

# BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 2022

Dear Committee Secretary,

I am making this submission in my capacity as a Community Worker in Queensland for the past 20 years, including some extensive experience and research in the area of past adoption practices. I was employed at a federally funded forced adoption support service following the National Apology for Past Forced Adoption Practices and Senate Inquiry into Past Adoption Practices. This work included working with those who were adopted or had lost a child to adoption, but also those who had been affected by donor conception or surrogacy. These cohorts experience significant identity issues and barriers to finding and connecting with their family origins. In the case of mothers or fathers who lost children to these practices, significant trauma was experienced in almost all cases and ongoing systemic issues occurred in finding and contacting their child. Many mothers from this era have been advocating for over 50 years against the state to see legislation changed to allow them to find and be recognised as legitimate mothers of their own children.

I also hold a Graduate Diploma in Psychology and Master of International Community Development – including a 20,000 word research dissertation into the political context of International and Domestic adoption in Australia. In addition to this I have a lived experience of adoption and have a transgender step-child, both relevant to this legislation.

## Adoption and Birth Certificates

As I suspect this inquiry will attract many submissions from the adoption community, the question must first be asked as to why this piece of legislation is so concerning for this cohort – after all, isn't the legislation about making the law fairer for gender diverse people and not about adoption issues at all?

Birth Certificates and Birth Certificate Legislation is a core issue for people who are affected by adoption, donor conception and surrogacy. Australian Institute of Health and Welfare Research which provided the scaffolding for the Federal Apology, explored in the detail the issues for people affected by Past Adoption practices – an estimated 250,000 adoptions since the late 1920's. <sup>1</sup> *Past adoption experiences: National Research Study on the Service Response to Past Adoption Practices*<sup>2</sup> contains 53 references to birth certificates and detail the ongoing issues experienced by those affected by birth certificates that have been cancelled, contain missing information, contain false information, are not able to be accessed, and a range of other issues that cause ongoing pain for those affected. These issues include intergenerational impacts such as grandchildren seeking the genealogical truth about who they are. Fathers in particular were omitted from birth certificates<sup>3</sup> making it almost impossible for adoptees to find their father and paternal family. To date, there are many thousands of adoptees in Australia who do not know they are adopted or become late

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<sup>1</sup> Inglis, K. (1984). *Living mistakes: Mothers who consented to adoption*. North Sydney, NSW: Allen and Unwin.

<sup>2</sup> [https://aifs.gov.au/sites/default/files/publication-documents/rr21\\_0.pdf](https://aifs.gov.au/sites/default/files/publication-documents/rr21_0.pdf)

<sup>3</sup> <https://www.abc.net.au/religion/ej-clarence-fathers-ignored-on-adoptee-birth-certificates/14096306>

discovery adoptees. This is because their birth certificate contains the names of their non-biological adoptive parents with absolutely no reference whatsoever to their original birth details.

Those who have been donor conceived or born through surrogacy arrangements report similar experiences to those affected by adoption with regard to inconsistencies with birth certificates.

These ongoing challenges experienced by the adoption community and those affected by donor conception have led to decades of advocacy over many decades, even after the State's Forced Adoption Apology in 2012. While other states have introduced "integrated birth certificates" to record both historical biological origins and subsequent adoption information, Queensland remains defiant in this regard and refuses to make any changes to BDM legislation. The Queensland Government however, seems to have been proactive in responding to the more recent needs of the gender diverse community as evidenced in the Births, Deaths and Marriages Registration Bill 2022 (BDM Bill 2022).

But the adoption community is interested in this bill, not just because of its own plight, but because their plight goes to the heart of the core issues of identity, origins, truth telling, biology, culture and family bonds for all people. Their experience and trauma teaches us about the intergenerational consequences that occur when the state sanctions the removal of these core elements of personhood from an individual. And especially the consequences that occur, when women are omitted the status of motherhood for the most primal connection that humans can experience between a mother and her child. It is for this reason that the adoption community finds this legislation so offensive. And it is for this reason that I also oppose this legislation.

