

women, serving time in prison or seeking refuge in a shelter. They will likely never be at risk of being cornered by a sexual abuser in a place that was meant to keep them safe. However, they do have a responsibility to protect those women, and they also shoulder a responsibility for the consequences should they fail to do so.

I ask that the committee listen to the voices of women, that you take seriously the countless stories of harm, and that you have the courage to stand up against this ill-conceived legislation. Thank you.

Mrs GERBER: Thank you for your appearance today and for your written submission. I understand from both your oral submission then and your written submission that you are completely opposed to part 5 in the bill. Could you talk me through any other amendment or anything that could be incorporated in the bill that might allow for the LGBTI community to self-identify in relation to their gender? I will premise that by asking you to accept the concept of gender and sex as two different things, for the context of your answer.

Ms Wong: The comments that I think Sandy made via videoconference just before is something that we could accept as an appropriate compromise in this situation: to keep the very important concept of a birth record which is a factual document that is very important for obviously data collection and for keeping a record of that person's biological sex, but there could be, for example, a certificate which acknowledges a gender identity which, as we understand, is obviously subject to change and is not something that is immutable and based in biology or science.

Ms BOLTON: You did recommend the creation of gender-neutral spaces as a way forward and that was on page 8. Could you elaborate on this a bit more?

Ms Wong: Yes. The idea there is that, as I have said today and in my submission, keeping female single-sex spaces and also male single-sex spaces is incredibly important for the functioning of our society and for the rights, safety and dignity of women and girls in particular. However, I see no reason why there cannot be gender-neutral spaces, so spaces where someone who does not feel comfortable going into a sex-based facility that they do not identify with—it may be their biological sex, but it will not be congruent with the gender they identify with—I do not see an issue why there cannot be a gender-neutral space for people who fall along that gender identity spectrum that they can access and feel more comfortable in.

Ms BOLTON: You wanted to remove part 5 at the very least and that part 12 should also be removed; that was on your page 8. Can you quickly reiterate why?

Ms Wong: Part 5 is the part of the bill that deals with self-identification. That is quite clear in the sense that we believe it is very important to be able to continue to record a person's sex on their birth certificate, and not allowing that to be conflated with gender in practical situations is incredibly important. Part 12, from memory, was in relation to—

Ms BOLTON: I think it was to do with amending the Anti-Discrimination Act.

Ms Grover: That is a really important point, the Anti-Discrimination Act. My ultimate issue with this law is that it is asking all Queensland residents to potentially ignore what they see with their own eyes; to ignore reality. Is that going to become illegal? I can correctly sex every single person sitting in this room right now. It is an instinctive, evolutionary, important biological skill. Is that going to be illegal? What is the punishment if we say, 'This person standing in front of me is male, not a woman'? This has not been covered in any way, not even a substantial way. We are constantly being asked to provide evidence of harm and what could possibly go wrong. There has been no evidence given that men are women. It did not even start. The conversation is over. There. It is just absurd that it has even gotten to this stage. If you want to have a gender recognition certificate, fine, it is your life, it is your identity, you are welcome to it, but there needs to be exemptions in this law that says gender does not exceed the rights of sex because it is just obliterating reality for every single Queensland resident.

Ms BUSH: Thank you for attending and your submission and for giving voice to certainly a cohort of people who have those views. I was interested in whether you had the opportunity to read the response from the department to submissions around some of the issues that you have raised and what your thoughts were along their response.

Ms Wong: Were there particular areas you would like us to comment on?

Ms BUSH: The issues that you have spoken to, particularly to where I am struggling which is the reference to evidence that risk of harm will elevate and their very clear response, and certainly the research I have undertaken myself prior to these hearings which has not really unearthed any peer

reviewed critical evidence—certainly media reports and hypothesis, but no tangible evidence that that risk has increased when we accept that predatory people are out there in every domain.

Ms Grover: Yes, but predatory men are out there in every domain; that we have had single-sex spaces to protect women from them. Fair Go for Queensland Women's submission detailed the rising number of male inmates who are identifying as women. In 2021, it was 42. In 2022 as of 30 June, it was 63. We are in 2023 right now. It is growing. There are only 800-and-something female inmates in prison. If you put 80 males into that prison, you have 10 per cent of the women's prison population that is male. How does the Queensland women's prison system plan on handling that? Do you think that all of those men who are in prison for crimes are telling the truth? Or maybe they have ulterior motives.

Ms BUSH: Have you read the submissions and—

Ms Grover: Yes.

Ms BUSH:—the department's response around—

Ms Grover: Yes, it is nonsense.

Ms BUSH: Sorry, I am still going—from services that, without this legislation, they are already interacting in a space of gender fluidity in that they have risk assessment procedures already established to support this, and that they are not capturing the evidence of harm, and that is not just in Australia; that that is across hundreds of millions of people who are living in countries where this legislation has been in place for some time?

Ms Grover: In New Jersey last year, two women inmates were impregnated by a male who claims to be a woman.

Ms Wong: To that point, I would like to add that, I agree, there are definitely jurisdictions where there are not formal self-ID laws yet, where males are already identifying as women and accessing women's spaces, and there are definitely problems with that in itself. There have been the stories I mentioned of sexual assaults occurring and other kinds of harm stemming from that as well. Self-ID laws make it even easier.

At the moment, I think in some jurisdictions without the legislation, there are policies and guidelines in place which allow this to happen. For example, in the UK there are no self-ID laws, but there is that story of the single-sex hospital ward where that woman was raped by a transgender patient who was biologically male, and for an entire year after that she was disbelieved because—'Well, no, she could not have possibly been raped because there was no man on the ward', when actually there was a biological male who identified as a woman. There was no self-ID law, but there were obviously guidelines and policies that the hospital followed to say that if someone identified as transgender, as a trans woman, they could access that hospital ward, and that has obviously had devastating consequences for that particular woman. However, actually creating a law which says, 'Legally speaking, this is a female,' that makes it even easier for those people to access those spaces.

To be very clear, this is not to say that trans people are predators; this is to say that biological men have patterns of criminality where they are more likely to commit sexual assault, as opposed to women. Trans women are biologically male. There is absolutely no evidence to suggest that because a biological male identifies as a woman that those patterns of male criminality change in any way. In fact, there has been data that has come out of the UK which suggests that trans women who are biological males, who have gone to prison and have committed sexual offences, there is actually a more concentrated number of those as opposed to the general male population, which is quite interesting.

To your point in terms of the data not being available and so on, there is data that is available. But I also think that it has been quite difficult to collect data because a lot of the time it is not collected accurately which is obviously a big part of this in that once certain guidelines or laws are allowed to conflate sex and gender, then we do not have the ability to collect accurate data which shows that this is actually a biological male's crime and so on.

Mr HUNT: Given all the limitations you have just talked about with the collection of data, within Australian jurisdictions—the states that have already done work in this space—how many incidents have you narrowed down of a transgender person committing a sexual assault in a designated safe space?

Ms Grover: One is enough.

Mr HUNT: How many?

Ms Grover: The problem is that when you allow anybody to change their sex marker it is being recorded as a female crime. It is not being recorded as a trans crime; it is being recorded as a female crime, so where is your data collection.

