

Births, Deaths and Marriages Registration Bill 2022

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**MULTICULTURAL
AUSTRALIA**

it's who we are

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

10 January 2023
Legal Affairs and Safety Committee
Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Q 4000

Electronic submission

Re: Births, Deaths and Marriages Registration Bill 2022

Multicultural Australia welcomes the introduction of this Bill and acknowledges and appreciates the extensive consultations that have preceded its introduction.

Multicultural Australia exists to create a welcoming and inclusive community for all new arrivals to Queensland. As Queensland's Settlement Service Provider for migrants and refugees, we have been welcoming refugees, people seeking asylum, international students and other new arrivals since 1997. We strive to create a fairer, more prosperous society for all Queenslanders. We work closely with diverse multicultural communities in Queensland, from new and emerging communities to the more established communities.

The focus of Multicultural Australia's service delivery includes linking new arrivals with essential services and building their independence with links and connections to services and networks. Our experience in this regard informs our understanding that many culturally and linguistically diverse community members face issues with respect to accessing government services, including, timely registration of births and other interactions with the Registry of Births, Deaths and Marriages.

As Queensland's primary humanitarian settlement provider, Multicultural Australia notes instances where Queensland's life registration system does not appropriately accommodate the specific experiences and requirements of humanitarian new arrivals and refugees. Multicultural Australia's submission is based on our experience providing settlement support to new arrivals, including case management support. It draws on our experience supporting humanitarian arrivals who have been impacted by the residency requirement in relation to the registration of adult and child name changes and trans and gender diverse refugees who have experienced barriers from the restrictions pertaining to applications to change their sex on their birth registration. Our submission also notes the current prescriptive requirements under the BDM Act that can exclude or impose hardships on vulnerable community members – including refugees and humanitarian arrivals. Further, as a service provider within the Queensland Community Services sector, Multicultural Australia is able to offer its perspective on a range of issues arising from the operation of the BDM Act that impact on the broader community.

Our submission provides a range of recommendations to better reflect contemporary considerations as well increasing the responsiveness of Queensland's registration framework to address diverse access requirements within the state.

We welcome this opportunity to provide a submission to this submission on the *Births, Deaths and Marriages Bill 2022*. While acknowledging the importance of ensuring accuracy and authentication, Multicultural Australia considers that the reforms must prioritise development of an equitable, non-discriminatory, and accessible registration framework that centres the focus on the human rights of the relevant person.

Multicultural Australia welcomes the opportunity to participate further in this important consultation. Please do not hesitate to contact Rose Dash, Multicultural Australia's Chief Client Officer, on [REDACTED] or [REDACTED]

Yours sincerely,



Christine Castley

**Chief Executive Officer
Multicultural Australia**

Introduction

Multicultural Australia welcomes the opportunity to provide this submission on the Births, Deaths and Marriages Bill 2022 (the 'Bill'). We acknowledge and support the key objectives of the Bill, to:

- strengthen the legal recognition of trans and gender diverse people
- better recognise contemporary family and parenting structures
- facilitate improvements in the operations of the registry
- support fraud prevention and minimise misuse of the life event system
- clarify the information collection, use and sharing powers of the registrar.

Our submission is premised around two key themes:

1. Issues specific to new arrival humanitarian and refugee communities, and
2. Operation of the BDMA and its impacts for the broader community.

As Queensland's primary provider of settlement supports to humanitarian entrants, Multicultural Australia notes specific instances where Queensland's life registration system does not appropriately accommodate the specific experiences and requirements of humanitarian new arrivals. In addition to identifying issues specific to humanitarian arrivals and refugees, Multicultural Australia - as a service provider within the Queensland community services sector, is also able to offer its perspective on a range of issues arising from the Births, Deaths and Marriages Act that impact on the broader community. The sections below address aspects of the Bill relevant to Multicultural Australia's work and experience.

