

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
11 January 2023**

Introduction

The Women's Action Alliance Canberra (WAAC) is a women's liberation organisation committed to the advancement of women and girls and to the protection of our sex-based rights on the understanding that sex is a biological fact with material consequences for human females living under patriarchy.

While we are Canberra-based, our membership includes Queensland women who are temporarily resident in Canberra and attending our national institutions, such as the Australian National University. Our membership also includes women from jurisdictions across Australia whose understanding of self-ID legislation similar to that proposed for Queensland informs our comments, as well as women who were born and raised in Queensland.

We recognise that the purpose of the bill before the Committee is to modernise current law to reflect the diversity of the Australian community. Unfortunately, as it currently stands, the bill unnecessarily sets up a conflict of rights, privileging the rights and interests of a relatively small group at the expense of essential protections for women and girls, while also risking safeguards for vulnerable children. Under international and Australian law few rights are absolute, and conflicts of rights – especially in human rights law – are not uncommon. These conflicts are not insurmountable, however, if they are adequately recognised and intelligently and compassionately mediated. We hope our comments assist the Committee to achieve such a mediation.

Specifically, we urge the committee, at a minimum, to make explicit in this bill that exemptions to the operation of Queensland's *Anti-Discrimination Act 1991* and other legislation that allow discrimination in certain circumstances for the legitimate purpose of protecting women's safety and rights will continue. We further urge the committee not to add 'sex characteristics' to the *Anti-Discrimination Act*, and we counsel the committee in the strongest possible terms to reject provisions in the bill that will streamline the process for children to change their legal sex – a process that will inexorably lead to more children proceeding to puberty blockers and cross-sex hormones, interventions that are known to impact their long-term health and future sexual functioning.

The stated purpose of the law

The Explanatory Notes tell us that the bill is designed to strengthen the legal recognition of trans and gender-diverse people, essentially by allowing the legal recognition of a change in an individual's sex without the imperative of surgery. The Explanatory Notes provide the example (the only such example provided in all the documentation associated with this bill) of a gender-diverse Victorian who reported that, as a result of similar legislative reform in Victoria, "I will now be able to change my sex at the bank so that I can actually be spoken to and not be denied access to my account. I can now enrol in university, apply for a job without feeling unsafe and at risk of humiliation or worse."

Of course, no fair-minded person could object to measures that reduce the potential for humiliation and that safeguard the dignity (including privacy) of individuals when interacting with banking services or in employment and education. Nor could a fair-minded person object to measures that discouraged dangerous and often experimental surgery especially in light of increasing rates of transition regret. WAAC certainly does not.

But this presentation of the purpose of the bill fails to reflect – and indeed distracts from – the complexities of the issues engaged. As it currently stands, the bill, if passed, will have the effect of:

1. Jeopardising single sex spaces and the safety of vulnerable women and girls,
2. Fast-tracking the medicalisation of gender questioning children, and
3. Compromising freedom of association for women's groups.

The effect of the bill: Jeopardising single-sex spaces and the safety of vulnerable women and girls

We approached this bill in good faith expecting to find reassurances that the creation of a right to change one's legal sex by declaration would not render discriminatory or illegal the provision of single ('natal') female sex spaces and services -- in other words, services that exclude individuals who were born male, and whose sex was observed or 'assigned' male at birth, but who become legally female.

Unfortunately, the bill offered no such reassurance. On the contrary, because it concurrently inserts 'sex characteristics' – that is, a person's physical features including genitalia – into the Queensland *Anti-Discrimination Act*, the provision of single-sex spaces for women and girls will soon be in a position of genuine legal jeopardy in Queensland. This will affect all women and girls, but it will hugely impact disadvantaged women who have few alternatives to community-funded domestic violence refuges and rape crisis centres. Moreover, it will especially impact the welfare of religious and migrant women, many of whom must have single-sex spaces for religious and cultural reasons. These amendments will also place in legal jeopardy authorities who make considered judgments that their responsibilities to safeguard children requires them to exclude male-bodied individuals in certain situations – such as in girls' changing rooms.

We ask the Committee not to misinterpret our concerns here. It is not that we believe that all self-declared transwomen provide any greater safeguarding risk to women and girls than other male-born people do, but rather that their obvious maleness is traumatising to victims of domestic and sexual violence. The committee need only reach out to experts who have worked in rape counselling to understand the vulnerabilities of women seeking to escape male violence or who are dealing with its life-long impacts. It is also not the case that we believe that all transwomen present any greater safeguarding risk to women and girls than other male-born people do in, for example, girls' changing rooms but that, as the UN Special Rapporteur on Violence Against Women and Girls has noted, sex offenders will go to great lengths to access those they wish to abuse (link URL:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27681>)

We acknowledge the reality that trans people may themselves be the victims of sexual violence and need protection. But the relevant question for the Committee is whether the bill as drafted creates a barrier to protections for either group. The proposed amendment to Queensland's *Anti-Discrimination Act* sets up a concrete barrier to female-only services: its removal would not present a barrier to transwomen people accessing unisex or gender-diverse services.

For these reasons, we urge Committee members to reject the proposed amendment to the *Anti-Discrimination Act*. If you cannot see clear to do so, we urge you to include in the bill's operative clause (s.47, 'the effect of the alteration of sex') explicit carve-outs to existing laws under which female-only services operate.