Mr HUNT: Just to go back to the question: how many do we know of at the moment?

Ms Wong: I am uncertain as to how many there are because it is very difficult to get that data. There have certainly been allegations in Victoria of, for example, a trans identified male who was a transwoman raping a woman in a prison. That has happened multiple times, but, again, it is very difficult to collect that data.

To that point, obviously sexual assault is one of the most extreme forms of harm that can come from this legislation, but there is obviously a very wide spectrum of harm to particularly women and girls which ranges from the very extreme of rape but goes right down to not feeling comfortable to go and use what should be a single sex space and then being excluded from society in that sense because you do not want to face that kind of intimidation.

Mr HUNT: That is an excellent answer. Just to confirm: at this point in time—and it may well be due to difficulties in data collection—we do not have a concrete example that we can point to that at this time at this place X offence transpired? Is that currently the situation?

Ms Grover: We are happy to send through the information to you.

Ms Wong: At this point in time I do not know of an exact number, but certainly we can try to send through more examples of specific occurrences. One interesting point that I will note is that last year, I think it was, a freedom of information request was done in relation to a women's prison in Victoria—obviously Victoria has self-ID laws—and what came back from that is that they are not actually recording the sex of the prisoners who go into a female prison. We know that there is at least one trans identified male—so a transwoman—who is in a women's prison there. We are pretty sure there are more because we have seen media reports on that. They are not recording the sex of those people so if that person was to rape or assault a female prisoner there would be no record of that being a male crime or that being a transgender crime because those details are not being recorded, which is obviously extremely concerning.

Mr HUNT: So there could conceivably be dozens or zero because we do not know?

Ms Wong: It is unlikely to be zero because there are already stories of it happening. We do not know how many exactly; it could be dozens or more.

Mr HUNT: Is there a contention that an offender would go through the process—and they are not insignificant processes—of changing their gender identity specifically to commit an offence? Could they not commit the offence without going through the process?

Ms Grover: Predatory men have always gone to great lengths to get close to victims. They used to dedicate their lives to theology to do it. Going and getting a piece of paper to say that you are a female is essentially nothing in comparison to what has historically been known to happen. They can train as police officers and a bunch of different things. To try to mitigate the harm of that, we have had single sex spaces. This takes away that and allows the predatory men into the single sex spaces that were a protection from the predatory men.

Ms Wong: Exactly. To your point, obviously a man could go into those spaces but there is at least the understanding that they are not meant to be there. It makes it a lot easier if they are legally able to claim that that is their space as well.

CHAIR: That brings to a conclusion this part of the hearing. I understand that you have taken a question on notice on the data in relation to offences committed. Would you be able to provide that information to the secretariat by 31 January at 5 pm?

Ms Wong: No problem. On that note, Chair, could we also mention some statistics to do with prison data that have been collected by Fair Go for Queensland Women? Some of that may be in her submission, but we might like to provide a little extra data in relation to that as well.

CHAIR: Yes, anything to do with the data question will be welcomed by the committee.

ANDERSON-KARENA, Ms Catherine, Community Liaison and Public Officer, Active Watchful Waiting Inc.

CHAIR: I now welcome Ms Catherine Anderson-Karena. Good afternoon and thank you for coming along. You may have heard me address the other witnesses in relation to unparliamentary language. Could you refrain from quoting someone who has used unparliamentary language. If you could refrain from identifying someone in a public space who may not wish to be identified, the committee would be grateful. I invite you to make an opening statement of five minutes.

Ms Anderson-Karena: Our members of Active Watchful Waiting are a mixed group—parents, teachers, health professionals, detransitioners, transsexuals and members of the LGB community. I would say, despite our differences and diversity, what unites us is our deep concern at the pipelining of young people onto the conveyor belt of products and services that underpins the profits of the gender affirmation industry. The major profiteers of this industry being the medical and pharmaceutical organisations. The major brand of this industry is gender identity—to be your authentic self via a product line of drugs and surgeries. Its core target market is the youth, LGB, autistic, vulnerable youth with mental health comorbidities and young girls susceptible to social influence and contagion.

This bill is playing its part in the gender affirmation process in two ways: one, being part of a social transition process; and, two, through legitimising the conversion therapy process of LGB children. Social transition starts with documentation. In schools it involves the referencing of a recording of students' gender identity, new name and pronouns, clothing and bathroom use et cetera. Changing the sex on the birth certificate is taking the child's social transitioning to another level altogether. This is not a neutral act.

Most youth, if pushed to socially transition, will move on to the second stage which is medical transitioning. This involves the taking of chemical castration and endometriosis drugs used to interfere or block puberty, cross-sex hormones and the last stage is extreme body modification—mastectomies and physical castration. Instead of a future healthy life with a body undamaged these children who medically transition are set on a course for lifetime pharmacological dependence, an increased risk of cardiovascular disease, osteoporosis, thrombosis, sterility and probably sexual dysfunction.

This bill takes an active part in this gender affirmation process because it does not just note the gender identity—what the child feels about themselves at that time—it legally falsifies the child's sex. It is dubious that this bill is affirming an existing transgender identity. It is for most youth creating a transgender identity. Without this type of interference, of the children who have an incongruence or disconnect with their body, up to 80 to 98 per cent will grow out of it once through puberty. Furthermore, more than two-thirds of those youth who would normally grow out of this will grow up to be gay or bisexual as there is a high correlation with gender nonconformance, homosexuality and bisexuality.

What children are told if they are gender nonconforming is that they are born in the wrong body because they have a gender identity that does not match the gender norms or behaviour expected of their sex. In line with this idea, a female child more likely to grow up lesbian is expected to present as a transboy. A gender nonconforming male child is expected to identify as a transgirl.

Once a child is identified as trans, state education policies—Victoria states schools, for example—make a gender affirmation plan. These impressionable LGB young people effectively are groomed to conform to a heterosexual norm. This is conversion therapy. LGB organisations such as LGB Defence, Coalition of Activist Lesbians, LGB Alliance Australia and LGB Tasmania call it transing the gay away.

The other distinct cohort is girls. Before 2012 gender dysphoria in the past was almost exclusively boys—roughly 0.01 per cent—but girls are now the majority of children who are transitioning. This is more to do with gender ideation—a fixation on gender identity through social influence and contagion.

There are more than 95 gender identities thus far. In research they commonly refer to these kids as having ROGD—rapid onset gender dysphoria. My co-founder of Active Watchful Waiting also runs Australia Parents of ROGD Kids. She deals with four to five calls a week from distraught and desperate parents of these girls. She told me recently of a typical call: a sobbing father called through desperate to stop his 15-year-old daughter from cutting off her breasts. In the state he is in in Australia if he denies her this is child abuse and he could lose her to the family court system. She could be taken from her home, as many others have been. Under the family court system there are criminal sanctions if he speaks of this so he—and he is one of over 1,000 of these parents she has dealt with in the last seven years—is gagged. They suffer in silence. The system keeps most Australians in the dark on this reality.

This movement is not a grassroots movement. Self-ID laws are one of the several laws the transgender lobby's handbook—and I have notes on this—instructs trans lobbies to put into place to enable children to be transitioned. Sex should in no way be removed, conflated or replaced with gender identity in law. We should affirm all people's birth sex as their legal sex while ensuring all people protection from discrimination or interference based on their gender nonconforming appearance or behaviour.