Issues impacting new arrival humanitarian and refugee communities

Multicultural Australia supports humanitarian arrivals and refugees that arrive in Australia as a result of persecution, violence or conflict overseas. Often this persecution is the direct result of a person's identity – including, ethnic or gender identity. Reclaiming of identity is often a key priority in resettlement for many humanitarian arrivals. This includes seeking changes to correctly reflect names or sex on identity documents. Barriers to appropriate recognition, or a correct reflection of a person's identity can impact significantly on a person's wellbeing in settlement – and could serve to compound aspects of trauma associated with persecution and stressors associated with relocation to a new country.

In our provision of settlement supports to humanitarian new arrivals and refugees, Multicultural Australia Case Managers support clients in their interactions with the Registry of Births, Deaths and Marriages. We note specific issues and concerns raised in relation to the registration of births; residency requirements pertaining to registration of adult and child name changes; and issues for trans gender diverse refugees pertaining to restrictions on applications for change of sex. Further, we also note prescriptive requirements within the Act that may seek to exclude refugees and humanitarian arrivals with limited literacy, English language or digital proficiency – or an understanding of Australian systems and processes; or the financial means to obtain required information and documentation under the Act. These issues are noted in detail below:

Registration of births

Multicultural Australia Case Managers have supported single mothers who are humanitarian entrants to Australia, and whose child is born in Australia, but who face difficulty registering their child's birth to include the name of the child's father, because the father is overseas at the relevant time. This requirement can be the source of undue stress, particularly in circumstances where the mother is managing other settlement-related stresses and is struggling to navigate new systems and processes.

We support the amendment, proposed by Clause 8(2) of the Bill, for the Registrar to accept an application completed by only one parent in circumstances that include where the applicant is unable or unwilling to give information as to the other parent's identity or whereabouts, where the other parent is unable, unwilling or unlikely to sign the application, or where it would cause the applicant unnecessary distress to have the other parent sign (for example, in the case of domestic violence). We note, however, that the examples provided are narrow and, while they should not be interpreted in an exhaustive or limiting way,¹ may in practice impact interpretation.

We propose amending Clause 8(2)(b) of the Bill to expressly recognise the situation where a child is born in Queensland and only the birth parent is in Queensland, with the other parent overseas and not practically able to sign the application within the required timeframe, or alternatively to provide this scenario as an example to this section. We note that there are a number of humanitarian entrants in this category, who experience the current requirements as a barrier. While we note the requirements created by Clause 8(3), these will only be activated once the discretion to accept the application is exercised under Clause 8(2).

¹ *Acts Interpretation Act 1954* (Qld), s 14D.

Name Changes

Multicultural Australia's experience is that the requirement that an adult has been ordinarily resident in Queensland for at least 12 consecutive months prior to making an application to change their name is a significant barrier for many humanitarian entrants. Many humanitarian entrants may have had travel documents issued overseas with names spelt incorrectly. Issues with literacy or a lack of familiarity with English, can mean these errors are not corrected before arrival in Australia. Other humanitarian arrivals may not necessarily follow local naming conventions (first name/last name). As a result, many arrive in Australia with incorrect names or only one legal name recorded. Securing a name change is crucial to obtaining correct identity documents in Australia.

Having an incorrect name in the initial part of their settlement journey, when new arrivals are undergoing registration and enrolment across a range of educational, employment, health, accommodation and other domains is problematic, and will often require subsequent correction of records. Further, as part of their settlement journey, many arrivals who have previously been identified by only one name seek to add a shared family surname to comply with the Australian cultural norm in this regard. The requirement to wait 12 months before doing so serves to disrupt this aspect of their settlement journey. In both scenarios, many humanitarian entrants no longer have access to case management support when the 12 months have passed, to assist with navigating processes including the Births, Deaths and Marriages Registry at the 12-month post-arrival mark, notwithstanding that their English language and familiarity with Australian systems is still developing. There can also be difficulties with securing evidence of residency in Queensland for 12 months. In practice, these challenges represent significant, and unnecessary, barriers for vulnerable people.

Multicultural Australia notes the proposed amendment in Clause 26 of the Bill, which reframes the requirements pertaining to registration of name changes. The proposed new section provides that an adult born outside Australia must have ordinarily been resident in Queensland for at least 12 consecutive months before making an application to change their name, subject to:

- the registrar being satisfied that exceptional circumstances exist;
- the application relating to a marriage or divorce;
- the application is for the purpose of protecting the person, a child of the person, or another person associated with the person.