### **"Birth" Parents and the Bill**

The terms "birth parent" and "birth mother" are offensive to mothers impacted by past adoption practices. At the Federal Forced Adoption Apology at Parliament House in 2013 when Tony Abbott used the term in front of the hundreds that attended he was openly rebuked during his speech.<sup>4</sup> The former Chair of the Forced Adoption Implementation Working Group, Former Family Court Judge and Professor of Law Hon. Nahum Mushin, explains the following during a presentation in 2018:

*"The Reference Group consisted of several mothers, adoptees, a father and the three senators and a member of the House of Representatives referred to earlier. Our first task was to consider the language which we should use in the apology. We readily adopted the language of the Senate committee in recognising that the person who gave birth to the child is the child's mother and that no adjective should precede that word. Similarly for father".<sup>5</sup>*

The term "birth parent" is offensive to mothers affected by adoption because it denies their legitimate status as the mother of their own child. In addition to this, terms like "birth parent" and "birth mother" reduce a woman's role to the act of giving birth, denigrating the amazing qualities that women and mothers have beyond the birthing act, and additionally valuing the importance of the primal bond between Mother and Child in the womb. The term "birth parent" has been criticised by feminists for diminishing the importance and unique qualities of women and motherhood.

The BDM Registration Bill 2022 diminishes the role of mothers by replacing the term "mother" with "birth parent". Motherhood must be valued for not only women everywhere but for children everywhere. Only a biological Mother can carry a baby in the womb and form a vital bond between

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<sup>4</sup> <https://www.youtube.com/watch?v=OAZywwaLR-o>, <https://independentaustralia.net/politics/politics-display/risky-tony-abbott-and-the-birth-parents-5148>

<sup>5</sup> <https://www.jigsawqueensland.com/5th-anniversary-national-apology>

mother and child that lays the building blocks for attachment. It is one of the most unique and powerful (and in underdeveloped countries - dangerous) things a woman can do. Biological Fathers, while having a different experience of attachment with children, cannot carry a child in the womb and give birth to a child. The term "Birth Parent" is degrading towards women and even more so for mothers who have lost children to adoption.

Additionally, the legislation adds insult to injury to women and children, by omitting any definition of the term "birth". This is quite bizarre for legislation about "birth" registrations. Again, the experience of people impacted by adoption is that the state has sanctioned the removal of the Mother who gave birth to them off their birth certificates and replaced them with people who they are not biologically related to. This has caused huge amounts of pain for adopted people who rightly claim their birth certificate contains false information, impacting upon identity issues and trust issues. Additionally, there are those who don't even know they have been adopted and don't know their biological origins due to false and misleading information on their birth certificate, who live with an ongoing sense that something is "not quite right".

By omitting any definition of the term "birth" and by not defining the one who gives birth as a "mother", it leaves birth certificates open to a wide range of false information sanctioned by the state. It creates the same issues experienced by past adoption over and over again, for future generations. The Commonwealth and State Government have apologised for past adoption practices with a vow to "never let anything like this happen again". But the reality is – if the State plans to issue birth certificates without a biological Mother and Father listed as such and the factual details about a birth recorded - it is letting the same thing happen again. It will be a formal apology to those affected in the future.

### **Humans Rights and Identity**

The BDM Bill 2022 is a breach of human rights legislation.

Article 8 of the Convention on the Rights of the Child<sup>6</sup> states:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Section 26 of the Qld Human Rights Act 2019<sup>7</sup> says that:

1. Families are the fundamental group unit of society and are entitled to be protected by society and the State.
2. Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.
3. Every person born in Queensland has the right to a name and to be registered, as having been born, under a law of the State as soon as practicable after being born.

A registration of birth and attached birth certificate supports the fundamental rights of the child to preserve their identity, including their family relations. This registration is a child's right (not a

<sup>6</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>7</sup> <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-of-families-and-children>

parent's right), is for their best interest and the state must provide immediate support to restore some or all of the elements of his or her identity when these have been deprived.

In order to maintain the right to preserve a child's identity, and maintain all elements of their identity, their birth registration and birth certificate must include:

- The Child's name
- The biological Mother's name
- The biological Father's name
- The place of birth for nationality purposes
- The child's sex (The CRC stipulates *his or her identity* and is based on the assumption that identity is at the very least biological)

However the BDM Bill 2022 removes essential elements of identity and is in breach of human rights legislation. Such breaches may include:

- The changing of a child's name retrospectively
- Changing a child's sex retrospectively<sup>8</sup>
- Not registering a "mother" in cases of father/father and parent/parent
- Not registering a "father" in cases of mother/mother and parent/parent
- Not registering a "mother" or a "father" in cases of parent/parent
- Not registering the genetic familial origins of a child
- Not registering a child's sex at all<sup>9</sup>
- Not having a birth certificate/registration that is an accurate historical record of a child being born
- A range of other circumstances where essential elements of identity are missing, false or not identified correctly.