CHAIR: We will move to questions.

Mrs GERBER: Thank you very much for your oral submission and for your written submission. I am going to put to you a similar question that I have put to other submitters today and it is in relation to whether or not there are any other amendments that could be made to the bill that you see might be able to fulfil the purpose or intent of the bill, whether that be more in line with the Tasmania Law Reform Institute or whether that be more in line with Victoria or the way it is right now.

Ms Anderson-Karena: I would say that you need to withdraw it and do your homework because you have not taken in all side of the events. My background is in analysis. You cannot make any decent product or bill or anything unless you have heard all sides of the story and you have not. You have not heard all sides. You have not heard from women, parents or ROGD. I set up a whole site lostwomensrights.com and it goes through 12 major areas this impacts. You have only heard of three or so areas, but there are far more than that. The homework has not been done. I am quite happy to share any information on any topic in this area.

As to the TLRI—I remember searching that—they again were ill-informed. There are several ill-informed things behind this bill. One is the Yogyakarta Principles. That has no agreement with any of the governments of the United Nations. It has no formal legal status whatsoever, so I am not sure why it was referenced at all as something to give it legitimacy or validation. However, we are signatories to the UN Convention on the Rights of the Child—and this violates, I think I listed, about nine of them—and we also are signatories of the UN Convention on the Elimination of Discrimination Against Women which only refers to 'biological female'. I am at a lost as to why we reference something that was put together primarily by activists and yet we are not honouring our agreements with the United Nations. If you could answer me that, I would be interested.

Ms BOLTON: You quoted statistics. I think you said 80 to 98 per cent of young people—I am not sure of the terminology you used, but basically their gender identity or any confusion, by the time they leave puberty, has been resolved. Is that correct?

Ms Anderson-Karena: Yes. There is a bit of history behind the transitioning of children. Originally they called it gender dysphoria, and how it was handled in the past was an approach of exploratory therapy or they call it commonly 'watchful waiting', which is where they will take a child with a psychologist, a psychotherapist et cetera and the family and they will investigate everything. Usually what they have found in that process is that the reasons why they have an incongruence with their body or disconnect with their body or they do not feel comfortable in their body has been a whole bunch of things—internalised homophobia, autism, mental health comorbidities or that kind of thing—primarily in the past. With watchful waiting and individualised care, they have gone through that process and puberty tends to handle most of it. Two-thirds of the kids find out, 'Oh my goodness, I am gay,' and they have a community to go and support them.

Most recently we have had, apart from that, gender ideation where there has been a push, and we have seen the pushing of gender identity through the schools. We have indefenceofchildren.org which gives you material to show what has—from my personal perspective, I call it trans indoctrination. There is basically a handbook to this and the handbook says, 'Give lots of sympathetic stories about transgenderism to make this acceptable and get everybody on board and sympathetic to this gender identity.' But we are dealing with children and children are highly impressionable.

In regards to normal everyday things like television, we do not have certain things shown in children hours because they are impressionable. However, when you have, say, for example, a young lesbian who is typically gender non-conforming and you have some young teacher who identifies that kid as a trans boy and then surrounds them—and there is so much celebration about being trans as opposed to being a lonely lesbian—then you have started them on the pathway. Then you imbed that pathway when you start bringing in documentation and clothing and change the names.

I make a comment: in Australia this is happening behind the backs of parents. We have been collecting testimonies of this as well. This is really undemocratic, but it seems to be un-Australian as well, that the state is stepping in to the guidance of the child. That is a violation against the UN Convention on the Rights of the Child. There are quite a few violations there.

These days, what happens is, particularly with the conversion therapy bills, as these kids are automatically put on the one-size-fits-all solution which is they are trans, they are started on their social transitioning, which you are making this a part of, and then the medical transitioning and then, hopefully not, surgical transitioning. The target market is the children which I have emphasised. They are not so much interested in the adults. 75 per cent of the trans-identifying males are actually what is called AGP, autogynephilic. They get a sexual turn-on for identifying as a female. Most people are not talking about that. It is a very different cohort to what it used to be. I have dealt before with trans-identifying men to get them jobs and also connected them to a lady in Chatswood, Sydney who helps them with make-up, clothes and things like that, to present well and all the rest of it. That is a different cohort to these transsexuals, far different to that.

One of the perspectives which has not been talked about is the industry that this is part of, and it is very much targeted to the youth because once you have a youth on this pathway, they are worth at least \$250,000. However, when you go the old way which had them come through puberty intact and accepting of themselves—the whole of themselves, not just a slither of their personality of which gender is only a part—then you have no money. There is no money from that. A prescription model with the conversion therapy process, that money is for their whole life: they will have dependence on pharmaceuticals and medicals, even if they transition.

At the moment one of our projects has been working with detransitioners to get them help—medical help and psychological help. It has been so hard because so many of these practitioners are chilled by the laws going around; they cannot get the help they need. One of our practitioners who has spoken up—and we managed to get him the support to sue the psychologist who lied to him—had to move state to get the help he needed. It is not just him. This is what we are dealing with. We are dealing with the after-effects of detransitioners.

I will tell you something that I have told the Australian Psychological Society, because they ignored us: we will make sure these people who are part of this process will be sued. We will fight to the teeth for a royal commission on this. We will fight to the teeth for a parliamentary inquiry on what has been happening with these children, and this hiding of what is going on. It is wrong!

CHAIR: Jason, I understand you have a question. We are over time.

Mr HUNT: No, that is fine, Peter. I have certainly heard enough.

Ms Anderson-Karena: Any questions you have we can answer and quite a few more.

CHAIR: Thank you for your attendance. Thank you for your written submission. That brings this part of the hearing to a conclusion.

HILL, Ms Christine, Executive Manager Educational Services at Carinity (via videoconference)

MACPHERSON, Mr Alistair, Executive Director, Public Policy and Advocacy, Associated Christian Schools

CHAIR: I now welcome representatives from Carinity and Associated Christian Schools. You may have heard me ask people earlier in their submissions to avoid quoting people using unparliamentary language. I do not know if you are going to, but the committee would appreciate if you could avoid doing that. Also, the committee would be grateful if you can avoid naming other persons who may not wish to be identified. Again, I do not know if you are going to do that; this is precautionary. Thank you. I invite you to make an opening statement after which the committee will have questions.

Mr MacPherson: Thank you, members, for the opportunity to speak to you regarding this bill. My name is Alastair MacPherson. I am the Executive Director of Public Policy and Advocacy for Associated Christian Schools. With me today is Christine Hill, Executive Manager of Carinity Education and also a director of Associated Christian Schools. At the outset, I wish to acknowledge and pay our respects to the traditional owners of the land on which we meet and pay our respects to their elders past, present and emerging.