While we support the inclusion of the specified exceptions, we request that this provision is

amended by the removal (or significant reduction) in the residency requirement or by inclusion of an exception for humanitarian entrants.

In instances of Humanitarian entrants seeking a change to their name, as well as a change to their sex, the process is difficult or not available in most instances. Often, significant advocacy is required by the Case Managers and clients through Federal and State systems to achieve a desired outcome – unnecessarily impacting wellbeing and adversely affecting settlement. Further, for transgender refugees who have transitioned, the waiting process, for example to have a name change that reflects their gender identity, compounds the trauma they have experienced as part of their refugee journey (which can include persecution in their country of origin on the basis of the gender identity).

For these reasons, Multicultural Australia recommends removal, or reduction to three (3) months, of the residency requirement.

We note the similar proposed framing of the requirements for registration of changes of an eligible child's name in Clause 28. We consider the reasons applicable to registration of adult name changes are equally applicable to registration of child name changes and make an equivalent recommendation in that regard.

Procedural and access to justice considerations

Multicultural Australia notes the difficulties imposed by the current prescriptive requirements in the Act, particularly for refugees and/or people experiencing poverty or hardship who may lack access to the required documentation, or the financial means to obtain it, in a timely way. This is compounded where there are barriers including limited literacy and familiarity with English language, limited knowledge of Australian rights and responsibilities, and/or lack of understanding of Australian systems and processes.

We support the proposed changes to:

- Reduce and simplify the information requirements for registration;
- Introduce a discretion for the registrar where the inclusion or removal of certain information on a certificate may cause significant distress;
- Increase the flexibility in the notification and application process; and
- Formally implement waiver of fees for certificates for disadvantaged groups and First Nations peoples.

Additionally, we submit that the categories of persons recognised as eligible for a waiver of fees

should be extended to include other disadvantaged communities. In particular, we recommend that humanitarian entrants should be eligible for a waiver of fees. We note the hardship imposed on financially disadvantaged humanitarian entrants by the need to pay for birth and/or change of name certificates for all members of the family, particularly for large families seeking to register a family surname following arrival in Australia.

While there is a lack of data establishing the under-representation of culturally and linguistically diverse communities in birth registrations, anecdotally we are aware that this issue is a significant issue for this cohort, as for First Nations peoples.²

We also note that there is further scope to simplify the registration process and make it more user-friendly. In particular, we draw attention to the potential to remove prescriptive requirements and increase the flexibility in relation to the information collected and recorded in certificates.

Multicultural Australia's experience with online birth registration processes

Multicultural Australia client service teams have experience supporting new arrivals in Queensland to complete online birth registration processes. While the processes were designed to be user-friendly, they pose particular challenges for our clients due to the baseline language and digital literacy required. Without the assistance of Case Managers, many of our clients would have faced significant difficulties completing the process. For more established culturally and linguistically diverse communities who are not engaged with case management support, they anecdotally continue to experience barriers to online birth registration.

Our experience in this regard highlights the need for consideration of:

- The establishment of online portals which offer inbuilt translation or simplified English;
- Increased support, through culturally informed and sensitive workers and interpreter services, at Registry offices for persons from culturally and linguistically diverse backgrounds to complete registration documents; and/or
- Establishing a channel for facilitated referrals by Registry staff to agencies to support culturally and linguistically diverse community members to obtain appropriate information and complete the application process.

² Queensland Ombudsman. (2018). *Report into the under-registration of Aboriginal and Torres Strait Islander births.*

Strengthening of Recognition and Protections for Diversity – Impacts for the Broader Community

Multicultural Australia provides the following considerations on the Bill, with impacts for the broader community.

Terminology

As a caveat to this section, we note that the Bill fails to recognise the distinction between sex and gender, removing the legal distinction between these concepts. While we recognize that there is some contention in relation to the distinction between these concepts,³ we note that they are afforded distinct meanings by key authorities⁴ and consider that further consultation and consideration of this aspect of the Bill is required, in conjunction with a review of other relevant legislative instruments with intersecting definitions.

