

## Births, Deaths and Marriages Registration Bill 2022

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## SUBMISSION TO THE LEGAL AFFAIRS AND SAFETY COMMITTEE, QUEENSLAND PARLIAMENT

Births, Deaths And Marriages Registration Bill 2022

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Part 5 of this draft law enables people to re-purpose a key identification and historical document, a birth certificate, into a license to live a legal fiction, with all law-abiding organisations obligated to likewise respect and enable the legal fiction. The legal fiction is often named 'gender identity', but in the following I will instead use the term 'synthetic sex identity', as it more accurately implies the content of the identity and its relationship to the self (this phrase was coined by the estimable independent investigative journalist Jennifer Bilek). The legal fiction is executed by conflating sex, one of the key characteristics of people and one entirely beyond human control, with synthetic sex identity, a descriptor that is – to say the least about it – wholly subjective and, therefore, also subject to changing as the person changes. The draft law further states the synthetic sex identity on the altered birth certificate will be conflated with sex for the purposes of all other laws of the state – there will be no distinctions made for any purpose between someone who just is the sex they were conceived as and someone who is not physically that sex.

Therefore we must infer the government believes sex is not a salient characteristic for people's lives. If the government believes sex is not salient, why maintain any distinctions at all for the sexes? For example, our society has agreed for a long time – as reflected in the permissible exceptions to the Anti-Discrimination Act 1991 – that women (people of the female sex of any age) are entitled to single-sex services, spaces and sports. But if sex is not salient, why not just remove those exceptions and mandate all spaces, services and sports to be unisex, all-inclusive and non-discriminatory? However the draft law does not abolish those exceptions, rather it re-defines who those exceptions apply to. In this case, it will enable someone whose sex is not female to state their sex is now female. Therefore sex would change

- from a characteristic that is as unvaryingly and objectively true as the roundness of the earth, that serves – in certain socially-approved and legally-enabled circumstances – as a boundary for the benefit of people of that sex
- to some combination of a key to remove the boundary to people who would otherwise be excluded and also a variable fashion accessory, to signal to a wider social group a person's subjective state or membership, like a sub-culture's fashion style or a computer game avatar.

Therefore those anti-discrimination exceptions for women are diluted if not wholly abolished by the draft legislation. A result of this is that the draft legislation does not affect just the small percentage of people who have a synthetic sex identity, but everyone in Queensland who is female – 50.4% of the population following the previous census. Given that child safeguarding is also dependent on being accurate about who is responsible for a child's safety at any one time, it can be said the numbers affected also include minor males, approximately a further 13% of Queenslanders. So up to 64% of Queenslanders are directly affected by this draft law.

At the risk of belabouring the substance of the word 'synthetic' in the term 'synthetic sex identity', sex cannot change and there are only two of them. To quote a selection of experts:

- Dr. Jerry Coyne, evolutionary biologist and Professor Emeritus at the University of Chicago: "Evolution itself produces a binary of sex! To be anthropomorphic, evolution wants a binary of sex."<sup>1</sup>

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<sup>1</sup> <https://whyevolutionistrue.com/2018/12/11/once-again-why-sex-is-binary/>

- Dr. Georgi Marinov, Stanford University Genetics Department: "The objective truth is that sex in humans is strictly binary and immutable...Denying that sex in humans is binary attacks the very foundations of biological sciences."<sup>2</sup>
- Dr. Stéphane Bermon, Director of World Athletics' Health and Science Department: "Biological sex is not a spectrum."<sup>3</sup>
- Dr. Dave Curtis, UCL Genetics Institute: "Sex is not a spectrum & is not assigned at birth. There are only two categories, male & female & even if we take account of disorders of sexual development, we can't say it produces anything like a spectrum."<sup>4</sup>
- Two physicians, a professor of obstetrics & a psychiatrist: "Humans are sexually dimorphic, with rare intersex conditions being anomalous developments of dimorphic sexual classes. It is not possible to change biological sex."<sup>5</sup>
- Christiane Nüsslein-Volhard, biologist and Nobel laureate: "With all mammals there are two sexes, and the human being is a mammal... There are people who want to change their sex, but they cannot. They remain XY or XX. The crucial thing is that the fact whether one has a Y-chromosome already affects the development of the embryo during pregnancy and of course also in the adolescent. Boys therefore have different sex characteristics than girls and this cannot be reversed. People retain their sex for life..."<sup>6</sup>

Changing the birth certificate to show the opposite sex, or something else like the government's examples of 'genderqueer' and 'agender', would be adopt something not just synthetic, but post-truth, into the records of the state.

If sex is not salient for the government, is it also really not salient for all people without a synthetic sex identity? Is a single-sex bathroom, changeroom, medical service or, in extremis, strip-search by the police, a fashion accessory for women (a person of the female sex of any age)? Are anonymised statistics stylistic accessories for anyone, to the extent records and statistics will include synthetic sex identities for some people alongside sex for everyone else? For sex is, and will go on being, more salient than synthetic sex identity for many Queenslanders, despite how the draft legislation will require the labels for these events to formally change from what is physically true.

