

## **Births, Deaths and Marriages Registration Bill 2022**

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# **SUBMISSION TO THE LEGAL AFFAIRS AND SAFETY COMMITTEE, QUEENSLAND PARLIAMENT**

## **Births, Deaths And Marriages Registration Bill 2022**

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### **Introduction**

Insofar as this Bill is a general rewrite, and re-enactment of, the births, deaths and marriages legislation, I have no comments on it. However, Part 5 will cause a lot of problems. It has nothing to do with births, deaths or marriages, and so, in any event, does not really fit within the scope of this Bill.

Part 5 includes various provisions on “acknowledgement of sex”. These seem to be modelled on the law in Victoria, but with a few variations. Self-id laws like this one are highly controversial. If they only advanced the interests of one group in the community while causing no concomitant harm to others, they would not be so controversial. However, this Bill will have a harmful impact upon a much larger group in the community than will benefit from it.

In particular, and for reasons I will explain in detail with reference to the provisions of the Bill, it will have an adverse effect on women and girls generally (see pp. 8-16). It will make it unlawful, for example, for a women’s gym to exclude natal males who have registered a female sex (and whose birth certificate will now declare them to be female), because this would involve discriminating against them on the basis of their sex characteristics. Special temporary exemptions granted on the basis of sex to allow for women’s gyms in operation currently will not suffice under the law as it is to be amended, and no women’s club or other organisation could have reason for confidence that the Human Rights Commission will support an expanded exemption or that QCAT will approve it.

It is very likely that the legislation will have adverse impacts upon women and girls who play competitive sports because of the interaction between this Bill and the *Anti-Discrimination Act 1991*. The proposed changes to the law will nullify the protections for women’s sports so far as natal males who are registered as female are concerned. Women’s sports organisations that run contact sports will have to risk either breaching the law, or expose their female participants to an unacceptable risk of serious injury, unless a special temporary exemption is granted by QCAT.

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<sup>1</sup> From Jan 1 2023, Emeritus Professor.

Furthermore, some of the most vulnerable women in our community – victims of domestic violence or sexual assault who find refuge in female-only premises – are likely to find that those administering these services will be in breach of the law if they exclude natal males who have changed their sex as a result of these provisions. The same is likely to be true, for example, of women’s hospitals unless a vague public health exemption in the *Anti-Discrimination Act* can be invoked.

The legislation will also have an adverse impact on children and adolescents who have neurobiological disorders or are mentally very unwell (pp. 16-20), and who may embrace a transgender identification to gain notice or popularity. Legal registration as a sex other than their natal sex may concretise what would otherwise be a transient and relatively harmless identification beneath the broad transgender umbrella.

This draft legislation is particularly controversial because it allows for an ‘acknowledgement of sex’ rather than for registration of a gender identity that is incongruent with the person’s sex (see pp. 3-8). The Queensland government has, mysteriously for quite a socially conservative State, chosen the most radical expression of a self-id law that is imaginable. It is bringing this legislation forward at the very time when the serious harms to vulnerable children, adolescents and young adults that result from the ideas being advanced by a tiny minority of LGBTQ+ advocates are becoming increasingly clear. The legislation will exacerbate those harms (see pp. 16-20). Indeed, the Queensland government is fully embracing the most radical views of a small number of LGBTQ+ activists at the very time when these ideas are being rejected by many European nations and by some of the activists themselves.

The Explanatory Notes cite the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as support for these amendments. Those notes fail to mention that these Yogyakarta Principles were drawn up by self-selected activists in non-government organisations. These principles have never been agreed by the governments of the United Nations and cannot be said to have any formal legal status in international law.

There are reforms to recognise a person’s gender identity that could be enacted that do not cause nearly as many conceptual and practical difficulties (see pp. 20-21).

## **Summary of the problems**

This submission will traverse a number of objections to the legislation before proposing a less radical alternative:

1. The decision to treat gender recognition as an ‘acknowledgement of sex’.
2. The decision to allow changes to birth certificates in accordance with a gender identity that may well be transitory.
3. The decision to provide that a self-chosen sex identity takes effect in principle for all purposes in Queensland law.

4. The effects that this legislation will have on the application of other laws based upon sex, particularly because of its interaction with the *Anti-Discrimination Act 1991*.
5. The damage that will be done from giving legislative support to the social transition of vulnerable children who have experienced child abuse, family dysfunction and suffer from various psychiatric comorbidities.

## **Acknowledgement of sex**

The language of the Bill follows the law in Victoria in treating the administrative change to a birth certificate as an ‘acknowledgement’ of ‘sex’. This reflects a belief no longer as widely held in the LGBTQ+ community as it once was, that one can be ‘born in the wrong body’, and that to change a birth certificate is simply to acknowledge the sex that the person always was.

It is an unscientific belief. Indeed, insofar as hitherto unknown forms of ‘sex’ such as being ‘agender’ or ‘genderqueer’ are concerned, the belief is fantastical. There is more scientific substance to the notion that one can be ‘non-binary’, since a very small number of babies are born in Australia who are ‘intersex’ or, to use the technically correct language, have a disorder of sex development. Even still, most such babies are clearly identifiable from genitalia and reproductive organs as being male or female. True hermaphroditic conditions are rare.<sup>2</sup> The vast majority of people who now describe themselves as non-binary are, and have always been, conventionally male or female in every respect except their self-characterisation.

### *‘Born in the wrong body’*

There is very little scientific evidence to support the idea that one can be ‘born in the wrong body’. It may be that in course of time, a genetic or biological explanation will be found for at least some transgender identification, but for now, this has eluded researchers.<sup>3</sup> A recent review of studies of the brain found that: “Despite intensive searching, no clear neurobiological marker or “cause” of being transgender has been identified”.<sup>4</sup>

Perhaps because the scientific evidence to support a physiological explanation is so limited, the view that transgender identification arises because people are ‘born that way’ does not underpin much clinical practice in gender identity services. Clinicians working with gender-

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<sup>2</sup> True hermaphroditic conditions are defined by the presence of both ovarian and testicular tissues. G. Krob, A. Braun & U. Kuhnle, ‘True Hermaphroditism: Geographical Distribution, Clinical Findings, Chromosomes and Gonadal Histology’, (1994) 153 *European Journal of Pediatrics* 2.

<sup>3</sup> The research evidence is reviewed in S.C. Mueller, G. De Cuypere, & G. T’Sjoen, ‘Transgender Research in the 21st Century: A Selective Critical Review from a Neurocognitive Perspective’ (2017) 174 *American Journal of Psychiatry* 1155; Jack Turban & Diane Ehrensaft, ‘Research Review: Gender Identity in Youth: Treatment Paradigms and Controversies’ (2018) 59 *Journal of Child Psychology and Psychiatry* 1228; Lawrence Mayer and Paul McHugh, ‘Sexuality and Gender: Findings from the Biological, Psychological and Social Sciences: Part Three’ 50 *New Atlantis* (2016) available at <https://www.thenewatlantis.com/publications/part-three-gender-identity-sexuality-and-gender>.