Our member schools, and schools generally, take significant steps to accommodate students on the basis of their gender. They routinely make accommodations regarding uniform, use of toilets, use of names and pronouns, and sleeping arrangements at camps. This is an existing requirement of the Anti-Discrimination Act, but it also fits with the overarching desire of our member schools to provide a safe and supported environment for all students, including transgender students, so that each student can achieve their full potential. Our member schools do not just do this because they are required by legislation to do so; they do it because of their genuine care and concern for all students. However, as we stated in our submission, our primary concern with the bill relates to the interplay with section 41 of the Anti-Discrimination Act and the existing exemption for schools that operate for students of a particular sex. Christine Hill will be able to speak to you about the important work that is being done by Carinity Education Southside, an all-girls specialist assistance school working with young women, including many Indigenous women, who are disconnected from education, and the impact this bill will have on that school.

I want to note at the outset that the Department of Justice and Attorney-General's response to our submission at page 66 references a QHRC publication that suggests that a single-sex school for boys cannot refuse to accept the enrolment of a female-to-male trans student. We suggest that that is an oversimplification of the legal position and is inconsistent with the case law. The approach suggested by the department would render section 41 as having limited effect. We say this cannot be correct or the intention of the act. We note that 'sex' is not defined in the act, but we submit that it should be read as being different to 'gender', and that is the approach that the QHRC take in that very same publication in how they define 'gender' and 'sex'.

We accept that this bill seeks to resolve that issue by providing a streamlined approach to changing the formal record of 'sex' and, once this is changed, the person is to be treated of that particular sex. What we are asking you is to give careful consideration to same-sex schools and how the bill will impact them.

Carinity Education Southside is a school that exists only for female students and specifically assists students who are disengaged. This is the final education option for many of them. Some have been victims of assault, domestic violence and coercive control. The college seeks to be a safe space for these students so they can complete their education and receive genuine care and compassion from staff. Males on campus can provoke a trauma response for some students because of their larger size and the previous trauma they have suffered. It is not a reflection or a suggestion that these males are dangerous, but it is nonetheless a genuine trauma reaction for these students. Christine Hill can answer your questions further about this. What we are asking is that you bear this in mind and include appropriate protections to assist these schools to continue to operate for the purpose they were created.

In saying this, we accept that there are other factors that will need to be taken into account and there can be no one size fits all. An obligation on a school to act reasonably, taking into account all the relevant circumstances would, for example, be a suitable position. The reality is that schools do seek to act reasonably and responsibly, having regard to the best interests of their students and, for our member schools, that is consistent with their mission and purpose. We are happy to answer your specific questions.

CHAIR: Before we go on, I want to make a declaration. Christine, I understand Carinity College is in the electorate of Toohey on the south side; is that right?

Ms Hill: Carinity operates five schools throughout Queensland. We have one single-sex school and that is Carinity Education Southside which is located in Sunnybank.

CHAIR: That is in my electorate, so that is my declaration. I have been invited and visited there several times and I have organised trips into Parliament House for some of the students.

Mrs GERBER: Thank you very much for your submission. Is it my understanding that your view is that this bill will prevent same-sex schools from making a decision as to who can come to the school? Is that essentially your view? Because I just want to point out what DJAG has said on page 65 of their written submission, and I am really interested in your perspective on that. DJAG has said that 'nothing in the bill prevents an organisation from applying for an exemption' and then goes on to say how that application may be made. What is your view in relation to the impact of this bill on same-sex schools and their ability to decide who comes to the school?

Mr Macpherson: The difficulty is that an application for exemption needs to be made to the judicial body, and that is subject to them accepting that the application is reasonable in the circumstances. It puts the school at additional cost to do so when the exemption is already there in the act specifically for that purpose.

Mrs GERBER: Is it your view that this bill would override that exemption? I am just not clear on how it is going to interplay.

Mr Macpherson: Our concern is that as it is currently drafted it will because the sex will be as regarded by the change on the birth certificate.

Ms BOLTON: Just to give me better clarity, for your all girls' school, obviously how you determine the make-up of the girls is through sighting the birth certificate?

Ms Hill: That is one of the ways that we determine that, yes. We do request birth certificates from students.

Ms BUSH: I was interested more broadly in what your current process is for working with trans people. If you had a student who was born a girl attending a girls only Christian school who wanted to identify as male, what would be the approach of the school in managing her/his enrolment?

Mr Macpherson: Carinity and Christine can respond from the all girls' perspective and I can respond from a general school perspective.

Ms Hill: Our schools are very small. Carinity Southside has around 120 students, so we have a community environment. Because we are dealing with young people with trauma we work very flexibly with individuals, so we would certainly provide support. We endeavour to link any students who require counselling with appropriate bodies and provide students and their families with information and options to help them. Our Southside school certainly respects pronouns of choice from the students. We have a non-gendered uniform. The students have a polo shirt that they wear and they can choose whether they wear trousers, shorts or skirts—whatever they are comfortable with. We do not have an issue with uniforms, and certainly we would continue to work with any young person whatever their particular concerns are.

Ms BUSH: To be clear, the concern that you are raising is more around a person who was born a particular sex, identifies as a different gender and wants to go to that gendered school, and your ability to refuse service.

Mr Macpherson: It is an exemption that applies only at the point of enrolment, so it is at that point where we would say that there is a need to consider the exemption. For students who are already enrolled the exemption does not apply.

Ms BUSH: If that hypothetical student does not identify as female, for example, then they could not attend a boys' school either and they would have to look at co-ed?

Mr Macpherson: That would depend upon the particular school they are looking at. That is why we are saying it is not one size fits all, but it is having regard to all of the relevant circumstances and why that particular school exists and what are the needs of that particular school.

Mr HUNT: Alistair, I may have misunderstood, so you can talk me through this. You talked about some of the young girls at some of the schools. The school in question might, as a consequence of their previous experience, be negatively impacted by the presence of a student who is transitioning; is that correct? Do I have that wrong?

Mr Macpherson: Broadly, that is correct. Christine will be better placed to answer that within the context of this particular school.

Ms Hill: Within our context we have quite a number of young women who have suffered from sexual assault, who have suffered from domestic and family violence. In fact, some of the students actually live in relationships where there are concerns of coercive control. For some young women, because of these past trauma experiences and the overactive amygdala they have when they see a physically male person who is larger usually or when they hear the lower tone of voice of a male that can cause a trauma reaction. This is not something that can be reasoned with because a trauma reaction obviously is a reaction; it is not a choice. It certainly does not suggest that the males are dangerous in any way or we have concerns about the males; it is the concerns for these young women. The very reason they are not attending other schools is because of the presence of males. That particular school has a predominantly female staff for very similar reasons because we are trying to work with those young people to help them overcome that trauma so they are again able to engage in normal society; however, their only option is our school for disengaged young women.

Mr HUNT: Certainly, and I think you have answered my next question. Are there male staff members employed at the school?

Ms Hill: There are only a couple of male staff members.

Mr HUNT: Does their presence there impact on those students?

Ms Hill: Their presence can impact on some students, although these particular male staff are very gentle and they are older gentlemen who have more of a grandfatherly type role. We have a maintenance person and our English teacher is male, but we also ensure that, for those students who have trauma, we have a female youth worker who is there with them in the English class as well.

Ms BUSH: Alistair, it sounds like you are not disputing the Human Rights Act and principles in the Human Rights Act but perhaps maybe disputing some of the clauses in the ADA around your ability to seek an exemption from being able to discriminate based on gender.

Mr Macpherson: That is correct.