People affected by adopted, donor conception and surrogacy know all too well the consequences that occur when their identity has not been protected, including the removal of their biological family's details from their birth certificate. Much of my work in supporting people affected by adoption over the years was about finding the "missing piece" in their life. In all of these situations, people weren't looking for a "sperm donor" or "egg donor" and even if they initially indicated they "just wanted medical information" this was often a smokescreen for what they were really looking for: A mother. A father. Someone who looked like them and walked like them. Someone with their personality traits and similar interests. Someone with the same ethnic heritage. Something that their non-biological family could not provide no matter how loving and supportive they were. And as their story unfolded they would often find much more than this – biological grandparents, sisters, brothers, nieces and nephews. A culture, history and family group deprived to them. Primal wounds occur from birth when children do not have access to these primary family relations or at the very least be able to identify who they are on birth records. Families are complex and will not always tell the truth about origins but a birth certificate should at the very least aim to reflect the plain historical and actual truth of birth and identity with the support of the state.

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<sup>8</sup> See Footnote 10

<sup>9</sup> The explanatory notes about this legislation mentions cases when a child is born intersex. This is an extremely rare condition that should not be used as the basis for general public policy. Intersex Human Rights Australia (<https://ihra.org.au/16601/intersex-numbers/>) supports a statistical figure of 1.7% of the general population, however 1.5% of this figure is Late-onset CAH diagnosed much later in life. Likewise other conditions like Vaginal Agenesis is typically diagnosed during puberty. Actual circumstances when a baby is born with indeterminate genitalia is as low as 0.1 – 0.2%. Regardless, BDM legislation should allow for this extremely rare condition to be registered as neither male or female, but intersex rather than omit sex information altogether.

The BDM Bill 2022 removes these essential elements of identity, blocking not only a child's right to their identity but their children and their children's children. This is not in children's best interest and has major intergenerational impacts as we are already aware from the experience of past adoption practices and donor conception. Genealogy is important to people because they want to *know who they are*. Significantly altering birth registrations and certificates prevents people from knowing who they are, their true origins, culture, heritage and causes primal separation<sup>10</sup> both in life and on paper.

All children have a right to a birth certificate that states their true familial origins. For all people – whether adopted, donor conceived, birthed by a surrogate or the children of gender diverse people. This is a basic human right that the BDM Bill 2022 breaches.

### **Integrated birth certificates – A Solution**

The recommendations of the Commonwealth Senate Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices<sup>11</sup> include the following:

#### *Recommendation 13*

12.33 *The committee recommends that*

***all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and***

*jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers.*

#### *Recommendation 14*

12.36 *The committee recommends that:*

***All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and***

*Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.*

Integrated birth certificates are a form of birth certificate that includes information about an adopted person's biological family and adoptive family into one legal document.

Integrated birth certificates have been/are currently being introduced in NSW, Victoria and South Australia. However ongoing meetings and advocacy since the senate inquiry findings in 2012 (and decades before) to the Queensland Government about introducing these birth certificates have been met with defiance to change anything in this regard. It is offensive to the adoption community to discover that the Queensland Government can introduce general legislation like the BDM Bill 2022 in order to meet the needs of one cohort in the community and yet continually ignore the requests of another who have the backing of a Federal Senate Inquiry, National Apology and State Apology across every jurisdiction in Australia.

Again, the experience of adopted people as those affected by BDM legislation and removal of identity can inform solutions for the problems inherent in the BDM Bill 2022. Integrated birth certificates can be introduced to respond to both the adoptive and gender diverse communities. For example, an

<sup>10</sup> See "The Primal Wound: Understanding the Adopted Child", Nancy Verrier, Lafayette, 1993.

<sup>11</sup> [https://www.aph.gov.au/parliamentary\\_business/committees/senate/community\\_affairs/completed\\_inquiries/2010-13/commcontribforforcedadoption/report/index](https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/commcontribforforcedadoption/report/index)

integrated birth certificate can detail the biological mother and father in one section and also detail the subsequent adoptive parents in another section. Likewise, an integrated birth certificate can detail the biological mother and father of a child in one section and also detail subsequent sex transition changes or non-biological parents in another section.