<sup>4</sup> Mueller and others, *ibid*, at 1158.

dysphoric adolescents have quite a variety of opinions on the causes of gender dysphoria and about whether it matters that there is no clear biological or other explanation for it.<sup>5</sup> Brain imaging studies are complicated by a lack of agreement among researchers as to whether there is even such a thing as a ‘female’ ‘or ‘male’ brain once differences of size are disregarded,<sup>6</sup> and how to account for homosexuality, neuroplasticity and the effects of cross-sex hormones in the various studies that have purported to find differences between the brains of people who identify as transgender and the rest of the population.

Even clinicians who find support in tentative indications from some studies to suggest a biological component to gender diversity, nonetheless acknowledge the need for “multiple-level explanations where the social and the biological intersect.”<sup>7</sup>

Notions that people are ‘born that way’ are now strongly critiqued in the LGBTQA+ community as involving ‘biological essentialism’.<sup>8</sup> A recent article to be published by a transgender lobby group and which promised to demonstrate a biological foundation for transgender identification was discarded after protests from trans advocates when the forthcoming publication was announced.<sup>9</sup>

It follows that even if the government goes down the pathway of enacting some kind of self-id law, it should allow a person to register a gender in which they choose to live, not to alter the birth record of their sex. The Bill itself seems to recognise this. Two of the labels it suggests people might use are ‘agender’ and ‘genderqueer’. Both of them describe a gender identification, not an identification concerning their sex at birth.

### *Trans people have both a sex and a gender*

Identification as another gender does not alter a person’s sex. Those whom this legislation is designed to assist have both a sex and a gender identity, and these happen to be incongruent.

This may be illustrated by a hypothetical person, Chris. Chris, a natal female, began taking cross-sex hormones (testosterone) at the age of 19. At the age of 20, Chris elected to have a double mastectomy. Chris identifies as male and uses he/him pronouns. He is now 22 years of age. Chris’s voice has deepened as a consequence of the testosterone, and the double

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<sup>5</sup> Lieke Vrouenraets and others, ‘Early Medical Treatment of Children and Adolescents With Gender Dysphoria: An Empirical Ethical Study’ (2015) 57(4) *Journal of Adolescent Health* 367.

<sup>6</sup> See, for example, Daphna Joel et al. ‘Sex Beyond the Genitalia: The Human Brain Mosaic’, 112 *Proceedings of the National Academy of Sciences* 15468 (2015); Gina Rippon, *The Gendered Brain: The New Neuroscience that Shatters the Myth of the Female Brain* (2020).

<sup>7</sup> Gary Butler and others, ‘Puberty Blocking in Gender Dysphoria – Suitable for All?’ (2019) 104 *Archives of Disease in Childhood* 509.

<sup>8</sup> See e.g. J Latham, ‘Axiomatic: Constituting ‘Transsexuality’ and Trans Sexualities in Medicine’ (2019) 22 *Sexualities* 13. See also <https://www.scientificamerican.com/article/the-search-for-a-cause-of-transness-is-misguided> (March 23, 2021).

<sup>9</sup> <https://unherd.com/thepost/trans-organisation-pulls-biological-condition-article/> (14<sup>th</sup> December, 2022).

mastectomy has flattened his chest. He has even grown a small beard. So he has done much to modify his body so that externally he is perceived as male. Chris's gender identification should, of course, be accepted by those around him in day to day social interactions, and ill-treatment of him due to his gender identity is unacceptable and discriminatory.

However, Chris has retained her sex, chromosomally and in terms of reproductive organs. When she goes to the doctor, she will be treated, so far as it is relevant, as female; and it *is* relevant for all sorts of reasons, for example, in reading blood test results, in diagnosis and in treatment. There are conditions that Chris may continue to experience which are only experienced by women, such as endometriosis. She remains at risk of uterine cancer, but need never be screened for prostate cancer. As Queensland Health currently explains: "Only men have a prostate".<sup>10</sup>

When Chris goes to the bathroom, she will urinate as a female. If Chris has sexual intercourse, then her experience of sexual pleasure, to the extent it has not been diminished by the loss of her breasts and the effects of testosterone on her lower body, will be female sexual pleasure. She will never experience a male orgasm or be able to have sexual intercourse as a man does.

It is likely, because she was not placed on puberty blockers as a child and cross-sex hormones as an adolescent, that she will retain the capacity for pregnancy if she goes off testosterone for a sufficient time.<sup>11</sup> Sex is traditionally defined by reproductive function. One either has large gametes (ova) or small gametes (sperm). Chris was born with ovaries and a uterus. She cannot produce sperm. She is definitionally female and always will be, in a medical and scientific sense.

Chris's sex limits him in various ways which cannot be changed by medical intervention. Despite his change of gender identity, Chris's physique will continue to be that of someone of female build, not male. Contact sports with other men will put him at a greater than average risk of physical injury, and he will be at a physiological disadvantage compared to biological males of a similar age and fitness, in playing even non-contact sports.

The Parliament of Queensland is completely powerless to change Chris's sex. Chris's registration as male will not make her so. The Parliament can indulge Chris's irrational beliefs. It cannot change her body. Whether she was 'born in the wrong body' or not, she only has one body and the modifications she has made to it have changed his appearance and voice, but not her sex.

It may be distressing to Chris that in so many fundamental respects, his sex is unchanged by the modifications he has made to her body through cross-sex hormones and the removal of her breasts. The hypothetical Chris may be very upset that I am using feminine pronouns when I describe her sex, rather than his gender identity. I don't think it is ultimately helpful to Chris

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<sup>10</sup> <https://www.health.qld.gov.au/news-events/news/prostate-facts-awareness-enlarged-testing-cancer-symptoms>.

<sup>11</sup> Rosie Charter and others, 'The Transgender Parent: Experiences and Constructions of Pregnancy and Parenthood for Transgender Men in Australia' (2018) 19 *International Journal of Transgenderism* 64.

to engage in a conspiracy of silence concerning biological realities. One can recognise his gender identity without indulging fantastical beliefs that he can change her sex by filling in a form.

## **Gender identity may be transitory**

Actually, for most children who experience gender incongruence sufficient to require referral to a specialist service, it is not permanent; and to be frank, for the great majority of teenage girls who are now adopting various forms of non-binary or genderqueer identity, we should call it for what it is: a fad.

