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Committee Secretary
Legal Affairs and Safety Committee
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**SUBMISSION IN RESPONSE TO THE BIRTHS, DEATHS AND MARRIAGES
REGISTRATION BILL 2022 (QLD)**

Feminist Legal Clinic Inc. is a community legal service that works to advance the human rights of women and girls through a combination of targeted casework, community education and law reform submissions. We make the following submission in response to the Births, Deaths and Marriages Registration Bill 2022 (Qld) -

The law, as it is embodied in both legislation and judicial precedent, is an integral part of civilised society. It provides a guide to behaviour that enhances the greater good and ensures we do not descend into uncontrolled anarchy. It protects individuals and their property from assault – physical, verbal and financial – and allows for appropriate penalties when the bounds of accepted, legal conduct are breached.

We accept the necessity of law as a means of guaranteeing fairness, decency, ethics and morality in our dealings with each other.

We also expect the law to evolve with changing social attitudes and reflect contemporary understandings of the roles and rights of both individuals and groups in society. We expect all individuals and groups will be afforded an opportunity to express their thoughts about the law

and its impact on them, not just via their vote at election time, but throughout the term of an elected government.

We expect the law to be as clear and unambiguous as it can possibly be, to best facilitate interpersonal and group interactions.

Above all else, however, in a democratic society we expect the law to operate on a level playing field, with no evidence of preferential consideration being afforded any individual or group. Legislation, for example, should be for the benefit of all citizens. It should not, as is the case with the Births, Deaths and Marriages Registration Bill (Qld) ('the Bill'), be proposed with the stated intention of alleviating the existential angst of a vocal minority – 'At the core of this bill is strengthening legal recognition of trans and gender diverse Queenslanders' (Fentiman, Explanatory Speech, 2 December 2022, p. 3931 - https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

Elements of Opposition to the Bill

Other submissions will no doubt address several bases of opposition to the Bill. These include –

1. Failure to fully consider the impact of the Bill on the rights of female people. If there are three ways to be female at law – biologically female, biologically male with a female 'gender identity' and biologically male but 'legally' female – those born female have no enforceable sex-based rights.

In fact, the Queensland Attorney-General, when commending the Bill to the House, spoke dismissively of the opposition voiced by those concerned with female sex-based rights as follows –

'We also know 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' (Fentiman, Explanatory Speech, 2 December 2022, p. 3932 - https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

2. Failure to consult broadly on the proposed reforms intended to further the legal recognition of trans and gender diverse Queenslanders.

The Attorney-General notes that the consultation process commenced in 2018 and proceeded through 2019 via three discussion papers, all focussed specifically on the trans and gender diverse community. Despite a 'significant number' of responses critical of the proposed legislative reforms, those responses and their concerns appear to have been summarily dismissed as irrelevant, because those that supported the changes were considered more credible –

'In relation to the legal recognition of the trans and gender diverse community, over 500 submissions and 6,500 online survey responses were received. While a significant number of these were critical of reforms in this area, key LGBTIQ+, legal and health bodies strongly supported amendments to improve legal recognition of trans and gender diverse people' (Explanatory Notes, 2022, pp. 26-27 - <https://documents.parliament.qld.gov.au/tp/2022/5722T2053-D145.pdf>).

In drafting the Bill, consultation was taken with a selection of organisations and groups in which advocates for trans and gender diverse rights predominated.

There is no evidence of balance or wide-ranging consultation in either the original 'discussion' process or in the drafting of the Bill.

3. Failure to consider the impact of the proposed legislative reforms on the health and well-being of children and young people who may express a trans or gender-diverse 'identity'.

Provisions enabling a change of registered sex for minors are one element of a trend towards affirmation of a 'gender identity' different to a child's birth sex.

Many other jurisdictions worldwide are backing away from the 'gender affirmation' model of intervention for children who manifest an incongruence between their sex and their gender identity. For good reason – it is a highly medicalised model, reliant on the use of hormone drugs and surgeries to produce a

passing change of apparent sex in the individual. The safety of these interventions is neither well-researched or definitively determined.

In fact, what evidence there is indicates those children who embark on a path of medicalised transition begin with so-called ‘social transition’. Changes to identity documents are a part of those initial steps.

Arguably, it is incumbent on a ‘responsible’ government to fully explore all sequelae of proposed legislation, not act in haste on the advice of adults with a vested interest in furthering a particular ideology.

Other Considerations

1. Legislating for all Queenslanders

As noted previously, legislation should ideally be receptive to the needs of all constituents. The members of Queensland’s single house of parliament are arguably under a greater obligation than others to take their commitment to the people seriously. Since the abolition of the Queensland Upper House in 1922 (the initiative of a Labor government), the state’s legislators and its people have not had the benefit of a formal house of review. All other governments in Australia have functioning upper houses, which operate as a check on the activities of the sitting government.

When sworn in, Queensland members of parliament make the following oath, in part –

‘I will well and truly serve the people of Queensland and faithfully perform the duties and responsibilities of a member of the Legislative Assembly to the best of my ability and according to law’.

It can be assumed this oath applies to all people of Queensland, not just groups with a narrowly focussed agenda.