CHAIR: Thank you for your written submission and your attendance here today to give evidence to the committee.

BROCCHI, Ms Necho, Policy Worker, Sisters Inside

JOOSTE, Ms Sasha, Policy Officer, Sisters Inside

CHAIR: I would now like to welcome representatives from Sisters Inside, Necho Brocchi and Sasha Jooste. Good afternoon. I do not know if you heard my introduction previously, but if you are going to quote anyone today who may or may not have used unparliamentary language the committee would ask you not to do that. Secondly, if you are going to name a person who may not be comfortable with being identified in the public space, if you could respect that and not name them the committee would be very appreciative.

Ms Jooste: We would just like to acknowledge the Jagara and Turrbal people, the traditional owners of the land on which we work and on which we are meeting today. We pay our respects to their elders past and present and to all Aboriginal and Torres Strait Islander people who might be here today or tuning in via video link. We would like to explicitly acknowledge all Aboriginal and Torres Strait Islander people who are incarcerated on sovereign land that was never ceded. This content was, and always will be, Aboriginal and Torres Strait Islander land.

Sisters Inside is an abolitionist organisation that advocates for and supports all women, girls and people in women's prisons who are subjected to harm and racial-gendered violence under the prison industrial complex. We have always fought to ensure that no harm is ever perpetrated against anyone in the prison system, nor to their families. This has always been, and will always continue to be, the foundation of the work that Sisters Inside does. Since its inception Sisters Inside has always supported trans and gender diverse people in women's prisons, so this is not a new conversation that is being had in the abolitionist space.

A quick note on the language we will be using today. We use the terms trans and gender diverse to describe people whose gender identity or experience is different from the gender they were assigned or that was recorded for them at birth. We also understand that the term cisgender is used to describe people whose gender identity or experience does align with the gender that was recorded for them at birth.

Our direct support work and advocacy and our submission extends to all criminalised trans and gender diverse people. We would also like to highlight that trans masculine people and transmen also experience profound interpersonal institutional violence while in custody. A carceral response will always result in the net widening of cages and it will always worsen the conditions for all people in prison. This extends to all trans and gender diverse people, which is a community that has always been marginalised and incarcerated since the advent of the prison system. Again, it is not new to see trans folks in prison. We are putting light on a group of people in prison who have always been brutalised, just as everyone in prison who has been, and continues to be, brutalised while in prison.

We are very cautious of how some of the discourse around this bill has only really focused on interpersonal violence. It is distracting from the broader conversation and issues around racial-gendered harm under the patriarchal system. Specifically, we are concerned about the racial-gendered violence that is perpetrated by the prison industrial system itself, which sees all people incarcerated subject to harm. Like I have said before, this is not a new conversation, but we do have a question. In terms of opposition to the bill and some of the concerns about interpersonal harm we have heard from some of the submissions, we wonder where have the advocates for all of the women and girls who have been assaulted and sexually assaulted in prison been? Where is the resistance against the colonial patriarchal system and the outcry about gendered violence perpetrated by the system and those employed to uphold it? Sisters Inside is an abolitionist practice which advocates for transformative justice and building new modes and safety of security. We are not here to advocate for building new cages or to reform systems that are violent.

Ms Brocchi: The following are some statistics which underpin and inform our advocacy. We can make these resources available to the committee for reference. Aboriginal and Torres Strait Islander people are subject to mass incarceration, making up more than one-third of all of the prison population. The consideration of the impacts of the bill on criminalised people must acknowledge that Aboriginal and Torres Strait Islander trans and gender diverse people will be most affected. It is also important to note that racism, coupled with transphobia, further compounds trans people of colour's experiences of discrimination and racial gendered violence.

Some 70 to 90 per cent of women and girls in custody have experienced violence. Research and surveys have found that more than 50 per cent of trans and gender diverse people have experienced sexual violence, assault and rape, very often at the hands of strangers. Between 60 and 75 per cent of trans and gender diverse children and adults experience some form of severe mental

distress or mental health condition with about half attempting suicide. It is important to note that these experiences are largely due to the way in which trans and gender diverse people are targeted in society and not because a person is trans.

More than 20 per cent of trans and gender diverse youth and more than 30 per cent of trans and gender diverse adults are subject to a lack of stable accommodation and homelessness. We highlight these statistics because it is important to acknowledge the nexus of criminalisation and experiences of violence and discrimination, psychological distress and a lack of stable accommodation. The product of this is the criminalisation of the most vulnerable people.

The explanatory notes alongside the Attorney-General's introduction of the bill state that reforms will be made to update requirements to undergo sexual reassignment surgery. Not all transgender people will want or be able to undergo sexual reassignment surgery given its costs, limited availability in Australia and potential health risks and other complications. Limiting the scope of the bill to talk about the anatomical characteristics of a person takes away from the racial, gendered harm and violence that all bodies are subject to while in prison. We urge the committee to consider ways in which provisions may be made that do not fall back upon anatomical characteristics but that privilege the lived, gendered expression of a person.

We would also like to talk about the restricted person's section of the bill. The prison industrial complex facilitates the physical abuse of all women, girls and gender diverse people in prison. This includes incidences of corrective service officers watching and making jokes while these people are assaulted. Specific to the approval process for restricted persons, as defined under the bill, we urge the rollout of the bill to specify a standard time frame in which the chief executive of corrective services must respond to the application. We also urge that there be specific and clear grounds on which an application might be refused and these, as well as pathways by which to appeal the decision, be communicated to the applicant.

We would like to finish by thanking the committee for extending the invitation to participate in the conversation today.

CHAIR: Thank you for being here.

Mrs GERBER: Thank you for your oral submission and written submission. Forgive me but I am just trying to work out where you stand in relation to the part of the bill that proposes to alter the record of sex marker. I have read your submission from page 3 down to page 4. Correct me if I am wrong, on my reading of your submission you would prefer the Tasmanian Law Reform Institute model whereby gender is what is recorded on the birth certificate as opposed to changing the sex? Is that what you are saying? What model are you saying you would propose?

Ms Brocchi: My understanding is that the bill highlights an opt-in option so a family around a trans and gender diverse person do not have to have the gender recorded on the birth certificate and then choose to opt into that certificate.

Mrs GERBER: In Queensland it says sex not gender. I am trying to understand what your submission is in relation to the section of the bill that proposes to alter the sex marker on the birth certificate.

Ms Jooste: What we are arguing for is gender. There needs to be a privileging of someone's lived expression. Our submission and the background of what we are talking about today is that we are approaching it from the experiences of trans and diverse folks who are likely to be criminalised or who are currently incarcerated and how a change of their gender marker would lead to change in their experience as someone who is criminalised or incarcerated.

CHAIR: In relation to the birth certificate the bill proposes a change. How does Sisters Inside feel about that? I understand where you are coming from that the gender marker will not make a great deal of difference for people caught up in the connective system and the violence that exists now will continue. I do not want to put words into your mouth. That is what I understand.

Ms Jooste: That is it.

Ms Brocchi: Yes.

CHAIR: The question that we are trying to have answered and may not have been outlined in your submission is what Sisters Inside's preferred position is.