### *Desistence among gender incongruent children*

Every single study that has followed children who have attended gender clinics experiencing gender incongruence, or what used to be called ‘gender identity disorder’, has come to the same conclusion.<sup>12</sup> The majority – in some studies, the vast majority – resolve their gender incongruence before or while going through puberty if they have been supported through a therapeutic approach that does not involve the prescription of puberty blockers. Very often, they grow into gay, lesbian or bisexual adults.<sup>13</sup> There have been methodological criticisms of some of this research.<sup>14</sup> However, no published studies have shown a different pattern of desistence in gender dysphoric children and adolescents.

### *The new fashion for trans identification amongst teenagers*

Being ‘trans’ or ‘queer’ has now become a fashionable identity amongst teenagers, especially, it seems, girls.<sup>15</sup> This ought not to be surprising. In recent years a high profile has been given to transgender issues. Popular figures on YouTube promote a somewhat rosy view of the transition journey.<sup>16</sup> Media reporting about transgender issues has been shown to have

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<sup>12</sup> See eg Kelley Drummond et al, ‘A Follow-up Study of Girls with Gender Identity Disorder’, (2008) 44(1) *Developmental Psychology* 34; Thomas Steensma, et al, ‘Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study’ (2013) 52(6) *Journal of the American Academy of Child and Adolescent Psychiatry* 582; J. Ristori and T. Steensma, ‘Gender Dysphoria in Childhood’ (2016) 28 *International Review of Psychiatry* 13; Devita Singh, Susan Bradley and Kenneth Zucker, ‘A Follow-Up Study of Boys with Gender Identity Disorder’, (2021) 12 *Frontiers in Psychiatry* 632784: 1-18.

<sup>13</sup> Ristori and Steensma (ibid), 15.

<sup>14</sup> See Julia Temple Newhook et al, ‘A Critical Commentary on Follow-Up Studies and “Desistence” Theories About Transgender and Gender-Nonconforming Children’ (2018) 19(2) *International Journal of Transgenderism* 212; and the responses from Kenneth Zucker, Thomas Steensma & Peggy Cohen-Kettenis in the same issue.

<sup>15</sup> Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Washington DC: Regnery Publishing, 2020). See also Anna Hutchinson, Melissa Midgen & Anastassis Spiliadis, ‘In Support of Research Into Rapid-Onset Gender Dysphoria’ (2020) 49 *Arch. Sex Behavior* 79.

<sup>16</sup> Elin Lewis, ‘Transmission of Transition via YouTube’ in Michele Moore and Heather Brunsell-Evans (eds) *Inventing Transgender Children and Young People* (Newcastle, UK: Cambridge Scholars Publishing, 2019) 180.

significant impact on referrals to gender clinics in England and Australia.<sup>17</sup>

Some US studies indicate large numbers of young people now identify as ‘trans’ or adopt some other label for ‘sex’ supported by this Bill. For example, a study of responses of over 3000 9<sup>th</sup>-12<sup>th</sup> graders in Pittsburgh, Pennsylvania in 2018 found that 9.2% identified as a gender other than their natal sex, choosing one or more of “trans girl,” “trans boy,” “genderqueer,” “nonbinary,” and “another identity.”<sup>18</sup> 39% were natal males identifying as female, 30% of these were natal females identifying as male, and 31% were non-binary, ‘genderqueer’, chose another identity or adopted more than one descriptor. The DSM-5, the most widely recognised authority for mental health professionals, records gender dysphoria as occurring in between 0.005% to 0.014% of natal adult males, and 0.002% to 0.003% of natal females.<sup>19</sup> Unless rates of gender dysphoria were massively undiagnosed in the past, it is likely that for the vast majority of these teenagers in Pittsburgh, the transgender or non-binary identification is just another transient form of identity, not unlike being ‘goth’ a few years ago.<sup>20</sup>

Anecdotal reports from all over Australia indicate that there are similar developments here, particularly among teenage girls, and particularly, it seems in private schools and with parents who identify themselves as ‘progressive’. This fashion will pass. These teenage fashions always do. Mostly, teenage trans identification is harmless. The great majority of teenagers who identify with one of the labels under the broad ‘trans’ umbrella go no further than ‘coming out’ as such to their friends and on their social media profile. However, there has been a massive increase over the last seven years in the number of teenagers who are seeking treatment from gender clinics, and from GPs willing to provide puberty blockers and cross-sex hormones. As I will explain (pp.16-20), these medications will cause irreversible changes when used in the way they are now being used to address gender incongruence, with some serious adverse health consequences.

### *Allowing children to change their birth certificates*

Allowing children and young people to change their birth certificates and legal status when their change of identity is transitory is not sensible public policy. Yes, there are a few conditions that must be satisfied for children under 16 to register a so-called ‘acknowledgement of sex’. The child must understand the meaning and legal implications of the alteration of the record of sex in the relevant register. The application must be supported by a ‘developmentally informed

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<sup>17</sup> Ken Pang et al, ‘Association of Media Coverage of Transgender and Gender Diverse Issues with Rates of Referral of Transgender Children and Adolescents to Specialist Gender Clinics in the UK and Australia’ (2020) 3(7) *JAMA Network Open* e2011161: 1-10.

<sup>18</sup> Kacie Kidd et al, ‘Prevalence of Gender-Diverse Youth in an Urban School District’ (2021) 147(6) *Pediatrics* e2020049823.

<sup>19</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5*, (5th ed, 2013) p. 454.

<sup>20</sup> Lucy Bowes et al, ‘Risk of Depression and Self-harm in Teenagers Identifying with Goth Subculture: a Longitudinal Cohort Study’ (2015) 2(9) *The Lancet Psychiatry* 793.



practitioner’ (s.41). These are sensible requirements, and make this Bill more responsible than the laws of Victoria<sup>21</sup> or Tasmania.<sup>22</sup> However, the laws of those two states do not set a particularly high bar when it comes to good legislative policy in this area.

The problem is that these requirements are not onerous, and no minimum age is specified below which it is to be presumed that the child does not have the requisite understanding. ‘Developmentally informed practitioners’ have been very broadly defined; and this is deliberate. As the explanatory notes state:<sup>23</sup>

It is intended to catch a broad net of professionals so as to encompass the most diverse range of supports possible for a child.

Specifically, these professionals don’t need to have medical or mental health qualifications. The draft regulations provide that they may be a speech pathologist, a nurse, a social worker or an occupational therapist. Furthermore, the “assessment is not intended to question the appropriateness of a child’s transition”. So it is not diagnostic, and in any event, the assessment work is not confined to those who might even generously be described as qualified to conduct a DSM-5 diagnosis of gender dysphoria in childhood.