2. The Birth Certificate as an Identity Document

A birth certificate is a primary identity document. Without a birth certificate, individuals cannot easily function in modern society – their access to services is compromised, as is their ability to secure employment.

The key element of a birth certificate is its function as a unique identifier of a given individual. To fulfil that function, birth certificates in Australia can contain information about a person's name, sex, time and place of birth, parents' names, parents' date and place of marriage (if applicable) and information about the individual's siblings (if there are any).

'Sex', meaning biological sex at birth, is a key identifier. The ordinary meaning of 'sex' in this context is either male or female. Standard dictionary definitions of 'sex' reflect this ordinary meaning. For example, the Merriam Webster online dictionary defines 'sex' as –

a: either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on the basis of their reproductive organs and structures (<https://www.merriam-webster.com/dictionary/sex>)

This definition is unremarkable, uncontested and repeated in similar terms in all dictionaries and relevant texts.

It is common, however, for trans rights supporters and activists to argue that 'sex' exists on a spectrum, often by referring to individuals with differences of sex development (intersex). In fact, the overwhelming majority of infants are unequivocally observable as either male or female at birth. A very tiny minority of infants are born with genuinely ambiguous genitalia – they are described as having a difference of sex development. They are almost always determined to be of either a male or female karyotype - they do not negate the generality of human sexual dimorphism. A schema with close to 50 per cent of the population at one extreme (male) and the other 50 percent at the other extreme (female) and an infinitesimal number of individuals located between them is not a spectrum.

The Bill under consideration proposes to allow individuals over 16 to change the 'sex' descriptor on their birth certificate (presently either male or female) to a term that better reflects their 'lived identity'. The Attorney-General wants to ensure that 'that Queenslanders' legal identity matches their lived identity' (Fentiman, Explanatory Speech, 2 December 2022, p. 3931 - https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

The process by which this will be achieved – a 'quasi "self declaration"' protocol – is relatively simple, and also available to parents/guardians of minor children under the age of 16. If all else fails, and a 'developmentally informed practitioner' recommends the change, the Children's Court can step in and order a sex descriptor change for a child in this cohort.

'Sex descriptors' can be whatever an individual believes to be the most accurate description of their 'identity' – the Attorney-General makes the following observations –

'Some of the more common sex descriptors a trans or gender diverse person may nominate include: trans man or woman, agender, genderqueer or non- binary. The application process will be supported by robust safeguards which will ensure alterations are only made when they are genuine and in good faith. The registrar cannot approve a sex descriptor which is: obscene, offensive or absurd; could not practically be established by repute or usage; or is contrary to the public interest' (Fentiman, Explanatory Speech, 2 December 2022, p. 3933 - https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

To reiterate, 'sex' means either male or female. 'Sex' is a key element of a primary identifying document.

'Agender' is not a sex. 'Genderqueer' is not a sex. 'Non-binary' is not a sex. To present any these terms as the sex descriptor on a birth certificate compromises the validity of the document as a reliable identifier. They are, by the Attorney-General's own definition of unapproved terms, 'absurd'. They cannot be established definitively by repute and usage, and their capricious use is contrary to the

general public interest – an interest which the members of the Queensland parliament are bound by oath to serve.

The fact that sex descriptors can be legally changed every 12 months under the proposed legislation elevates the absurdity of these parts of the Bill to grotesque, ill-considered irrationality.

3. Gender Identity

The Bill, like its predecessors in Tasmania and Victoria, has a laser-focus on promoting the notion of ‘gender identity’ and providing for its recognition and protection at law. But, what is ‘gender identity’? And, why has it replaced biological sex, both as a reliable identifier and a protected attribute in law and policy?

Previously related to language, the term ‘gender’ indicated whether a word was male, female or neuter. Some languages, like German, are highly gendered – every noun has a gender, denoted by ‘der’ for a male noun, ‘die’ for a female noun and ‘das’ for a neuter noun.

Subsequently, ‘gender’ came to be used as a substitute for the word ‘sex’, probably because it was considered more conservative and could be differentiated from the word ‘sex’ meaning sexual intercourse. Everyone understood, though, that ‘sex’ and ‘gender’ meant the same thing when referring to whether a person was male or female.

Now, ‘gender’ is considered to have a meaning separate to ‘sex’. It is described as a social construct based on stereotypical behavioural and appearance expectations for male and female people. No-one has yet defined gender in a way that does not reference these stereotypical attributes. In fact, both ‘gender’ and ‘gender identity’ defy clear definition.

A person’s identity is the unique combination of physiological and social attributes that sets them apart from others. In order for a person to be ‘identified’ those attributes must have a degree of consistency. For some physiological attributes – blood group, hair colour, eye colour, and sex – they must be constant. And for all humans, they are – it is impossible to change the blood group, hair and eye colour and sex with which an individual was born.

‘Gender identity’, on the other hand, is fluid – not fixed. It is entirely counter-intuitive that an attribute that must be considered mutable

for all legal and practical purposes, can also be a legally recognised identifier. Why must we accept it as such?

