

Births, Deaths and Marriages Registration Bill 2022

Submission No: 259
Submitted by: [REDACTED]
Publication: Making the submission public but withholding your name

See attached:

10 January 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee Secretary

Births, Deaths and Marriages Registration Bill 2022

Thank you for the opportunity to provide a submission in relation to the Births, Deaths and Marriages Registration Bill 2022 (**Bill**).

This submission outlines my concerns with Part 5 “Acknowledgement of Sex” of the Bill and the proposed changes to the Anti-Discrimination Act 1991 (Qld).

At the outset I would like to raise my concern with the Hon Shannon Fentiman MP’s comments in her speech introducing the Bill on 2 December 2022. Despite Ms Fentiman’s speech suggesting she had not consulted with any women’s groups or groups outside of LGBTIQ+ stakeholders (notwithstanding this Bill impacts all Queenslanders), Ms Fentiman’s speech casts aspersions regarding the motivations of people who may wish to raise concerns regarding the Bill. Namely, by asserting that “some groups will try to cloak their transphobia in the guise of women’s safety - making claims about trans women accessing women’s spaces, including change rooms or even domestic violence shelters”. This is unfair, inaccurate and suggests that any submissions not in support of the Bill will not be properly considered. Holding genuine and well-founded concerns for women’s safety is not transphobic.

The purpose of a birth certificate is to record factual data regarding the person who has been born and is a core identity verification document. Information recorded includes the biological sex of the person. This Bill, in proposing to allow changes to the recording of a person’s sex, proposes replacing the concept of sex with “sex descriptor” which is a broad definition that includes in addition to male or female “(c) any other descriptor of a sex”, then gives examples which are not actually sexes, namely ‘agender’, ‘genderqueer’, ‘non-binary’. Such changes to the registration of births undermines the integrity of the data that is recorded.

The Bill in allowing people to change one’s registered sex (including to a non-sex descriptor), conflates gender identity (which is based on self perception/belief and can be fluid/change over time) with a person’s sex, which cannot be changed ever. Perceiving you are the opposite sex, no matter how genuine that belief, does not make you the opposite sex. Perceiving that you are non-binary does not make you without a sex. The role of the government and the law, including with respect to recording births, is not to validate how a person may perceive themselves at any stage in life, regardless of the reason for that person’s perception. The examples provided in Ms Fentiman’s speech regarding why the Bill is proposed do not show that people who may perceive themselves as the opposite sex are being unlawfully discriminated against in Queensland on the basis of their birth certificate.

However, amending current law to significantly reduce the requirements to be able to change sex recorded on a birth certificate as this Bill does, raises uncertainty and concerns as to how such a changed birth certificate may be used.

In particular, with respect to single sex spaces and benefits. For example, women’s single sex spaces that exist to support protecting the safety, privacy, dignity and inclusion of women as a sex, such as bathrooms, changing rooms, domestic violence and rape crisis shelters, mother’s groups, sporting teams and having single sex carers. The Australian Bureau of Statistics, Personal Safety Survey 2016 reflects that:

- (a) 1 in 5 women have been sexually assaulted or threatened since the age of 15;
- (b) 1 in 2 women aged 15 and over have experienced sexual harassment since the age of 15; and
- (c) 98% of women who have been sexually assaulted said that the perpetrator was a male.

The Queensland Sexual Assault Network provides a good summary of some concerning statistics regarding sexual assault at <https://qsan.org.au/key-facts/>. What is clear from the data is that women are significantly more likely to be the victim of sexual assault with a man being the perpetrator of the sexual assault.

In addition to supporting women's safety, single sex spaces also support women's inclusion in public life such as for women whose faith prevents them from sharing spaces with men.

However a man may self-identify with respect to his gender/gender identity, he remains a man and male bodied. While of course the same statement applies to women, the reality is that women do not pose the same risk to safety to men as men do to women.