With such a wide range of practitioners to draw upon to satisfy the regulation, and the likelihood of shopping around to find a practitioner willing to certify, it will no doubt be fairly easy to find someone willing to provide the requisite assessment concerning even quite a young child’s understanding of the meaning and implications of the change. The condition that the practitioner must have a ‘relationship with the child’ (s.37) is open to a range of interpretations. Yes, the draft regulations (pp.5-6) specify that the practitioner must provide details of the dates he or she has seen the child; and the nature of the relationship with the child. And yes, the registrar may refuse a registration if he or she considers the information to be inadequate. However, everything is left up to discretion. There are really no specific minimum requirements.

## **The legal effect of an ‘acknowledgement of sex’**

Clause (section) 47 is of the greatest importance in understanding the effect of this Bill. It provides:

If the record of a person’s sex in the relevant child register is altered under this division, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State.

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<sup>21</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic.) as amended by the *Births, Deaths and Marriages Registration Amendment Act 2019*.

<sup>22</sup> *Births, Deaths and Marriages Registration Act 1999* (Tas.) as amended by the *Justice And Related Legislation (Marriage And Gender Amendments) Act 2019*.

<sup>23</sup> Explanatory Notes, p.7.

Clause 58 is in similar terms in relation to a recognised details certificate for someone who was not born in Queensland.

### *Genderqueer as a new legal sex*

The effect of this is that if a person says that they are ‘genderqueer’ or ‘non-binary’, or ‘agender’, or uses some other descriptor for their sex that is neither male nor female, this is what they are in law, subject to the effect of other Queensland laws. In this way, Parliament is essentially abolishing the sex binary as a legal concept, despite all the laws in Queensland, and practices of the society, which rest upon distinctions of sex, characterised as being either male or female.

It is worth thinking about what this means. In law, the registered non-binary person will be, in Queensland law, neither of the male nor female sex, subject to anything to the contrary on the statute book. What happens, in law, to their real sex? Does their body ‘disappear’ in a world of legal make-believe? Clause 47 could have exclusionary effects for those people if taken literally. Natal females who register with a descriptor that is neither male nor female will be ineligible for positions on boards that are reserved for women. Persons who register an ‘acknowledgement of sex’ in this form and who are subsequently sentenced to imprisonment for criminal offences will neither be males nor females in Queensland law for the purpose of allocation to a male or female prison.

This may seem to be a ridiculous interpretation, but it is the only one available unless a court determines that a person’s ‘real’ sex is otherwise than as described on their birth certificate. To adopt such an interpretation is the diametric opposite of what the Parliament evidently will intend by allowing someone to register an ‘acknowledgement’ of sex, as opposed to gender, on their birth certificate. Ridiculous? Yes; but it is not the interpretation which is ridiculous. It is what logically follows from the language and ostensible purpose of the legislation. Courts must give effect to the natural meaning of the words Parliament has used, taking into account the purposes of the statute.

### *Sex characteristics in the Anti-Discrimination Act*

Clause 47 needs to be read in conjunction with changes that Part 12, Division 3 of the Bill will make to give effect to the Queensland Human Rights Commission’s recommendation 28 in its report entitled *Building Belonging* (2022).

That recommendation was concerned solely with the protection from discrimination of that very small number of people who have intersex conditions or disorders of sex development. However, in the Bill, the definition is very widely drawn. ‘Sex characteristics’ are defined, inter alia, as a “person’s physical features and development related to the person’s sex”, and include “genitalia, gonads and other sexual and reproductive parts of the person’s anatomy” (Bill, p. 115). Unless relevant exemptions are enacted or otherwise applicable, an organisation running a single sex facility or a women or girls’ sporting competition will be discriminating

on the basis of sex characteristics were it to exclude a natal male person who has an amended birth certificate indicating a female sex, but who has a penis and testicles.

*The empty promise of the Explanatory Notes*

Clause 47 does not provide any further explanation of the legal effect of saying that someone is, in law, a sex different to their actual body, other than to say it doesn't affect entitlements in wills or trusts unless specified to the contrary in the relevant legal document.

The Queensland Public Service, police, hospitals and other public entities, as well as non-government entities such as schools, will have to tease out what clause 47 means, particularly in the light of the changes to anti-discrimination legislation, with almost no guidance from the Parliament. Queensland Health for example, will have an immediate decision to make whether it should still explain publicly that only men can have a prostate.<sup>24</sup> That will no longer reflect the position in Queensland law, insofar as registered transfemales registered as women are concerned.

Courts, interpreting statutes, are entitled to give legislation a non-literal construction in order to avoid absurdities, but they must also, and first and foremost, give effect to the intentions of Parliament. For that reason, it is of the greatest importance that this Committee, advising the Parliament about the detail of the Bill, spells out with great clarity what it is that the Parliament is signing up to if it passes the Bill in present form. It will not be greatly assisted by the Explanatory Notes, which are remarkable for their brevity. These notes inform MPs:<sup>25</sup>

The 'Effect' provision is designed to be facilitative and flexible. In particular, the reference to 'but subject to' will allow for an express contrary intent to be expressed in other legislation; and for the new Births, Deaths and Marriages Registration Act 2022, if enacted, to be read appropriately alongside other legislation (whether enacted before or after the Bill) to produce a logical reading. For example, it will facilitate provisions in other Acts which use gendered terms that are directed to the anatomical capacity of a person to be interpreted in a way that captures a person if that person retains the anatomical characteristics necessary regardless of what that person's registered sex may be.

So future legislation might provide specifically for the sex of a person to be otherwise than on their birth certificate as amended; and rather vaguely, MPs and the general public are assured that "other Acts which use gendered terms that are directed to the anatomical capacity of a person" may be "interpreted in a way that captures a person if that person retains the anatomical characteristics necessary regardless of what that person's registered sex may be" whether enacted before or after this legislation.

I cannot find in the Bill any legal basis for the government's assurance. Indeed, I consider the opposite is the case. The Bill, understood in conjunction with the anti-discrimination

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<sup>24</sup> See above, n. 10.

<sup>25</sup> Explanatory Notes, p.13.

legislation, does not allow for any flexibility to interpret the term ‘sex’ or ‘male’ or ‘female’ to exclude what I will call a ‘female by registration’ – that is a natal male who has an amended birth certificate stating that he is female but whose lower body is anatomically male.

The vagueness and brevity of the Explanatory Notes on what the legal effects of this Part of the Bill will be is, with respect, quite astonishing. The issues which do not appear to have been considered are almost all the issues which make self-id laws so controversial. The government is proposing sensible provisions that prisoners will require the consent of the Chief Executive of Corrective Services before being allowed to make an application to change legal sex under Part 5. This also applies to former prisoners out under supervision in accordance with the *Dangerous Prisoners (Sexual Offenders) Act 2003*. However, problems in prisons will continue to the extent that male offenders, including sex offenders, succeed in an application for a change of sex prior to being incarcerated.