This type of birth certificate retains the child's true historical identity and biological familial origin, eliminating any breach of human rights for the child. It contains information about the Mother who carried them in the womb and gave birth to them, honouring the unique and important role of womanhood and motherhood. A biological father is recorded so the child as an adult, and further generations can know and find their paternal identity. The sex at birth should also be recorded, also retaining the historical identity of the child and genealogical record. Yet at the same time an integrated birth certificate can also detail subsequent details that also inform identity – without erasing the former. These may include details of an adoption or same sex parents that are not biologically related to a child. It may contain information about how the subsequent parents identify – such as father/father, mother/mother or parent/parent. It may also contain details about changes in sex – a matter I have not addressed in this submission but is equally challenging when it comes to identity and retaining the historical record for future generations.<sup>12</sup>

The solution to address the challenges experienced by both the adoptive and gender diverse communities, with the primary aim being the best interest and identity of the child, is not through the proposed BDM Bill 2022 changes. It is through integrated birth certificates that record both the biological truth of a child's birth and subsequent non-biological parental information after the child's birth.

## Conclusion

Every child has the right to a legal birth certificate that states their true historical and biological identity. Past adoption practices in Australian history have taught us that there are severe consequences when this doesn't occur. While trying to be more accepting of the gender diverse community, the BDM Bill 2022 repeats the same mistakes of the past through the issuing of state sanctioned birth registrations and certificates containing misinformation. Past adoption practices have taught us that cultural forces mixed with bad public policy does not serve the best interests of the child in the short or long term.

The legislation is not only offensive to mothers affected by adoption, but an offense to all who uphold basic feminist values. Replacing the rich and affectionate word "Mother" with "Birth Parent" is derogatory to women. Omitting the definition of birth and defining a birth parent to be "the person, of any sex, who gave birth to the child" is equally offensive to all who value women around the globe and the unique challenges they face as mothers of children. Even within the proposed term, the definition is false because someone of the male sex cannot give birth to a child<sup>13</sup>.

Human Rights law upholds the right of the child to preserve his or her identity, including nationality, name and family relations. The BDM Bil 2022 removes core elements of identity and family relations from birth certificates – the most crucial identity document that exists for a child. A biological

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<sup>12</sup> The BDM Bill 2022 seems to thoroughly confuse sex and gender. These are two very different concepts. Gender Dysphoria occurs when someone's perceived gender is incongruent with their biological sex. This is a psychogenic condition, not a biological condition needing a change of registered historical birth record and certificate. Likewise, the definition of a "birth parent" in the bill being "the person, of any sex, who gave birth to the child" is a statement that contradicts basic fact. While it can be said that a person of any identified gender can give birth to a child, someone of any sex cannot. Sex is a biological term and only someone of the female sex can give birth to a child. BDM changes that erase historical, objective and biological truth is highly problematic and generally sets a worrying precedent in public policy and legislation.

<sup>13</sup> For more about the difference between sex and gender see <https://psychcentral.com/health/sex-vs-gender#what-is-gender>

mother, biological father, sex of the child, name and nationality must be recorded not for the parent's sake – but for the child's sake to maintain core elements of their right to identity.

Instead of the proposed changes in the BDM Bill 2022, Integrated birth certificates are a solution to the challenges faced by both the gender diverse community and adoption community. For the adoption community it is a recommendation of a Federal Senate Inquiry over 10 years ago. The Queensland Government's refusal to address this recommendation, while introducing the BDM Bill 2022 for another cohort is discriminatory and negligent. Birth certificates which contain both the biological mother and father, as well as subsequent adoptive and other forms of non-biological parents including same sex parents, provide an accurate record of a child's birth and retains the elements of identity and origins that satisfy the human rights of the child. The claim that "there are no alternative ways to achieve the policy objectives" is incorrect.

"We thought we were doing the right thing" is often used as an excuse for almost 100 years of legislative and societal forces that fed past adoption practices. We now know that society and Government were wrong and denied thousands of people access to their family origins and true identity. If this Bill is passed, in 40 or 50 years time when a future generation comes looking for the truth about themselves and finds the state sanctioned the falsification of their birth certificates, "We thought we were doing the right thing" will not be good enough. We need to learn from the past now, stop the BDM Bill 2022 and introduce integrated birth certificates that contains factual details of a child's true identity.

Kind regards,

Chris Mundy

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