Ms Fentiman asserts in her speech that there is "no evidence" to support the claims of transwomen accessing women's spaces and describes such claims as being "outrageous". A simple Google search reflects Ms Fentiman's assertion is incorrect and indicates that further consideration should be had to the Bill in particular with respect to risk and compatibility with the human rights of people who risk being negatively impacted by the Bill. There is plenty of evidence of men seeking to use gender identity to insist on accessing women's spaces. This includes (and is not limited to):

- (a) Roxanne Tickle, a trans-identifying male, suing Giggle, a company providing an app available only to female users for discrimination on the basis that Roxanne was barred from the app due to being male (<https://www.theguardian.com/media/2022/dec/31/transgender-woman-sues-female-only-app-giggle-for-girls-for-alleged-discrimination>);
- (b) trans-identified males seeking to and playing on women's sports teams and in women's sports (there are many examples of this but just to name some high profile ones – Lia Thomas (<https://edition.cnn.com/2022/07/15/sport/lia-thomas-ncaa-woman-of-the-year-nomination/index.html>), Sasha Jane Lowerson (<https://www.news.com.au/sport/more-sports/transgender-surfer-sasha-jane-lowerson-claims-historic-victory-in-wa-longboard-championships/news-story/305dd76b3e65344d2cb8bdce45fb3824>) and Laurel Hubbard (<https://www.nytimes.com/2021/07/31/sports/laurel-hubbard-trans-weight-lifting.html>);
- (c) male prisoners being moved to women's prisons because of their gender identity and sexually assaulting women prisoners (for example, <https://www.theguardian.com/uk-news/2018/oct/11/transgender-prisoner-who-sexually-assaulted-inmates-jailed-for-life>);
- (d) men (whether identifying as transgender or not) filming themselves in women's public bathrooms and change rooms, including performing lewd acts.

Notwithstanding the important purposes and need for single sex spaces, if someone changes the sex on their birth certificate, is another person required to treat them as the sex they self-identify as instead of their biological sex they are otherwise they are in breach of the Anti-Discrimination Act 1991 (Qld)? The Explanatory Notes reflect that this is the Bill's intention.

For example:

- (a) Will organisations/individuals be unable to exclude males from single sex spaces (such as change rooms, bathrooms, women's only events that exclude males), benefits that are for members of a specific sex (such as female only scholarships) or single sex roles (such as female only rape counsellors) – even though not excluding males may:
 - (i) conflict with an organisation's/individual's obligation to not unlawfully discriminate against others with protected characteristics (such as women, or adherents to a religion); or
 - (ii) negatively impact the ability of a person conducting a business or undertaking to meet their obligations under workplace health and safety law to ensure the health and safety of workers while they are at work in the business and others who may be affected by the carrying out of work?
- (b) Will individuals be compelled to refer to people by the sex recorded on their birth certificate as opposed to their biological sex, including in settings where a person's biological sex is relevant (such as in sexual harassment legal proceedings or investigations, and legal proceedings involving domestic and family violence and sexual assault)?

- (c) In conjunction with the proposed abolition of section 28 of the Anti-Discrimination Act 1991, will organisations be unable to require that employees and/or volunteers be biological females where the work to be undertaken involves sharing accommodation and change rooms with young girls (such as on excursions and camps)?

In addition to compelling people to participate in a fantasy (that they themselves may not believe), it undermines the very purpose and reason for single sex facilities and protections.

Accordingly, if the Government wishes to allow people to change their sex on their birth certificate, legislation such as the Anti-Discrimination Act 1991 should be amended to reinforce and strengthen single sex protections on the basis of biological sex to ensure single sex protections are not undermined and to provide clarity to individuals and organisations.

In relation to the proposed change to the definition of gender identity, notwithstanding the proposed definition reinforces that gender identity is a construct of self perception and stereotypes, the definition includes the incorrect phrase "sex assigned to the person at birth". Sex is not assigned at birth but determined at conception and observed at (and often prior to) birth. Notwithstanding a person's sex cannot change regardless of how they identify, it would be more accurate and clearer if the phrase "sex assigned to the person at birth" was replaced with "the person's birth sex".

Thank you for your consideration.