### *The impacts for women and girls*

The effect of the legislation is, of course, an issue of particular importance to women and girls. It is a controversial area even to discuss, because one can be accused of engaging in very negative and pejorative assumptions that transfemales could represent a risk to women’s safety if given legal access, by means of self-id laws, to women’s spaces.

Let me then be clear about my position on this. I am not saying that transfemales represent any greater danger to women and girls generally than any other natal male. Indeed, the effects of reduced testosterone and increased estrogen (if taken) may be to moderate tendencies towards physical violence and sexual assault.

However, the evidence seems to be clear enough 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. After all, the intent of the Bill is to remove any requirement for medical gatekeeping or mental health assessment, and this means, inter alia, that there are no effective barriers to mentally unwell males getting legal recognition for a newly discerned gender identity as a female. Really, the only corroborative requirement is that another person – literally anyone over 18 – who has known them for 12 months is prepared to say that he or she believes that the person making the application makes it in good faith; and that he or she supports the application (clause 50 of the Bill).

Most mentally ill men of course represent no threat 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. They might, properly, describe the man as ‘creepy’. Unfortunately, there is the possibility that some mentally unwell men may be more dangerous than this.

### *The relationship with anti-discrimination law*

Sex is a protected attribute under the *Anti-Discrimination Act 1991*. What then happens to provisions that allow for discrimination on the basis of sex if this legislation is enacted? What will be the position in Queensland law concerning girls' and women's separate changing and toileting facilities, sports, and female-only organisations? There are exemptions in the *Anti-Discrimination Act 1991* on the basis of sex in various places. Consider, for example, single sex accommodation (s.30). The section provides:

It is not unlawful for a person to discriminate on the basis of sex against another person with respect to a matter that is otherwise prohibited under subdivision 1 if the other person is required to live in accommodation supplied by the first person and—

- (a) the accommodation is not equipped with separate sleeping accommodation for people of each sex; and
- (b) the accommodation is already occupied by a person or people of one sex and is not occupied by anyone of the opposite sex; and
- (c) the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on the first person.

The dictionary contained in Schedule 1 to this legislation does not define sex. No-one needed to do so back in 1991 nor in any of the amending Acts since. On a plain reading of s.30, a female by registration will not be able to be excluded from female-only accommodation, and to do so will be discrimination on the basis of her (male) sex characteristics.

Issues also arise in relation to single sex educational institutions. Section 41 provides:

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment may exclude—

- (a) applicants who are not of the particular sex or religion; or
- (b) applicants who do not have a general, or the specific, impairment.

What is the effect of a change of sex for a child on the application of section 41? A plain reading of the legislation would indicate that all educational institutions, including single sex schools, will be required to accept the sex of the child as indicated in the child register because that is their sex under Queensland law according to clause 47 of this Bill. For young people sixteen years and above, there are really only minimal requirements for an 'acknowledgement of sex'. What effect will this have on girls' schools, and what are the rights, for example, to bodily privacy, of the girls at that school vis a vis the rights of a male who has self-identified legally as a female? Does a requirement imposed on the natal male to use a gender-neutral bathroom constitute a form of discrimination on the basis of sex characteristics?

What is the effect of the Bill, if enacted, on domestic violence shelters or rape crisis services designed for women? Section 104 of the *Anti-Discrimination Act* allows for them to operate. It provides:

A person may do an act to benefit the members of a group of people with an attribute for whose welfare the act was designed if the purpose of the act is not inconsistent with this Act.

The relevant attribute, in this context, is a person's sex; but a female by registration is in law, a female. It follows that it is hard to see how a domestic violence service could use s. 104 to turn away registered females who are anatomically male. If the organisation says it is only for those who are women in the biological sense, it is discriminating on the basis of sex characteristics, which will be made unlawful by the proposed amendments in Part 12. It is hard to see how such services could legally turn away a female by registration, notwithstanding the empty promise of the Explanatory Notes to this Bill. If the government does intend s. 104 to operate so as to continue to protect single sex domestic violence and sexual assault services, then it needs to make this clear by legislative amendment.

Women's gyms would appear to be in a very unfortunate position. They will not legally be able to turn away females by registration because there is no exemption that covers them. The gym is set up for women. A female by registration is, in law, a woman; so any exclusion of her is unlawful exclusion on the basis of sex characteristics. Currently, as a result of a 2021 decision, a large national women's gym organisation has a special exemption under s.113 of the Act which will last until 2026. This exemption is on the basis of sex.<sup>26</sup> That exemption will not operate to exclude females by registration who thereby meet the criterion of being of the female sex. The current special exemption does not cover sex characteristics. New applications will need to be made by all women's organisations that currently have a special temporary exemption to address the issue of females by registration.

Women's gyms can have no reason for confidence that the Tribunal (QCAT) will extend the temporary exemptions to cover females by registration. Such an exemption would be strongly opposed by trans groups, and may well not find favour with the Queensland Human Rights Commission. One of the arguments which may be used to reject such a special exemption is that enforcing a biological female-only membership requirement could breach a person's bodily privacy by necessitating 'looking under the hood'.

The power to grant the exemption lies with the Tribunal, QCAT. The lack of clarity in the legislation on this issue would put QCAT in the invidious position of having to choose between transfemale and female rights in circumstances where the law is clear that registered transfemales are to be regarded, in every legal respect, as women. Given recent experience in Tasmania (lesbians refused an exemption by the Commission and the Tribunal to allow for

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<sup>26</sup> *Re Fernwood Womens Health Clubs (Australia) Pty Ltd* [2021] QCAT 164. .

female-bodied people only at their social events),<sup>27</sup> the prospects for gaining an exemption are not strong.

Other exemptions are more difficult to interpret in the new context. What is the meaning and effect of s.107 (“A person may do an act that is reasonably necessary to protect public health”) in the light of the proposed changes in this Bill? Will it allow for discrimination on the basis of sex characteristics in women’s facilities to prevent the risk of harm to public health by causing trauma to vulnerable women forced to share spaces with women who are anatomically, in all respects, men? What about a women’s hospital? Is it reasonably necessary to protect public health for a women’s hospital to exclude anatomical males who have a legally registered sex as female? Such men, of course, do not have a communicable disease by reason of their gender identity, so the answer is probably that a women’s hospital or other health facility would not have the legal right to exclude a female by registration.

Does section 108, allowing for ‘reasonably necessary’ acts to do with health and safety at work, allow for differentiation of facilities on the basis of anatomical sex for health or safety reasons? If so, what reasons are sufficient? Again, problems of interpretation arise from the intersection of the two pieces of legislation.

Section 109 provides quite broad religious exemptions from the operation of the Act, but not in relation to educational institutions, whether primary, secondary or tertiary, and not in relation to work. Queensland is a state with many people of devout religious faith, including many recent migrants and refugees who come from parts of the world with significant cultural restrictions on the mixing of the sexes. Has consideration been given to the impact upon them of the proposed legislative changes outside of the contexts protected under s.109?