Ms Brocchi: If the bill can recognise the importance to prioritise someone's lived experience and gender expression over their anatomical characteristics that is going to support access for trans and gender diverse people to have secure housing, to have social and legal support and to increase
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mental health. That is going to reduce the number of trans and gender diverse people who are criminalised if we start to see and prioritise legally gender expression and identity over characteristics. I believe that is the argument we are trying to make.

Mrs GERBER: My understanding of the Tasmanian model is that the issue of sex and gender are not conflated. Previous iterations of this consultation process worked off the Tasmanian Law Reform Institute research. In terms of the bill that we are looking at today there is criticism that it does conflate sex with gender. Is it Sisters Inside's submission that you would prefer that gender be the priority and gender is the most important thing to be recorded on the birth certificate and not sex? What is it that you are saying in relation to the changing of the birth certificate?

Ms Jooste: I am not sure I am explaining this correctly. I know that our position is that a person's lived experience, whether that is defined as a gender that can be chosen or that can be changed once registered in birth certificate, is privileged.

Mrs GERBER: Whether it says sex or gender, you do not care?

Ms Jooste: I do not feel I could comment on Sisters Inside's position on that. Our concern does not lie with sex or gender it is the lived expression and whether that is understood as gender—

Ms Brocchi: What is more important is that if the intent of the bill is to strengthen the legal recognition of trans and gender diverse people and that recognition is based off someone's preferred gender and gender expression over their characteristics its Sisters Inside's position that less of our community will end up criminalised. If they continue to preference the anatomical characteristics and deny access to social and community support or housing or any of those services then more of our community will continue to be criminalised.

Ms BOLTON: I am loath to ask a similar question but I need clarity around the position of those whom Sisters Inside represents. It is not the importance of the need to change per se the sex on the birth certificate it is about the acknowledgement of gender and the lived experience that is going to impact those whom you represent?

Ms Jooste: If the sex on the birth certificate is the marker that will be privileged in a person's access to services or the institution which a person will be sent to where they are to be criminalised and incarcerated that is the issue we are concerned with.

Ms BOLTON: If there was another document that everyone had that was to do with gender identification and it was not necessarily a birth certificate that would address the issue?

Ms Jooste: I cannot speak to that because I do not know how institutions would privilege particular documentation. What we are concerned about is the fact that trans and gender diverse people are criminalised at rates. What is it that will make people safer and what is it that will make people less criminalised.

Mr HUNT: For my own clarity, the preference around lived experience is your organisation's primary focus; correct?

Ms Brocchi: We are an abolitionist organisation.

Mr HUNT: For Sisters Inside preference for lived experience should be the primary consideration? I have that correct, have I not?

Ms Brocchi: Yes, the lived experience of a person is prioritised legally. We believe that will reduce the harm, violence and particularly racial gendered violence that all people in prison experience. It is important that we highlight today that that is the focus of our submission.

Mr HUNT: Within a custodial environment what would be the position of someone who had self-identified and then was put into, for example, Brisbane Women's Correctional Centre? The only reason I am asking is that we had a submission earlier to say that this was probably a disastrous outcome and should be avoided at all cost. I am not completely convinced of that to be honest. What would be Sisters Inside's view around that? For someone who self-identifies and then goes into Brisbane women's or Townsville women's that is not problematic? Obviously there will be some policy and procedural issues to look at, but that is the preferred position, is that right, because we are looking at the lived experience?

Ms Jooste: Can I clarify that when you say someone who self-identifies are you eluding to a man who administratively then states that they are a transwoman who is transferred to a women's facility?

Mr HUNT: Is that a potential outcome and if it is is that good, bad or indifferent?

Ms Jooste: What we are concerned about and what we are trying to highlight in our presentation today is that a lot of the conversation and a lot of the discourse about this, particularly in submissions that are in opposition to the bill, has centred on these violent outliers that are hyper individualised acts of violence. What we argue is that the system as a whole is perpetrating racial gendered violence. All women, gender diverse folks, trans masculine people and transmen who are in women's prisons are all subject to racial gendered violence. All prisons are violent and all of them perpetrate harm, especially in a colonial state. What we are arguing is that that needs to be recognised before we get bogged down in this hyper individualised argument that one person who might decide somehow to take advantage, in theory, of a system should be the downfall of a bill which should be privileging people's lived experience but really needs to take into account the experiences of people who are incarcerated. I do not feel comfortable commenting on any policy reform that would stop a cis man from potentially identifying as a woman to be transferred to a women's prison. I think that is a little bit of a scare tactic that is used to—

Mr HUNT: No, that is not what I was asking.

Ms Brocchi: We are not calling for a reform that is a carceral response that further individualises systemic violence. As an antiviolence organisation we are advocating first and foremost for the safety of all people in prison. We are not here to individualise a systemic issue.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for presenting today and thank you for your written submission.

NORMAN, Mr Rob, Queensland Political Director, Australian Christian Lobby

CHAIR: I now welcome Mr Rob Norman, Queensland Political Director from the Australian Christian Lobby. Good afternoon, thank you for being here. I notice that you have been here for a little while so this is probably not news to you. If you are going to quote anyone who used swearing or offensive terms that are regarded as unparliamentary, the committee would be grateful if you could refrain from doing that. If you are going to identify any person who may not be comfortable with being identified in a public space, if you could respect that intention the committee would be grateful. I invite you to make an opening statement after which the committee will have some questions.

Mr Norman: Thank you, Chair and committee members, for allowing me to present to this public hearing. The Australian Christian Lobby currently has around 250,000 supporters Australia wide, almost 45,000 of whom are Queenslanders. We are one of the largest and most active grassroots political movements in Australia, and our mission is to bring truth into the public square.

This bill is based on a lie. It is a lie that men can become women and women can become men at the stroke of a pen. It is well established by science and society and broadly accepted by organisations such as the World Health Organisation and the European Institute for Gender Equality that sex refers to the biological and physiological characteristics that define humans as female or male and gender refers to the social attributes and opportunities associated with being female or male. Birth certificates are historical documents that provide accurate, factual data which provides documentary evidence of live births. If this bill is passed into law birth certificates will no longer provide a truthful static record of the facts of a child's live birth. It will become a dynamic document that is prone to ongoing changes based on subjective ideology. The Births, Deaths and Marriages Registration Bill 2022 will essentially legalise the falsification of birth certificates. The negative consequences of this bill being passed into law are numerous and well documented by the approximately 175 submissions clearly opposed to it.

In its published briefing paper which responds to the submissions to this bill, the Department of Justice and Attorney-General frequently uses the term cisgender when referring to natural males and females. This term is symptomatic of a paradigm that is informed by radical gender ideology rather than established norms and science. Submissions made by various feminist groups clearly indicate that Queensland women in particular are frustrated with a Minister for Women who minimises their wellbeing, safety and dignity. This bill has created allies that have little in common but who are united in opposing it. One of my new friends is a self-described radical feminist who is rightly concerned about the loss of privacy, comfort, dignity, safety and rights of women. In her submission she mentions concerns raised by mothers of teenage daughters who will no longer use public toilets unless they are accompanied by a trusted adult because they have experienced male sexual harassment in mixed-sex toilets. Stories like this have unfortunately become commonplace and probably will never appear in official data.