Consider crime, as a sadly common case for many people in the community: sex is salient there. The British professor of criminology Jo Phoenix states it well:

*Sex is the single strongest predictor of criminality and criminalisation. Since criminal statistics were first collected (in the mid 1850's), males make up around 80% of those arrested, prosecuted and convicted of crime. Violent crime is mostly committed by males. Females in contrast are a law-abiding lot and whilst they do get arrested for violent crimes, the majority commit poverty related offences. There are many different explanations for these differences, but none question that basic truism that crime tends to be a male problem. This remains the case regardless of stated gender identity. Her Majesty's Prison and Probation Service has collected statistics on transgender offenders in prison and these statistics demonstrate that the same sex ratios are present for transgender prisoners. Transgender women (that is natal males who identify as women but do not possess a gender recognition certificate) make up around 80% of transgender offenders... The data is easily available. The analysis simple and quick. The implication, however,*

<sup>2</sup> <https://www.nas.org/academic-questions/33/2/in-humans-sex-is-binary-and-immutable>

<sup>3</sup> Bermon, S., Taylor J., Coleman D. and Kidd B. 'Science, Sport, And Sex ' Issues in Science and Technology Vol. 36, No. 2 (WINTER 2020), pp. 7-9 <https://www.jstor.org/stable/26949094>

<sup>4</sup> <http://davenomiddlenamecurtis.blogspot.com/2019/12/sex-and-gender.html>

<sup>5</sup> Bewley, S., Clifford D., McCartney M. and Byng R. 2019 'Gender incongruence in children, adolescents, and adults' British Journal of General Practice, 2019 Apr. 69(681): 170–171 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6428456/#b11>

<sup>6</sup> <https://www.emma.de/artikel/many-sexes-nonsense-339765>

*is fundamental. Gender identity does not override biological sex in shaping offending histories. In fact, the opposite is true...*

*These basic criminological tenets about the importance of sex are not matters of opinion. It is a knowledge base formed over nearly two centuries of collection, collation and analysis of criminal statistics and through the rigour of peer reviewed published research. Criminologists already possess a great deal of knowledge from which we can surmise that gender identity does not take precedence over sex and that calls to act as though it does require ignoring a massive edifice of criminological knowledge about women's experiences and male violence...*

*And whilst there are no offence categories that are \*exclusively\* male or female, rape and other sex offences are profoundly sexed. 99% of sex offenders are male. Biology truly matters where sex offending is concerned, especially given that 88% of victims are female.<sup>7</sup>*

To re-cast those last sentences: sex is salient to sex offenders. So to understand and fight crime, and specifically men's violence against women and girls, requires an understanding of male and female not as synthetic sex identities and lifestyles accessories, but as immutable, binary sex.

For example, the draft law, if enacted, would turn all spaces segregated for the female sex into unisex spaces, because males with birth certificates registering a female synthetic sex identity, would now be entitled to access those spaces. Data from the United Kingdom in 2017-18 about sexual assaults in public leisure centres and swimming pools show that two-thirds of attacks took place in unisex changing rooms.<sup>8</sup> Turning more female-segregated spaces unisex heightens the risk to women and girls from predatory males; after all, how can a woman or girl tell the difference between one male who is disguised as a woman for criminal purposes and another who is discomfited at being a man? Whereas keeping all males out – on the basis that almost everyone who will attack women and girls is a male *even if* not all men will do so, because it is impossible to tell the difference between them – is a way to preclude such crimes. Not because a sign on a door has some talismanic power, but because it can be used to identify and neutralise a potential threat before the threat is actual. In a unisex setting, a male must actually be threatening before women may try to defend themselves or seek help; whereas in a single-sex setting, males can be removed immediately, before it's established whether or not he is one of the males who would attack women. Guns are an analogous case. Even though most gun owners will never be spree killers, in this country we don't allow any members of the public to carry guns in public, because of the outsize consequences of just one gun-owner being a spree killer. Single-sex spaces protect women and girls in a like manner.

Being accurate about sex matters in healthcare too, as author Caroline Criado Perez explains:

*Researchers have found sex differences in every tissue and organ system in the human body, as well as in the 'prevalence, course and severity' of the majority of common human diseases. There are sex differences in the fundamental mechanical workings of the heart. There are sex differences in lung capacity, even when those differences are normalised to height... Sex differences appear even in our cells: in blood-serum bio-markers for autism; in proteins; in immune cells used to convey pain signals; in how cells die following a stroke. A recent study also found a significant sex difference in the 'expression of a gene found to be important for drug metabolism'... [T]here is growing evidence of a sex difference in the aging of blood vessels, 'with inevitable implications for health problems, examination and treatment'... [A]nd 'mounting evidence' that 'cells differ according to sex irrespective of their history of exposure to sex hormones'.<sup>9</sup>*

