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Legal Affairs and Safety Committee  
Parliament House  
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Wednesday 11 January 2023

To the Legal Affairs and Safety Committee

**Submission re the Births, Deaths and Marriages Registration Bill 2022**

Thank you for the opportunity to provide this short submission to assist with the Committee's consideration of the Births, Deaths and Marriages Registration Bill 2022, and related Regulations.

Just.Equal Australia is a national organisation advocating for the rights of lesbian, gay, bisexual, transgender, intersex, asexual and queer (LGBTIQ+) Australians. We conduct regular consultations and surveys with our communities to determine their priorities. Those consultations inform this submission.

Just.Equal Australia welcomes key elements of this legislative package.

In particular, we welcome the removal of the requirement for transgender people in Queensland to have genital surgery in order to access identity documentation, including birth certificates, which reflects their gender identity.

This move is long overdue, and will leave NSW as the only jurisdiction in Australia which still imposes this requirement,<sup>1</sup> despite the fact many trans and gender diverse people do not wish to have this surgery, while others cannot afford to because it is financially prohibitive.<sup>2</sup>

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<sup>1</sup> Western Australia continues to require 'physical' treatment of some kind, which can include hormone therapy, although the WA Government has recently committed to removing this barrier.

<sup>2</sup> The removal of out-of-pocket costs for gender-affirming health services, including but not limited to surgery, remains a necessary pre-condition to the full enjoyment of human rights for trans and gender diverse Australians.

We also welcome the decision by the Queensland Government not to adopt the approach of jurisdictions like South Australia, the Australian Capital Territory and the Northern Territory in requiring trans and gender diverse people to include documentation from psychologists or counsellors supporting their application to update their gender identity.

Psychologists and counsellors should not act as legal gate-keepers to trans and gender diverse people affirming who they are.

Just.Equal Australia further welcomes the introduction of an ability for people to nominate gender identities other than male or female – for example, non-binary – on their identity documentation, as well as provisions which make the inclusion of sex on birth certificates ‘opt-in’ only.

Finally, we welcome the decision to allow people aged 16 and 17 to apply independently to update their birth certificates, and the inclusion of a process for children aged 12 to 15 to apply via the courts where no parent or guardian supports their application (allowing trans and gender diverse young people to affirm their identity even where their family may reject them because of transphobia).

Nevertheless, Just.Equal Australia wishes to make the following two criticisms of aspects of the Bill as introduced:

The unnecessary imposition of a requirement to provide a ‘supporting statement’

As noted above, we welcome the removal of any requirement for a person to undergo genital surgery in order to access updated identity documentation. We also welcome the decision by the Queensland Government not to introduce a substituted requirement for a person to provide supporting documentation from a psychologist or counsellor for their application.

However, we do not support the new requirements in proposed section 39(2)(d)(i), which provides that an application for a person aged 16 years or more to ‘alter the record of sex’ must ‘be accompanied by a supporting statement’, which is then defined in proposed section 39(3) which provides:

‘A supporting statement must-

- (a) Be made by a person who is at least 18 years and who has known the person making the application for at least 12 months; and
- (b) State that the person making the supporting statement-
  - (i) Believes that the person making the application makes the application in good faith; and
  - (ii) Supports the application.’

We oppose this requirement for at least the following three reasons:

1. *Principle*

This requirement means the Births, Deaths and Marriages Registration Bill 2022 falls short of the principle of self-determination, or self-identification, for trans and gender diverse people. Gender identity is a matter of inherent personal identity, and it should not matter whether *any* other person ‘supports’ the gender identity of the individual. This outcome means that the process for updating identity documentation in Queensland, even after this Bill is passed, will fall short of the best practice approach as adopted by Tasmania in its 2019 reforms to the *Births, Deaths and Marriages Registration Act 1999* (Tas).

2. *Pragmatic*

The requirement to provide a 'supporting statement' from an adult who has known the applicant for at least 12 months and who 'supports the application', may result in arbitrary barriers being placed in front of vulnerable trans and gender diverse young people. For example, a young trans or gender diverse person who seeks to leave an unsupportive family, school and/or community and 'start fresh' elsewhere within Queensland, may be prevented from commencing their new life with identity documents which reflect their actual gender identity because they do not know anyone who meets both criteria (the minimum length of time *and* is supportive). The policy rationale for making a young person in these circumstances wait for up to 12 months for new identity documents is unclear.