The bill has numerous negative consequences and few friends outside the trans lobby, but it is particularly dangerous for females, both women and girls. The bill provides legally sanctioned opportunities for sexual predators to legally change their sex in order to gain access to female-only spaces, including public toilets, change rooms, women's shelters and prisons. This bill places women at a disadvantage and increases the danger of serious physical injury in high-contact sports where physical strength and stamina are an advantage. The Births, Deaths and Marriages Registration Bill will allow this because it provides males with a legal avenue to falsify their birth records. What we see in this bill is the result of radical gender ideology rather than fact, science or objective truth.

Mrs GERBER: Thank you very much for your submission, both written and oral. I am going to put to you the same question I have put to various other witnesses during the course of this public hearing. I understand from your written submission that you are opposed to the notion of the bill changing the sex marker or people being able to apply to change sex on their birth certificate. From the Christian Lobby's perspective, is there a way forward to still achieve the objectives of part 5?

Mr Norman: There may well be, and I do not think we would be opposed to another vehicle. Our opposition and our problem with this bill is that it addresses the Birth, Deaths and Marriages Registration Act, so it is speaking to birth certificates which we believe—and which are obviously—legal documents. The downside of that is that people have a legal right to go into a space that their sex should not really allow them to. We believe that, as is evidenced by the number of submissions, there are many downsides to this bill.

Mrs GERBER: Referring to the Tasmanian model, the Tasmania Law Reform Institute recommended that sex and gender should be maintained as different. They therefore use gender and allow the gender marker to be changed. Is that a model the Christian Lobby Group could envisage? You say that you think changing sex opens the pathway to other legislative complications down the track.

Mr Norman: Our problem is that it basically opens the way for legal challenges for not-for-profits and all kinds of organisations to have to defend themselves in a legal way. We would not object to a gender certificate. We do not think that birth certificates are the place to do that. We are looking at a document that has historically been used as legal evidence of sex, so to introduce a new marker to that document is basically meaningless when that marker is in itself dynamic and prone to change. My understanding is that every 12 months that marker can be changed.

Mrs GERBER: What about changing 'sex' to 'gender' in the birth certificate? Taking 'sex' out of it, seeing as sex is a legally defined term with legal ramifications, and replacing that with the word 'gender', which is a societal construct. Essentially, that is what the Tasmanian model does.

Mr Norman: I understand.

Mrs GERBER: What is the Christian Lobby's perspective on that?

Mr Norman: Again that is a dynamic marker so it is constantly prone to change, depending on where the person is at. We know there are people detransitioning all the time, so we would be opposed to anything that introduces a dynamic marker into that document.

Ms BOLTON: Just to move forward on that point a little bit, just for my clarification even though there is a vast difference between the terminology and what sex means and what gender means, is it your submission that ultimately is it about legalities and spaces? You spoke of women-only spaces. Even if we use the word 'gender' or 'preferred gender' or 'identity', ultimately it comes down to the physiology of genitalia. Would I be correct in saying that, or have I misread it?

Mr Norman: No, I think that is correct. Our problem with that is that a person entering into a women's space who is a genetic male may then challenge the organisation, be it a not-for-profit or whatever. The person who would perhaps challenge them on being in that space would then be in a situation that is illegal.

Ms BOLTON: I am female and every day I go into female toilets. There are obviously many transgender people who have the same characteristics as myself who utilise women-only spaces without an issue. Is it because it is formalised in a way that then could be contested in a legal space by organisations that then say, 'No, you cannot use this space,' even though the question may never have been asked before? Because we currently have many women-only organisations that probably have members who do have male genitalia and they are unaware of it.

Mr Norman: That is right. Because it becomes a legal right at that point, it basically removes any argument or any right for that organisation to remove that person based on the fact that there could well be a woman in a female space who is fearful of a particular other person being in there. It is a very specific situation.

Ms BOLTON: Yes, thank you for that clarity.

Ms BUSH: Picking up on the member for Noosa's points and your comment around legal ramifications, I just want to get clear and make the point that already in the Anti-Discrimination Act you cannot discriminate against a person in providing services based on gender and gender identity. That is already a protected attribute, so I do not understand your argument. Those provisions are already there and have been in place in Queensland for some time.

Mr Norman: In a case where there is a perceived threat by a trans person in those spaces, my understanding is that at the moment there would still be an avenue to ask that person to leave.

Ms BUSH: There would be, but that would be under a policy by that organisation in managing risk generally and not associated with gender.

Mr Norman: That policy now, if this act is passed, would be severely challenged. There would be a legal right for the person to be there, whether the third party's perception of fear or threat is valid or not.

Ms BUSH: That exists currently. There is nothing in this bill that will make that different to what the current environment is. I will ask another question, if I may. Have you engaged with Christian trans or Christian LGBTIQ members in the development of your submission?

Mr Norman: No, we have not.

Ms BUSH: Have you reflected on what your submission—

Mr Norman: Yes. We are not anti trans people. We believe that there needs to be care and compassion given to them. Our submission is based on the fact that when you introduce a lie into legislation—and there is a lie: sex is a scientific marker—there are all sorts of symptoms that flow from it. That would be the core of our submission. This bill actually introduces the ability to falsify records. Once you do that, there is opportunity for anyone who has a criminal tendency to exploit that. That is how the criminal mind works. If there is a loophole, they will find it. Once you give people a legal right to change their sex, that will be exploited.

Ms BUSH: Do you see any benefits in what this bill is seeking to progress in terms of considering the needs and rights of Christian trans and young people particularly?

Mr Norman: I think there are always benefits in exercising compassion when it comes to a minority group. The problem is when we create a bill that completely embraces one group to the exclusion of all others then I think it is problematic. By the way, 175 submissions were opposed to this bill. In a state where they have a house of review, that would be a majority. If we are looking at the very important role of committees, this committee has a grave responsibility really—a very solemn responsibility—of listening to the broader community and not basically creating a bill to cater for one minority group.

CHAIR: Thank you for your written submission and thank you for your attendance today. That brings this part of the hearing to a conclusion.

BROWN, Ms Ymania, Strategic Adviser and Project Lead, Sydney WorldPride Human Rights Conference, Equality Australia (via videoconference)

KASSISIEH, Mr Ghassan, Legal Director, Equality Australia (via videoconference)

CHAIR: I now welcome representatives from Equality Australia who are appearing by videoconference. Two matters that the committee would like you to consider before you address the committee are that, if you are going to quote anyone today, could you please refrain from swearing or using offensive terms which are regarded as unparliamentary and we also ask you not to name a person who may not wish to be identified in a public space not only for the benefit of the committee but also to show respect to the individual. I now invite you to make an opening statement.

Mr Kasssieh: I will shortly hand over to Ymania to provide our opening statement. I preface that by saying that we strongly support this bill as everyone deserves to be recognised for who they are. I have particular legal expertise in the recognition of gender which I would like to speak to, but we felt that it was really important that you heard directly from someone who had lived experience. I will hand over to you, Ymania.

Ms Brown: This bill is a result of decades of work by advocates who have sought to ensure trans and gender diverse Queenslanders can be recognised for who we are without the need for surgery. I thank them for their tireless efforts on the ground in fighting for this recognition. Most Queenslanders take their ID documents for granted, but for trans and gender diverse people these simple pieces of paper and getting them can be an incredibly painful, traumatic and dehumanising experience.