Section 111 deals with sports. It provides:

- (1) A person may restrict participation in a competitive sporting activity—
  - (a) to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or
  - (b) to people who can effectively compete; or
  - (c) to people of a specified age or age group; or
  - (d) to people with a specific or general impairment.

The legislation does not define either ‘male’ or ‘female’, just as it does not define ‘sex’. This Bill will allow for self-identification to change someone’s sex. There is no indication in the Bill or in the *Anti-Discrimination Act* that a person registered as female who is in all respects anatomically male, who has gone through puberty and has the size, strength and stamina of the average male, is not to be regarded as female for the purposes of section 111.

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<sup>27</sup> <https://www.starobserver.com.au/news/tasmanian-womans-bid-to-ban-trans-women-from-drag-king-events-rejected/218752> (Nov. 30<sup>th</sup> 2022).

Subsection (3) provides that subsection (1) “does not stop participation in a competitive sporting activity being restricted on the basis of gender identity, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity.” That will continue to apply to non-registered female-identifying males, but when a person is legally registered as female, discrimination against them would be on the basis of their sex characteristics, not their gender identity, for their legal sex will be female and exclusion could only be on the basis of their genitalia. Has this issue, so prominent in the world of sport these days, been thought about? How will the proposed new Queensland law apply to elite swimming competitions held in Queensland? FINA has of course changed its rules on transgender competitors,<sup>28</sup> and there could well be a clash between its international rules and Queensland law, to the extent that females by registration, including foreign competitors, who register their ‘acknowledgement of sex’ under Part 5 of the proposed Bill, are excluded from competition. These issues could impact upon preparations for the South-East Queensland Olympic Games.

In swimming and other sports, the issue of female-identifying natal male participation in female competitions is hugely controversial, and the rules are in a state of flux. The emerging trajectory is now to accept that a person who has gone through male puberty is likely to have significant advantages in terms of height, stamina and strength that give that person an unfair advantage in competition with natal females. The IOC has also recently published a ‘clarification’ of its rules, which reflects the emerging trend to backtrack from somewhat liberal provisions that allow natal males to compete in elite female competitions.<sup>29</sup>

### *The law on personal searches*

The *Anti-Discrimination Act* is not the only issue. Consider also the issue of strip-searches. Section 34 of the *Corrective Services Act 2006* allows for personal searches, but on a strict condition (s34(3)):

A personal search of a prisoner may be carried out only by a corrective services officer of the same sex as the prisoner.

This would appear to mean that it will not be lawful for a male corrective service officer to conduct a personal search on a female by registration (and who may have been a female by registration prior to being incarcerated, thereby falling outside of the restraints upon prisoners applying under Part 5).

Section 35 allows for strip-searches if authorised. Section 38 requires that such a search involving the removal of clothing should be conducted by no less than two officers. Subsection (2) provides:

Each corrective services officer carrying out the search must be of the same sex as the prisoner.

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<sup>28</sup> <https://www.fina.org/news/2649715/press-release-fina-announces-new-policy-on-gender-inclusion> (June 2022).

<sup>29</sup> <https://www.thepinknews.com/2022/12/18/olympics-trans-athletes-rules/> (December 18<sup>th</sup> 2022).



There are quite a few implications for Corrective Services if a female by registration who is anatomically male, whether housed in a male or female prison, may only be searched by a female prison officer. What if the women prison officers refuse to carry out such a search because it makes them uncomfortable to do a strip search of a male? The effect of clause 47 of this Bill is to create a legal requirement which is, in this context, diametrically the opposite of what Parliament intended when it enacted the *Corrective Services Act 2006*. Have discussions been held with the management of Corrective Services or the relevant union about this?

### *Implications*

So clause 47 really is the crux of the matter. It has huge implications. Nothing in the analysis I have provided above gives grounds for any confidence that the exemptions in the Anti-Discrimination Act or relevant provisions of other legislation concerning a person's 'sex' may be "interpreted in a way that captures a person if that person retains the anatomical characteristics necessary regardless of what that person's registered sex may be" (to quote the Explanatory Notes). That claim is unsupported and, in my respectful view, unsupportable. The courts might eventually provide guidance, but litigation, particularly up to an authoritative interpreter such as the Court of Appeal, is hugely expensive. Public entities and civil society organisations across the State will need to try to understand and apply this legislation from the day it is enacted.

If this legislation is to move forward in the Parliament, the Premier and Attorney-General need to explain to MPs and the public what, in introducing this legislation, they want Parliament to 'intend' with respect to all the issues that I have raised concerning interactions with the *Anti-Discrimination Act 1991* and other legislation. What adverse effects upon on the rights of women and girls has Cabinet decided to accept? What limitations on the rights of transgender or non-binary identifying persons has Cabinet decided to accept in favour of protecting women's rights to safe spaces and bodily privacy? The Bill as presently drafted does not address any of the adverse consequences except in relation to prisoners and those released under supervision.

### **Social Transition**

Finally, something must be said about the way in which this legislation provides governmental support for the social transition of children by enshrining in legislation the unscientific belief that children who experience gender incongruence were 'born that way'. Not only does the scientific evidence not offer much support for this proposition, but the evidence is very strong that psychological and neurobiological factors are at work.

The evidence is clear that a lot of the young people now presenting to gender clinics around the world have a number of other psychiatric comorbidities.<sup>30</sup> Some of these comorbidities

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<sup>30</sup> Riittakerttu Kaltiala-Heino et al, 'Two Years of Gender Identity Service for Minors: Overrepresentation of Natal Girls with Severe Problems in Adolescent Development' (2015) 9 *Child and Adolescent Psychiatry and Mental Health* 9; Tracy Becerra-Culqui et al, 'Mental Health of Transgender and Gender Nonconforming Youth

cannot be explained by bullying, discrimination, parental disapproval or other sources of minority stress.<sup>31</sup> Examples are attention deficit disorder, anorexia and body dysmorphia.<sup>32</sup>

There is also emerging evidence that many of these young people have histories of family dysfunction, abuse or attachment disorders. Recent research by a clinical team at the gender clinic in the Children's Hospital at Westmead in Sydney provides particularly strong evidence. The researchers reported on the circumstances of children and adolescents aged between eight and nearly sixteen seen at the gender clinic. The cohort had high rates of family conflict, relationship breakdown, parental mental illness and child maltreatment.<sup>33</sup> Only 38% lived in a nuclear family with both biological parents. Over 35% had behavioural disorders (including ADHD). Nearly 14% were diagnosed as autistic. Nearly 40% reported child abuse or exposure to domestic violence, and in almost a fifth of the cohort, child protection services had been involved.