Recognition of the identities of trans and gender diverse people

Multicultural Australia supports the proposal to amend and strengthen the legal recognition of trans and gender diverse people, extending recognition beyond a medicalized model to the reflect the lived gender identity of the person. We acknowledge the importance, in terms of safety and wellbeing, of amendments facilitating the correction of the identity records of transgender people.

We support the development of a new framework for youths aged 16 and older to apply to alter their record of sex, without imposing a medicalized model. We consider these reforms to be human rights focused⁵ and to be consistent with support trans and gender diverse people to maintain identity documents that reflect their gender identity.

We note with concern the differentiation in requirements in relation to evidence for the proposed requirements pertaining to youths aged 12 to 16.⁶ While we are supportive of the implementation of safeguards for youths in this age bracket, we note the distinction between safeguards and assessments. We also note the potential difficulties, potentially for families and youths experiencing financial disadvantage or who do not reside in metropolitan areas, of

³ See, for example, the Tasmania Law Reform Institute, *Legal Recognition of Sex and Gender* (Final Report No. 31, June 2020) 19 [2.2.28].

⁴ See, for example, the World Health Organisation definitions: <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions>; *Australian Government Guidelines on the Recognition of Sex and Gender*

⁵ The reforms are broadly consistent with the right to recognition before the law, to protection against discrimination and to privacy and reputation: see sections 15 and 25 of the *Human Rights Act 2019* (Qld).

⁶ The proposal is for an assessment by a 'developmentally informed practitioner'.

engaging and paying for this assessment. For these reasons, we propose amendment of this provision.

We support the reforms to permit a name change application to be made simultaneously with an application to alter a record of sex.

Recognition of contemporary family and parenting structures

Multicultural Australia also supports the amendments to bring the current provisions into alignment with contemporary understandings of diverse family and parenting structures. We consider that the current restrictions on the registration of children's birth certificates are outdated and fail to reflect contemporary family and parenting structures.⁷ We also consider that the current definition of 'birth'⁸ is outdated, discriminatory and exclusive.

Changes in relation to persons with impaired capacity

Multicultural Australia supports the amendments in Clause 175 of the Bill to expand the definition of 'special personal matter' in Schedule 2 of the *Guardianship and Administration Act 2000* (Qld) and Schedule 2 of the *Powers of Attorney Act 1998* (Qld) to include applications made by the person to alter the record of the person's sex or obtain a recognised details certificate. We agree that this is a human rights-aligned reform that prevents a substitute decision-maker making the decision to apply on behalf of a person in relation to these matters.

Changes to the *Anti-Discrimination Act 1991* (Qld)

Multicultural Australia supports the changes proposed by Part 12, Division 3 of the Bill to accelerate reforms by amending the definition of 'gender identity' in the *Anti-Discrimination Act 1991* (Qld) and to introduce a new protected attribute of 'sex characteristics' to provide protections for members of the intersex community.⁹

Prisoners and persons categorized as dangerous prisoners under the DPSOA

Multicultural Australia does not support the delineation between prisoners and restricted persons (categorized under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) and other persons in the context of applications to register a change of sex, created by the requirement

⁷ The Act presently requires that one, and no more than one, of the child's parents is registered as the child's mother and father respectively, with a total of no more than two people permitted to be registered.

⁸ Which is defined in Schedule 2 of the current Act as 'means the expulsion or extraction of a child from its mother' and therefore does not encompass circumstances where a transgender male or non-binary person has conceived and birthed a child.

⁹ We support these amendments and agree that they align with best practice, including the 2007 Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, as well as achieve greater consistency with other legislation.

that written permission of the Chief Executive of Corrective Services is first obtained, with the Chief Executive vested with discretion to refuse a change of sex. We do not consider that this amendment is justified or compatible with the human rights of the person.¹⁰

Recognised details certificate

Multicultural Australia supports the introduction of a framework for people born outside of Queensland to obtain a new recognized details certificate, acknowledging their name and sex.