<sup>7</sup> <https://jophoenix.substack.com/p/what-do-we-stand-for>

<sup>8</sup> <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk>

<sup>9</sup> Criado Perez, C. 2019 'Invisible Women' Chatto & Windus : London, pp 198-199

A retired doctor is more pointed:

*There is nothing more fundamental to dealing with a patient than knowing whether they are male or female... Being male or female makes certain diagnoses, complications, effects and side-effects of treatments, outcomes and prognoses more or less likely. Normal blood test values vary between the sexes and not knowing the true sex of the patient could lead to under treatment, over treatment, missing a diagnosis or making a wrong diagnosis.<sup>10</sup>*

The retired doctor looked at a documented case of a young female with a male synthetic sex identity and also renal failure.<sup>11</sup> The young female patient's health was needlessly jeopardised because one set of specialists looked at her test results against the expected results for males, in line with her synthetic sex identity, and so she was evaluated as ineligible for a kidney transplant, when that is exactly what she needed. Ultimately the young female got the transplant, but not before a significant delay and significant further health deterioration. The retired doctor demonstrates with this case that synthetic sex identification does not change sex or sex's importance to people's life:

*All sorts of variables affect kidney function values, from sex-specific differences, to muscle mass, age, ethnicity, medications and diet. Also, the studies show, predictably, that transgendered patients' values are more consistent with others of their biological sex despite cross-sex hormones and other gender reassignment procedures.<sup>12</sup>*

In the draft legislation's Explanatory Notes the government refers to the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* several times. One of the signatories of the original 2006 version, human rights professor Robert Wintemute, has since conceded that women's rights were simply not considered when formulating the Yogyakarta Principles:

*"If I had thought through the implications of Principle 3 [about legal identity documents]," says Wintemute, "I would have had to consider the potential for conflict with women's rights, but I didn't." Neither, so far as he knows, did anyone else at the meeting at which the Principles were drafted. "Women's rights weren't raised"...*

*The majority of the 2006 Yogyakarta signatories were men and trans men. "The issue of access to single-sex spaces largely affects women and not men. So it was easy for the men in the group to be swept along by concern for LGBT rights and ignore this issue," says Wintemute.<sup>13</sup>*

I hope that the committee will not repeat the sexist mistake of the Yogyakarta body of ignoring women's rights and not listening to women's advocates.

It should also be noted that the Yogyakarta Principles have no legal force, whereas the 'Mandela Rules' do: these are the international Standard Minimum Rules for the Treatment of Prisoners. Principle 8(a) of the Mandela Rules state:

*Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;<sup>14</sup>*

<sup>10</sup> <https://lascapigliata.com/2018/04/12/there-is-nothing-more-fundamental-to-dealing-with-a-patient-than-knowing-whether-they-are-male-or-female/>

<sup>11</sup> Whitley, Cameron T. and Greene, Dina N. 2017 'Transgender Man Being Evaluated for a Kidney Transplant' *Clinical Chemistry* 63:11 1680–1684

<sup>12</sup> <https://lascapigliata.com/2018/04/29/transgenderism-and-unethical-medicine/>

<sup>13</sup> <https://thecritic.co.uk/issues/april-2021/the-trans-rights-that-trump-all/>

<sup>14</sup> <https://www.publications.qld.gov.au/dataset/other-qcs-plans/resource/7b9f5895-194b-44be-bd8d-a05257ddc57d>

This rule is not qualified by saying some men, evaluated to be trustworthy to women or particularly vulnerable to other men, may be incarcerated with imprisoned women. It is quite clear and uncompromising: men and women shall be imprisoned separately. So in addition to the draft law affecting half of the Queensland population, not just a tiny percentage; to being in conflict with the existing rights of that half; the draft legislation also conflicts with the obligations enjoined by a venerable document for humane treatment of people in the custody of the state.

However the draft legislation's novel conflation of sex and synthetic sex identity, under the term "sex descriptor", enables those distinctions to be circumvented, by re-defining the words we have used to describe reality. For enabling the sex on a birth certificate to be changed will make it much harder, if not impossible, to say no to a person of the male sex from impinging in a space, service or sport segregated for female people. While such proof has likely rarely needed to be asked for until now, in recognition of the obvious dimorphic differences between the bodies of male and female people, following the legislation's enactment will render such proof moot. The draft legislation removes the backstop for the sex segregation that is meant to benefit women and girls. But sex is physical, binary and immutable, and not a lifestyle choice. Women and girls are not effeminate, or feminine, people. Women and girls are female people, in the way mares, does and flyers are female horses, deer and kangaroos. Men and boys are not masculine people, they're male people, just as stallions, bucks and boomers are males of their species. Sex is materially salient to people's lives, as I have tried to show with respect to crime and health. And sex must be salient to those would govern those people well. This is post-truth law and I encourage the committee to reject it.