### 3. *Precedent*

If this Bill is passed, Queensland will become the third Australian jurisdiction to remove both the requirement for genital surgery and to not impose a substituted requirement for supporting documentation from a psychologist or counsellor. In doing so, Queensland will help to create a precedent for other jurisdictions which are yet to update their own birth certificate laws, including NSW and Western Australia. By choosing to replicate the Victorian approach (which also requires people to submit a 'supporting statement') rather than the best practice Tasmanian approach (which does not, and instead relies solely on self-identification), we submit that Queensland would be setting an inferior precedent for these other jurisdictions to follow.

We therefore submit that the requirements in section 39 for people to submit a 'supporting statement' from someone who 'has known the person making the application for at least 12 months', 'believes that the person making the application makes the application in good faith' and 'supports the application' should be removed. Instead, updating birth certificates and other identity documentation should be based solely on self-identification.

**Recommendation: The unnecessary imposition of a requirement to provide a 'supporting statement' should be removed and replaced by a system of self-identification.**

#### The failure to recognise families with more than two parents

As noted above, we welcome the inclusion of proposed section 12(1)(a), which allows parents to be nominated as any combination of mother, father, or parent. This better recognises many rainbow families (including parents in same-gender relationships) and helps to prevent mis-gendering of parents, especially the current practice of forcing a parent who gives birth to be described as 'mother' even where they may be a trans man, or non-binary/gender diverse, or simply prefer to be described as parent.

However, we do not support proposed section 12(1)(b), which provides that: 'not more than 2 people in total may be registered as the child's parents (however described).'

This provision fails to reflect contemporary reality, where there may be more than two parents who are responsible for a child and who wish to be recorded as such (for example, the common situation where a female same-gender couple and a gay male friend decide to have a child together and consent to jointly parenting that child between the three of them).

While there may be additional legal complexity in legislating for these types of multi-parent families, complexity alone is no excuse for maintaining the legal fiction that these families do not exist. We note that the Births, Death and Marriages Registration Bill 2022, if passed, will therefore need to be amended in future to more accurately reflect the real world, and the contemporary diversity of families including rainbow families.

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We note the Bill also includes important amendments to the *Anti-Discrimination Act 1991* (Qld).

These amendments implement recommendations from the recent Queensland Human Rights Commission review of this Act, and are in line with Just.Equal Australia's recommendations in its submission to that inquiry. These include:

- Updating the definition of gender identity,<sup>3</sup> to ensure that non-binary and other gender diverse people enjoy protection against discrimination
- Introducing a new protect attribute of sex characteristics,<sup>4</sup> to ensure that intersex people enjoy protection against discrimination
- Including sex characteristics as a protected attribute for the purposes of existing prohibitions on vilification, and serious vilification, and
- Repealing the existing offensive provision in section 28 which permits discrimination in employment against transgender people where it involves working with children.

Just.Equal Australia strongly supports all four changes, and acknowledges that they are important steps along the path towards full equality for LGBTIQ Queenslanders.

However, we also note that, even after these reforms are passed, the Queensland *Anti-Discrimination Act 1991* still requires urgent amendments to remove the 'Don't Ask, Don't Tell' provisions which allow religious schools to discriminate against LGBTQ teachers and other staff, as well as allowing other religious organisations to discriminate against employees, and in certain circumstances to discriminate against people accessing services.

We call on the Queensland Government to progress these additional reforms as a matter of priority.

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Thank you in advance for your consideration of this submission. Please do not hesitate to contact us at the details below should you require further information, or to discuss the above in more detail.

Sincerely,  
Sally Goldner



Rodney Croome

<sup>3</sup> With the following proposed definition:

'gender identity, of a person-

- (a) Is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and
- (b) Without limiting paragraph (a), includes-
  - i. The person's personal sense of the body; and
  - ii. If freely chosen – modification of the person's bodily appearance or functions by medical, surgical or other means; and
  - iii. Other expressions of the person's gender, including name, dress, speech and behaviour.'

<sup>4</sup> With the following proposed definition:

'sex characteristics, of a person, means the person's physical features and development related to the person's sex, and includes-

- (a) Genitalia, gonads and other sexual and reproductive parts of the person's anatomy; and
- (b) The person's chromosomes, genes and hormones that are related to the person's sex; and
- (c) The person's secondary physical features emerging as a result of puberty.'