Registration of births

Multicultural Australia supports the amendments proposed by Clause 12 of the Bill to support same-sex and gender diverse parents to record a parenting descriptor on their child's birth certificate that correctly reflects their parenting role. We also support the related amendments proposed by Clause 107 to permit corrections to birth certification registered prior to the enactment of the amendments.

Our support for amendments to Clause 8(2) for the Registrar to accept an application completed by only one parent in circumstances that include where the applicant is unable or unwilling to give information as to other parent's identity or whereabouts, where the other parent is unable, unwilling or unlikely to sign the application, or where it would cause the applicant unnecessary distress to have the other parent sign – have been noted in the earlier section relevant to refugee and humanitarian parents in Queensland.

Recommendations

Multicultural Australia strongly supports the following proposed amendments:

1. Repealing and replacing the *Births, Deaths and Marriages Act 2003* (Qld) (the 'Act') with a new Act with the proposed objectives, to reflect contemporary considerations and increase the relevance and responsiveness of the registration framework.
2. Amending and strengthening legal recognition of trans and gender diverse people, beyond a medicalized model to reflect the lived gender identity of the person.
3. Permitting a name change application to be made simultaneously with an application to alter a record of sex.
4. Recognising diverse family and parenting structure, by enabling same-sex and gender diverse parents to record a parenting descriptor on their child's birth certificate that

¹⁰ In particular, with sections 15 (recognition and equality before the law) 25 (right to privacy and reputation) of the *Human Rights Act 2019* (Qld).

correctly reflects their parenting role and to permit corrections to birth certification registered prior to the enactment of the amendments.

5. Expanding the definition of 'special personal matter' in the *Guardianship and Administration Act 2000* (Qld) and the *Powers of Attorney Act 1998* (Qld) to prevent substitute decision-makers applying on behalf of a person with impaired capacity to alter the record of the person's sex or obtain a recognised details certificate.
6. Amending the definition of 'gender identity' in the *Anti-Discrimination Act 1991* (Qld) and introducing a new protected attribute of 'sex characteristics' to provide protections for members of the intersex community.
7. Introducing a framework for people born outside of Queensland to obtain a new recognised details certificate, acknowledging their name and sex.
8. Procedural changes, including reduction and simplification of information requirements for registration, the introduction of a discretion for the registrar where the inclusion or removal of certain information on a certificate may cause significant distress; the increase in flexibility in the notification and application process; and the implementation of waiver of fees for certificates for disadvantaged groups and First Nations peoples.

Multicultural Australia does not support the following proposed amendments:

1. To delineate between prisoners and restricted persons (categorized under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) and other persons in the rights and conditions attached to applications to register a change of sex.

Multicultural Australia makes the following further recommendations:

1. Engage in further consideration and consultation in relation to the terminology of sex and gender in the Bill, and related legislative instruments.
2. Implement safeguards for trans and gender diverse youths aged 12 to 16, without imposing the requirement to undergo an assessment with a 'developmentally informed practitioner', which can create barriers for disadvantaged youths.
3. Amend Clause 8(2)(b) of the Bill to expressly recognise the situation where a child is born in Queensland and only the birth parent is in Queensland, with the other parent overseas and not practically able to sign the application within the required timeframe, or alternatively to provide this scenario as an example to this section.
4. Remove or significantly reduce the residency requirement for adult and child name changes or include an exception to the requirement for humanitarian entrants.
5. Extend the categories of persons recognised as eligible for a waiver of fees to include other disadvantaged communities, including refugees and other humanitarian entrants.
6. Simplify and increase the accessibility of the registration process, including by:
 - (a) Establishing online portals which offer inbuilt translation or simplified English;
 - (b) Increasing available support, through culturally informed and sensitive workers and

interpreter services, at Registry offices for persons from culturally and linguistically diverse backgrounds to complete registration documents; and/or

- (c) Establishing a channel for facilitated referrals by Registry staff to agencies to support culturally and linguistically diverse community members to obtain appropriate information and complete the application process.