

Births, Deaths and Marriages Registration Bill 2022

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Submission to Inquiry into the Births, Deaths and Marriages Registration Bill 2022

I write this submission in my personal capacity as a historian who specialises in the history of LGBTIQ+ people in Australia. I have been chief investigator on two Australian Research Council-funded projects relevant to this inquiry: one examining the history of transgender people in Australia, and the other on the history of LGBTIQ+ people in the Australian Defence Force. My research draws from a mixture of archival documents, personal archives, old media reports and, most importantly, oral history interviews. For the project on LGBTIQ+ military service, I interviewed 10 trans Defence members, past and present; for the larger project on Australian trans history, I have interviewed 104 trans people along with 19 health practitioners. I have published the results of these projects in numerous journals, book chapters, books and research reports, and I have a book forthcoming with Melbourne University Press in September 2023 tentatively titled *Transgender Australians: A History since 1910*.

As a historian, I would like to take this opportunity to draw the committee's attention to some of the important legal and political histories of trans people in Queensland and Australia. This long history shows that calls for birth certificate reform are not some new fad. **Trans people have advocated for birth certificate reform for over 40 years, and in Queensland specifically there has been support for birth certificate changes without requiring gender affirmation surgery going back at least 30 years.** It is long past time that Queensland adopt these birth certificate reforms to make it easier for trans and gender diverse people to be recognised as their authentic selves.

Questions about the legal recognition of trans people emerged sporadically in the 1970s across Australia. As early as 1976 there was a petition tabled in the Victorian parliament calling for trans people to be allowed to change their sex marker on their birth certificates. In 1978, the Family Law Council published a paper entitled "Birth Certificate Revision of the Sexually Reassigned." The paper did not make any specific recommendations but noted that under Australian laws and regulations where gender mattered, recognition came back to the birth certificate, and this was under state and territory jurisdiction.

From May 1979 through the end of 1985, "Birth Certificate Revision for the Sexually Reassigned" was a standing agenda item for the Standing Committee of Attorneys General. The group aimed to develop a consistent national approach to gender recognition and birth certificate reform. New South Wales, Victoria and South Australia came close to an agreed approach in 1985, but in the end only South Australia passed legislation in 1988 allowing trans people who had gender affirmation surgery to obtain a certificate of recognition in their affirmed gender – the first Australian jurisdiction to do so.

In Queensland, trans activists worked closely with the gay and lesbian community throughout the 1980s to push for the decriminalisation of homosexuality as well as the introduction of anti-discrimination protections. The coalition was successful at securing these reforms for gay and lesbian Queenslanders by 1991, but anti-discrimination protections for trans people fell by the wayside.

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Birth certificate reform was also high on trans activists' agenda in Queensland. In 1988 the Sunshine Coast-based trans activist Kerrie Petrie founded the Queensland Collective of Australian Transsexuals. Petrie moved to Brisbane, and in October 1990 she re-founded the group with Toye de Wilde. Sometime in 1992, the group changed its name to what it is today: the Australian Transgender Support Association of Queensland (ATSAQ). For the next decade ATSAQ lobbied for anti-discrimination and birth certificate reform, along with a raft of other issues affecting trans people in Queensland.

Early on ATSAQ leaders pushed for self-identification for birth certificates. In August 1992 Kerrie Petrie prepared an ATSAQ submission to an inquiry led by the Electoral and Administrative Review Commission into a proposed Human Rights Bill. Petrie noted that people who did not desire, could not afford, or were medically ineligible for gender affirmation surgery should still be able to change their birth certificates. Petrie asserted that "Inability to gain a birth-certificate is the beginning of a chain of disadvantages to be endured by transgenderists."¹ The final report endorsed Petrie's recommendation, noting: "The Commission also believes that recognition of an individuals' right to determine their own sex is paramount and should not necessarily be dependent on a willingness to suffer onerous medical intervention." It recommended "that transsexuals' reassigned sex and transgenderists' affirmed gender identity be legally recognised in Queensland, either through a legislative or administrative scheme that does not necessarily rely on chromosomal, genital or gonadal evidence, with due regard given to psychological identity."² The Queensland government did not act on this recommendation. ATSAQ under the leadership of Gina Mather and Kristine Johnson would continue to lobby for both anti-discrimination and birth certificate reform.

Beginning with the ACT in 1991, almost every Australian jurisdiction passed legislation to facilitate birth certificate changes for trans people who had gender affirmation surgery. In late 2002, the Beattie government introduced a bill to add gender identity as a protected category in Queensland's *Anti-Discrimination Act* and to amend the *Births, Deaths and Marriages Act* so that trans people who had gender affirmation surgery could change their birth certificates. The legislation passed in early 2003, making Queensland the penultimate jurisdiction to implement this reform (Victoria was the last to do so, in 2004).

Trans activists continued to lobby across the country to facilitate self-identification for legal recognition. In March 2009 the Australian Human Rights Commission published a report entitled *Sex Files: The legal recognition of sex in documents and government records*. The *Sex Files* recommendations all centred on making it easier for people to update their sex and gender markers on legal documents – including removing the requirement for medical or surgical interventions and shifting towards self-identification. The report also recommended that gender categories be updated to allow people to select "unspecified", rather than forced into the male/female binary.³ A major breakthrough was in 2011 when the Foreign Minister, Kevin Rudd, changed passport rules to permit self-identification of gender and to elect the non-binary option "X".

The first jurisdiction to introduce self-identification and non-binary gender markers on birth certificates was the ACT in 2014. Since then, all other jurisdictions except for Queensland, NSW and WA have followed suit (though just before Christmas 2022, the WA government flagged their intention to amend birth certificate legislation as well). In 2019 Tasmania and Victoria passed legislation that went further than the earlier reforms in the ACT, South Australia and NT. In those two jurisdictions, individuals do not need

¹ Kerrie Petrie, "A Submission to the Electoral and Administrative Review Commission Concerning Transsexual and Transgenderist Issues, August 1992, by The Australian Transgenderists Support Association of Queensland," 14 August 1992.

² Queensland Electoral and Administrative Review Commission, "Report on the Review of the Preservation and Enhancement of Individuals' Rights and Freedoms," (Brisbane: August 1993), 378.

³ Australian Human Rights Commission, *Sex Files: The Legal Recognition of Sex in Documents and Government Records* (Canberra: Australian Human Rights Commission, 2009).

medical or psychological evidence to change their gender marker. Moreover, individuals may elect whatever gender marker they wish rather than use the generic “non-binary”, “unspecified” or “non specific”. This best practice approach would be welcomed in Queensland as well.

In every jurisdiction that has reformed the law around birth certificates, conservatives have railed against the reform, claiming that it was dangerous, part of some woke agenda, and/or represented a campaign to destroy society’s gender norms. Yet, in every jurisdiction that has introduced reform, the sky has not fallen. The reality is that this reform has no effect whatsoever on the cisgender majority – those people whose gender identity is the same as their sex assigned at birth. It has not led to more assaults on cis women or destroyed schools or women’s sport – all of which are furrphies which anti-trans people use to scaremonger. All the reform has meant is that trans and gender diverse people whose sex marker is not reflective of their authentic self can change it on their birth certificate and be legally recognised in their affirmed gender. This is such an important reform that can have enormous consequences for their resilience, mental health, not to mention legal hurdles where identification is important.

I hope that the committee finds this brief historical overview to be of use, and I would be happy to provide further detail on request.

Yours sincerely



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