In another Westmead study,<sup>34</sup> the researchers found that children with gender dysphoria were mostly classified as high-risk in terms of their attachments to caregivers. The gender dysphoric children had a high rate of unresolved loss and trauma. The researchers found no differences between children with gender dysphoria and children with mixed psychiatric disorders in terms of their attachment patterns. Findings in gender clinics elsewhere are similar.<sup>35</sup>

A substantial proportion of children and young people seen at gender clinics are on the autism spectrum. A leading study of 204 children or adolescents seen at the Gender Identity Clinic in Amsterdam, published in 2010, indicated that the rate of autism diagnoses among those with

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Compared With Their Peers' (2018) 141(5) *Pediatrics* e20173845. For earlier evidence, see Madeleine Wallien, Hanna Swaab and Peggy Cohen-Kettenis, 'Psychiatric Comorbidity Among Children with Gender Identity Disorder' (2007) 46(10) *Journal of the American Academy of Child and Adolescent Psychiatry* 1307; Norman Spack et al, 'Children and Adolescents with Gender Identity Disorder Referred to a Pediatric Medical Center' (2012) 129(3) *Pediatrics* 418.

<sup>31</sup> This is often presented as the reason for depression and self-harming among gender dysphoric adolescents. In Australia, see e.g. Michelle Telfer et al, 'Transgender Adolescents and Legal Reform: How Improved Access to Healthcare was Achieved Through Medical, Legal and Community Collaboration' (2018) 54(10) *Journal of Paediatrics and Child Health* 1096.

<sup>32</sup> Kaltiala-Heino et al (above, n 30); Gemma Witcomb et al, 'Body Image Dissatisfaction and Eating-Related Psychopathology in Trans Individuals: A Matched Control Study', (2015) 23(4) *European Eating Disorders Review* 287.

<sup>33</sup> Kasia Kozłowska et al, 'Australian Children and Adolescents with Gender Dysphoria: Clinical Presentations and Challenges Experienced by a Multidisciplinary Team and Gender Service' (2021) 1(1) *Human Systems: Therapy, Culture and Attachments*, 70.

<sup>34</sup> Kasia Kozłowska et al, 'Attachment Patterns in Children and Adolescents with Gender Dysphoria', (2021) 11 *Frontiers in Psychology* 582688. See also Guido Giovanardi et al, 'Attachment Patterns and Complex Trauma in a Sample of Adults Diagnosed with Gender Dysphoria', (2018) 9 *Frontiers in Psychology* 60.

<sup>35</sup> See e.g. Riittakerttu Kaltiala-Heino et al, 'Gender Dysphoria in Adolescence: Current Perspectives' (2018) 9 *Adolescent Health, Medicine and Therapeutics*, 31.

gender dysphoria were about ten times as high as the general population.<sup>36</sup> A study in Finland found that 26% of the 47 young people seen in the gender clinic had been diagnosed as being on the autism spectrum.<sup>37</sup> This strong association between autism and gender dysphoria has been found in other studies.<sup>38</sup>

Prof. Hilary Cass, whose review of the Tavistock Clinic in London led her to recommend its closure,<sup>39</sup> made it clear that social transition of children is not a neutral act. It may be very harmful, concretising a gender identity that may be transient or the result of mental health problems that the child has.

Social transition seems to make it more likely that a child or young person will embark upon a medical pathway that some will come, eventually, to regret deeply. There seems to be a growing number of young women in particular, who are detransitioning after making life-changing alterations to their bodies that they now deeply regret.<sup>40</sup> Queensland has the highest rate of prescription of puberty blockers in Australia.<sup>41</sup> These medications used to be regarded as fully reversible and safe, but the evidence does not now support that proposition for as long a time as they are administered, off-label, for the purposes of treating gender incongruence.<sup>42</sup> They have devastating effects on bone density,<sup>43</sup> and the effect on the developing adolescent

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<sup>36</sup> Annelou de Vries et al, 'Autism Spectrum Disorders in Gender Dysphoric Children and Adolescents' (2010) 40(8) *Journal of Autism and Developmental Disorders* 930.

<sup>37</sup> Riittakerttu Kaltiala-Heino et al, (n 30).

<sup>38</sup> Doug VanderLaan et al, 'Do Children With Gender Dysphoria Have Intense/Obsessional Interests?' (2015) 52(2) *Journal of Sex Research* 213; Anna Van Der Miesen, Hannah Hurley & Annelou de Vries, 'Gender Dysphoria and Autism Spectrum Disorder: A Narrative Review' (2016) 28(1) *International Review of Psychiatry* 70; Vicky Holt, Elin Skagerberg and Michael Dunsford, 'Young People with Features of Gender Dysphoria: Demographics and Associated Difficulties' (2016) 164 *Clinical Child Psychology and Psychiatry* 108.

<sup>39</sup> See 'Letter to NHS England – July 2022' and other publications of the review: <https://cass.independent-review.uk/publications/>.

<sup>40</sup> There are varying explanations for this. Jack Turban et al., 'Factors Leading to "Detransition" Among Transgender and Gender Diverse People in the United States: A Mixed-Methods Analysis', (2021) 8 *LGBT Health* 273; Pablo Expósito-Campos, 'A Typology of Gender Detransition and Its Implications for Healthcare Providers', (2021) 47 *Journal of Sex & Marital Therapy* 270; Elie Vandebussche, 'Detransition-Related Needs and Support: A Cross-Sectional Online Survey', (2021) 69 *Journal of Homosexuality* 1602; Lisa Littman, 'Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners', (2021) 50 *Archives of Sexual Behavior* 3353; Lisa Marchiano, 'Gender Detransition: A Case Study', (2021) 66 *Journal of Analytical Psychology* 813. For data on the substantial proportion of detransitioners in military families in the United States, see Christina Roberts et al, 'Continuation of Gender-affirming Hormones Among Transgender Adolescents and Adults', (2022) *Journal of Clinical Endocrinology and Metabolism* (DOI: 10.1210/clinem/dgac251).

<sup>41</sup> Dianna Kenny, 'Number of children enrolled, receiving puberty blockade and cross sex hormones in five gender clinics in Australia, 2014-2021' (paper on file with the author).

<sup>42</sup> For an introduction to the issues, see <https://www.nytimes.com/2022/11/14/health/puberty-blockers-transgender.html> (November 14th 2022).

<sup>43</sup> Michael Biggs, 'Revisiting the effect of GnRH analogue treatment on bone mineral density in young adolescents with gender dysphoria' (2021) 34(7) *Journal of Pediatric Endocrinology and Metabolism* 937.

brain is unknown. Puberty blockers in childhood followed by cross-sex hormones in adolescence will almost invariably lead to infertility and loss of sexual function, as well as other long-term adverse health effects.