If the bill remains silent on the question of exemptions regarding the legal treatment of male-bodied people who have legally registered their sex as female and/or Queensland's *Anti-Discrimination Act* is amended to prohibit discrimination on the basis of "sex characteristics," female-only domestic violence shelters, rape crisis centres as well as female-only change rooms will be placed in real legal jeopardy. Litigation may eventually resolve these issues – but at considerable and unnecessary cost and uncertainty for Queenslanders and without any clear guarantee that current exemptions in the *Anti-Discrimination Act* can be relied on. It is also unfair to expect domestic violence shelters and rape crisis centres that have limited budgets for litigation to rely on court proceedings to resolve what should have been made clear in legislation. Sadly, as we are witnessing in the ACT, some organisations are choosing pre-emptively to limit female-only services – to the detriment of the health and welfare of women and girls.

The Effect of the bill: Fast-tracking the medicalisation of gender dysphoric children

We also approached the bill in good faith seeking reassurance that procedures for legally changing the sex of a child would recognise and safeguard children's special needs and vulnerabilities.

We note that the bill goes marginally further in this regard than similar legislation in other jurisdictions by requiring a "developmentally informed practitioner" to attest support for an application to change a child's sex legally (and thus socially). Unfortunately, the Explanatory Notes then contradict this requirement by stating that it is not intended to "question the appropriateness of a child's transition" but rather support the child on their "transition journey". In other words, attestation by a developmentally informed practitioner is rendered an essentially tick-the-box exercise. The Committee would – or should – know that the affirmation approach to gender dysphoria in young people is greatly contested. While the trans rights organisations consulted in the drafting of this bill advocate that 'affirmation' of a child's stated gender identity is in the best interests of the child, there is a rapidly growing body of evidence that this approach can actually do more harm than good. This body of evidence is demonstrating that socially transitioning children can lead to the medicalisation of their condition and the prescription of puberty blockers and cross-sex hormones, interventions that, in turn, risk irreversible damage including to a young person's future sexual functioning.

Increasingly, experts are also finding that gender dysphoria in children can mask trauma and autism – conditions that indicate other treatment approaches. Gender dysphoria can also mask same-sex attraction, as evidenced by a growing cohort of people who later regret transitioning and recognise in retrospect that they had internalised homophobic attitudes which sadly, remain common, despite recent progress.

As a result, countries that were some of the first proponents of the 'affirmation only' approach to gender distress in children, such as [Finland](#), [Sweden](#), and the [UK](#) have taken significant steps away from this 'affirmation' model in the last few years, now advocating more for supportive psychotherapy such as the 'watchful waiting' model. (We recommend the recent [summary](#) of these developments provided by the Society for Evidence Based Gender Medicine. Link URL: <https://segm.org/gender-medicine-developments-2022-summary>.)

We also note that some of the earliest and most ardent [advocates](#) of the affirmation approach to children's care including in the World Professional Association for Transgender Health (WPATH) have also expressed concern that the affirmative model has gone too far (link URL: <https://www.thefp.com/p/top-trans-doctors-blow-the-whistle>).

Against this background, we urge the committee to reject the bill's provisions for the streamlined recognition of a change of sex for children. It would be a tragic irony if a bill aimed at reducing the risk of over-medicalising trans and gender-diverse people perversely ended up fast-tracking that very outcome.

If the Committee cannot see clear to do so, it is imperative that the bill includes a clause that would require Parliament to review at frequent intervals whether or not the legislation, if enacted, was meeting its objectives, or if it required modification in light of new developments. We would recommend such a review not only of the provisions relating to children younger than 16 but also on other young people.

The effect of the bill: Compromising freedom of association for women's groups.

Finally, WAAC is concerned that this bill will compromise freedom of association for women's groups. With the proposed addition of 'sexual characteristics' to the *Anti-Discrimination Act*, the bill will likely impact two groups in particular: lesbians who wish to associate based on their shared attraction to biological women (as it will similarly impact male homosexual – groups), and women who wish to associate and advocate on the basis of their shared political conviction, informed by evidence-based science, that biological women must work together to address the causes – including those rooted in human biology – of women's oppression. As a result, both groups may feel obliged to go underground, impacting their safety, dignity and fundamental human rights.

For these reasons, we again urge the Committee to reject the proposed amendment to the *Anti-Discrimination Act 1991*. It is in any case imperative that Queensland law provides the same protections for 'voluntary associations' that exist under the Commonwealth *Sex Discrimination Act 1984* (section 39). In other words, like sporting and religious bodies, voluntary bodies must be assured that discrimination is not unlawful.

Conclusion

Currently, many who genuinely and sincerely attempt to engage in honest discussion of these issues are subject to abuse, slurs, and having their concerns summarily dismissed. We note that the Minister has advised members of the Parliament "not to spread division and transphobic ideas, regardless of how they ultimately vote on the bill." We are confident that this Committee can discuss these issues sensitively and constructively, but we are concerned that the debate should be open and transparent.

Queensland has an opportunity to get this legislation right. But it will require a genuinely fair-minded, good-faith appraisal of the risks that the bill in its current form presents. It will also require adequate reassurances to the women of Queensland – who were only belatedly consulted on the bill – that their concerns have been taken seriously. It is also imperative that legislation impacting vulnerable children is evidence- rather than ideologically based.

Future generations of Queenslanders and Australians depend on your wisdom and intellectual courage.

We thank you for this opportunity to comment.