Having ID documents that give recognition for who we are and ensuring that these documents are consistent with our gender identity is critical to our peace of mind and living our lives free from discrimination and harassment. When our documents sync with our identities, the stress and fear disappear whenever we are required to prove who we are—for simple things like applying for a job or to study or when seeking access to services like opening a bank account. Especially for young people a birth certificate might be the only form of ID they have.

As a trans fa'afafine woman who migrated from Samoa to seek a safe haven in Queensland, I believe the ability to obtain a recognised detailed certificate that recognises who we are will give many like me who come from overseas that same peace of mind. I pass on my deepest appreciation and gratitude to the Queensland government and to the Attorney-General for introducing this bill. We are very happy to take questions now and I yield my time back to my colleague, Ghassan Kasssieh.

CHAIR: Ghassan, did you wish to address the committee before we go to questions?

Mr Kasssieh: I am happy to go to questions now if that suits you.

Mrs GERBER: Thank you for making the time for us today. We have heard a fair bit about the difference between the definition of sex and gender. I am interested in your organisation's perspective on those two terms.

Mr Kasssieh: I would like to make a few points about this. I think it is really important to separate the legal definitions of sex and gender from any sort of cultural, scientific or even public understanding of those terms. The law already conflates those terms when it uses them in many statutes that refer to gender as well as those that refer to bodily characteristics or functions in gendered ways. They vary from statute to statute, so the law has already brought them together. What this bill does is actually preserve those differences when they are intended. Clauses 42, 47, 58 and 128 preserve those differences when they are intended.

I do not agree, for example, with the submission that there are unintended consequences from these reforms because the law actually preserves those differences where necessary. New South Wales, WA, Victoria, Queensland and the ACT follow this approach without establishing any distinction in their birth certificate legislation. Tasmania does establish distinction but then puts in place a whole bunch of interpretive provisions to close that gap back again, while South Australia and the Northern Territory never resolve that issue.

This is the problem with separating them and leaving them unresolved and manufacturing a distinction in law. What happens then is that most laws do not actually refer to gender; some do. Laws are not always deliberate about the terms they use. Sometimes they use sex. Sometimes they use gender. Sometimes they do not even tell you what they mean. They might refer to breasts, pregnancies, sisters, brothers. All these terms can have a gendered or perhaps sexed understanding.

What the law does is look at each of those terms when they appear in light of the particular statute in which they appear—the purpose of that statute—and give meaning to those terms as it is relevant to that context. I will give you an example of that. Before marriage equality when marriage required a man and a woman, the courts looked to what the meaning of a man and a woman were—for example, allowing a trans woman to be recognised as a woman for the purposes of marriage.

One of our recommendations is that there is an audit following the passage of this bill to make sure those isolated examples are identified and remedied where necessary but, as I say, the distinctions are preserved by this bill where they are intended. Inserting a distinction in this bill would actually be very harmful for trans and intersex people because it would make it very unclear what their rights are in which context when you effectively have two very similar statuses—one on sex and one on gender—which may not align and it would be unclear under all of those consequential pieces of legislation which is intended.

Ms BOLTON: Ymania, earlier in the hearing we spoke about everybody having a gender identification certificate. Obviously you would have your birth record and, if you wish, that could remain confidential. For the purposes of obtaining a licence or when immigrating—anything that you would need your standard birth certificate for—if a gender ID certificate were used instead, would that be problematic for you? In your lived experience would that have made anything more difficult?

Ms Brown: I do not understand what you are referring to as a gender identity certificate. I came here from Samoa through New Zealand. I arrived on a New Zealand passport. In New Zealand I was able to change my identity and travel on a female passport because I have had gender reassignment surgery. Where in the living of my life in Queensland requires me to offer a birth certificate, I cannot do that because my country of birth, which is Samoa, cannot change my birth certificate. Their laws will not allow it.

This legislation will actually allow me to get an equivalent which is a recognised detailed certificate, so it will have my name and my gender as female so I can use that in spite of a birth certificate. The experience for me is that, if I wanted to get married and they wanted to see a birth certificate, I cannot offer a birth certificate, so I have not been able to walk down the aisle with the person that I love. These things are really difficult for trans people. I have had gender reassignment surgery and it is difficult for me. Imagine what it is like for the people who have not had surgery—the humiliation and the harassment and, as I said, the dehumanising treatment from authorities that require this birth certificate.

Ms BOLTON: What I was saying is that, instead of having to produce your birth certificate, what if those authorities recognised a gender identification certificate? The reason I am asking this question as an option is that we have those who are struggling with the concept of changing what occurred at birth—the actual sex—because they see it as falsifying a document instead of the journey. If we all had something like a gender identification certificate and it was accepted, then our birth—what we were born as—is still on record but it is confidential.

Ms Brown: There are a couple of things I wanted to mention here and I will refer to my colleague, Ghassan, for the legal ramifications of that. One of the things is that at birth nobody can determine what the gender of that particular individual is or what the sex is. All you can determine is the primary sexual characteristics, but there are known cases of babies born who have additional chromosomes that technically make them female but now we are going to write them up as male based on the primary sexual characteristics.

For me it is difficult to go down the track of a gender identity certificate. It should be about changing the law for trans and gender diverse individuals to recognise their gender markers and then have a recognised detailed certificate issued and have their birth certificates, if they were born in Queensland, changed so that it makes it a lot easier and seamless for them to access services. Having a gender identity certificate is fraught because then you have added ramifications like privacy considerations. I know the department will keep a record but what if it is leaked and becomes public? What if a university says, 'I don't believe your gender identity certificate. I need to see your birth certificate'? It becomes very convoluted and very difficult, whereas what they are proposing now in this bill for me is a very simple solution. I will defer to my colleague, Ghassan, for the legal situation around what you are asking.

Mr Kassisieh: Ymania has hit the nail right on the head. You only have a gender recognition certificate if you are trans which effectively outs the entire population of trans people or people who seek to have a certificate other than a birth certificate. We know that that unfortunately puts trans and gender diverse people at risk of harassment and potentially violence when their gender identity might be disclosed in ways that they did not intend.

Ms BOLTON: Sorry, just to clarify, my question was that all of us would have a gender identity certificate, not just those who are trans.

Mr Kassisieh: I see. I think the reality is that we have a class of people who already have birth certificates. Unless you are proposing to withdraw all of those birth certificates or issue everyone with a gender identity certificate, it seems like a very convoluted way to do what almost every other state and territory in Australia has done which is just allow people to align their documents with their identity and their life. What that means as well in not having mismatching identities—and this is the situation now—is that there are not questions when, for example, you have to prove through a number of documents what your identity is. For young people it might only be a birth certificate that they have. One of the issues we have is that at the federal level, for example, you can change your passport without the need for surgery but your birth certificate remains not aligned with your other documents. That can raise questions as to whether your documents have been falsified or whether they can trust them. I think the issue of consistency across documents is actually quite important as well.

CHAIR: That concludes this hearing. Thank you to everyone who has participated today and to all those who have helped organise this hearing. I thank the secretariat and the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare the public hearing closed.

The committee adjourned at 1.32 pm.