The Queensland government has not, as yet, indicated that it is aware of the growing international consensus that psychotherapeutic approaches should be the norm for minors under 16 who experience gender incongruence. Indeed, it has passed controversial legislation to criminalise the provision of so-called ‘conversion therapies’ for children and young people suffering gender incongruence.<sup>44</sup> While the legislation is less than clear,<sup>45</sup> it will have a chilling effect on the provision of the very same therapies that are now being mandated as the norm in Sweden<sup>46</sup> and Finland.<sup>47</sup> They will soon be the norm in Britain,<sup>48</sup> and probably Spain.<sup>49</sup> It is not at all certain indeed, that the sensible approach to gender dysphoria diagnosis and treatment recommended by the National Association of Practising Psychiatrists in Australia<sup>50</sup> would be lawful in Queensland even though it reflects a mainstream medical approach of comprehensive assessment and psychotherapeutic treatment. The Association advises:<sup>51</sup>

Individualised psychosocial interventions (e.g., psychoeducation, individual therapy, school-home liaison, family therapy) should be first-line treatments for young people with gender dysphoria/incongruence. Exploratory psychotherapy should be offered to all gender-questioning young people to identify the many potential sources of distress in their lives in addition to their gender concerns. Clinicians can apply a range of psychological interventions (e.g., supportive psychotherapy, CBT, dynamic psychotherapy, and family therapy) to assist the young person clarify and resolve these contributory factors.

It is hard to think of a more devastating way of concretising a transient gender identity than to give it the ultimate official recognition by allowing for a change in the birth certificate to record the child as having a sex other than their natal sex. The government needs to look at this issue

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<sup>44</sup> Section 213F of the *Public Health Act 2005* (Qld).

<sup>45</sup> P Parkinson, & P Morris, ‘Psychiatry, Psychotherapy and the Criminalisation of ‘Conversion Therapy’ in Australia’. (2021) 29(4) *Australasian Psychiatry* 409.

<sup>46</sup> The policy statement is available at: <https://segm.org/sites/default/files/Karolinska%20 Policy Statement English.pdf>.

<sup>47</sup> See <[https://palveluvalikoima.fi/documents/1237350/22895008/Summary\\_minors\\_en.pdf/aaf9a6e7-b970-9de9-165c-abadfae46f2e/Summary\\_minors\\_en.pdf](https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en.pdf/aaf9a6e7-b970-9de9-165c-abadfae46f2e/Summary_minors_en.pdf)>.

<sup>48</sup> The Government accepted the recommendation from Prof. Cass to close the Tavistock and is rolling out a mental health-focused approach across the country. See also <https://www.theaustralian.com.au/science/calls-to-review-transgender-treatment-for-kids-after-british-tavistock-clinic-is-closed/news-story/2b826d34b5d11063cf541885ebcd7bbc> (July 29th 2022).

<sup>49</sup> <https://cne.news/artikel/1949-spanish-socialists-suddenly-oppose-trans-bill>.

<sup>50</sup> <https://napp.org.au/2022/03/managing-gender-dysphoria-incongruence-in-young-people-a-guide-for-health-practitioners-2/>.

<sup>51</sup> *Ibid.*

afresh, not through the lens of LGBTQ+ advocacy groups, but as a very serious medical issue which is not being properly regulated.

My knowledge of what is going on gives me no reason for confidence that the prescription of powerful and life-altering drugs is occurring only after rigorous assessment or careful evaluation of the reasons why the child or young person may be wanting to embark upon this lifelong medical treatment pathway. On the contrary, my fear is that the practice of gender medicine in this country is going to emerge as the biggest medical scandal in Australia of the last 100 years. Queensland taxpayers will, within a few years, be paying the compensation bills for many plaintiffs who will bring justified actions based in negligence and failures to secure informed consent to life-changing treatments that irreversibly destroy their fertility, impair their sexual function, damage their health and reduce their quality of life. In my view, with this Bill that gives effect to unscientific ideas and allows for transient gender identities to be concretised, the Palaszczuk government is jumping enthusiastically on board a runaway train which is rapidly heading for a cliff.

## **What amendments are necessary?**

### *The need for a full inquiry*

With respect, this Bill is being rushed through without proper consideration. It was introduced in December and submissions close on 11<sup>th</sup> January. This launch of a Bill and a parliamentary committee review during the Christmas season and January holiday period creates the perception that the process has been designed to ensure the Bill does not attract much attention.

Prior to pushing through this Bill, the Attorney-General needs to refer to the Law Reform Commission or to a public inquiry consideration of all the effects of the proposed section 47 for Queensland laws where a distinction between being male or female arises. The relevant inquiry should be asked to make recommendations for how balances are to be found with women's rights and their need for safety as well as for the sensible governance of a society in which biological sex still matters for a multitude of reasons. Such an inquiry should also consider the implications for the practices of all government departments and public entities if section 47 is enacted. Further, it should consider what the legal consequences are likely to be in other Queensland laws and governmental practices if someone registers themselves as, say, of an 'agender' sex. The problems of this are noted above.

If, in the meantime, the Government wants to press ahead with its other changes to the law on registration of births, deaths and marriages, Part 5 should be removed from the Bill, as should Part 12 to the extent that it amends the *Anti-Discrimination Act 1991*.

### *A better approach*

In my view, the optimal outcome in terms of public policy would be for the government to work on a separate Bill, allowing for registration of gender identity as a matter that does not involve changes to the birth certificate. A simple reform would be to say that the registration

should be for the purposes of section 58(3)(c) of the *Electoral Act 1992*, (Electoral Commission to record details of a person's 'sex' in the electoral roll); and the *Photo Identification Card Act 2008*, and any other relevant laws that apply to registration of sex by government entities.

Children under 18 should not be permitted to seek a registration of a gender identity certificate, but otherwise, access to such registration of identity could be quite liberal so long as its legal effects are limited to those that do not have an adverse effect on the rights and freedoms of others. An application should contain a letter of support from a qualified mental health professional to the effect that the person has been living as another sex for at least 12 months, expects to continue in that gender identity for the rest of his or her life, and does not have a mental health disorder that impairs his or her capacity to make this decision. These are reasonable requirements, and do not have the mountain of either intended or unintended consequences that allowing for changes of sex on birth documents will entail if this Bill is enacted.

If the Government does push ahead with Part 5 in its present form, it should at the very least provide that 'sex' is defined for the purposes of the *Anti-Discrimination Act* in such a way as to exclude females by registration under Part 5 of this legislation, and to make clear that it is not discrimination on the basis either of gender identity or sex characteristics to exclude someone who is a natal male from female facilities or services.

**Prof. Patrick Parkinson AM**

**December 22 2022**