The discombobulation generated by notions of ‘gender identity’ and its vexed legal and social relationships with biological sex has already provoked a number of previously unheard of issues, all of which disadvantage female people.

Male born people are now competing in female sports, using female facilities (often involving personal needs), gaining access to the female prison estate and taking places reserved for women in business and public life. They are not always doing so with good intentions – there is evidence of both opportunism and abuse in some male people taking advantage of laws that allow them to legally identify as female and benefit from the protections afforded their ‘gender identity’.

The Attorney-General is apparently unaware of this – she says –

‘We also know 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. I want to be clear: there is no evidence, domestically or internationally, to support these outrageous claims’ (Fentiman, Explanatory Speech, 2 December 2022, p. 3932 -

https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

No doubt there will be other submissions that provide the evidence the Attorney-General is certain does not exist.

More specifically, and by way of example, a lesbian woman in Tasmania was recently denied an exemption under the Anti-Discrimination Act 1998 (Tas) for the purpose of holding a female-only lesbian social event.

The reasoning behind the refusal, and the rejection of the applicant’s request for review focussed on two elements of the law.

First, ‘sex’ is not, and never has been, a protected attribute under Tasmanian anti-discrimination law. After decades of activism in support of sex-based rights, women in Tasmania failed to have their female sex recognised as an attribute worthy of protection.

Second, it was determined that allowing the exemption would be against the intent of the legislation, which is to discourage discrimination. Allowing lesbians to meet and associate with other female people risked discriminating against male people who identified as female. Needless to say, the law in Tasmania fully and explicitly protects the attribute of ‘gender identity’.

The applicant in this case was admonished for her unseemly remarks about males who identify as female – in much the same way as the Attorney-General chides those who raise the issue of female rights in opposition to the Bill.

Further, and to illustrate the extent to which gender ideology has promoted the total abandonment of common sense, the Tasmanian Anti-Discrimination Commissioner made the following observation –

‘transgender and transexual women, that is, those persons identifying as female in circumstances where that identity does not correspond with the gender identity assigned them at birth or their birth gender’ (Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption) [2022] TASCAT 142 (24 November 2022), p. 21 - <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASCAT/2022/142.html>).

Despite everything we know to be true about the human species, particularly that humans are either male or female and their sex is observed at birth, and despite the modern notion of ‘gender identity’ as an inner sense of self that develops as an individual matures, the Commissioner is comfortable asserting that infants are ‘assigned’ a gender identity at birth. Does the attending doctor or midwife, or whoever sees the infant emerge from the woman’s body, have an infallible crystal ball?

Or, are our laws and institutions so invested in ‘gender’ that advocates can make patently ludicrous statements that even contradict the ideology’s underlying premise, without any apparent embarrassment.

A further example is the matter of a ‘legally female’ man seeking access to an online service set up specifically for females. The complainant initially took the matter to the Australian Human Rights Commission and is now seeking relief, including an apology, access to the service and compensation, in the Federal Court (Giggle legal case ‘a warning

for women', Joanna Panagopoulous, 02.01.2022 - <https://archive.ph/7mAU1>).

The text of the above article refers to discrimination against the complainant (Tickle) on the 'basis of her sexual identity'. The claim is based on Tickle's 'gender identity', not 'sexual identity'. Journalists are struggling with the language, as are the majority of persons not engaged with, or only superficially interested in, the 'sex' v 'gender identity' debate.

But, those people should be paying attention. Gender ideology is the Kraken lurking in the ocean of human rights law. Its tentacles have captured everything meaningful and true about humans and dragged it into a vortex of male entitlement. Who benefits from a legislative regime that allows male people to be legally recognised as female and usurp the hard earned sex-based rights of women and girls at their whim?

Certainly not women and girls.

Thanks to the now symbiotic relationship between birth registration and certification laws, and anti-discrimination legislation, Australian courts and tribunals are happily entertaining actions such as this. The Bill will strengthen the position of potential litigants with a similar agenda and no doubt embolden them to take proceedings against any perceived offenders against the sanctity of 'gender identity'.

The first mentioned policy objective of the Bill is to 'strengthen the legal recognition of trans and gender diverse people'. The Attorney-General proclaims, without explanation, that 'there are no alternative ways to achieve the policy objectives' of the Bill (Explanatory Notes, 2022, pp. 21 - <https://documents.parliament.qld.gov.au/tp/2022/5722T2053-D145.pdf>).

Given 'sex' is a verifiable attribute for most individuals, and 'gender' and 'gender identity' are changeable social presentations, one alternative way of achieving the first policy objective without diminishing sex-based rights would be –

- abandon any terms referring to 'gender';

- clearly define the term 'sex'. Include it as a required identifier on the register of births but an optional field on a birth certificate. Make it a distinct protected attribute under anti-discrimination law;
- make 'social identity', as appropriately defined, a protected attribute under anti-discrimination law.

Finally, the Attorney-General closes her Explanatory Speech as follows

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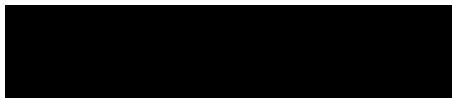
'The Palaszczuk government is committed to ensuring Queensland is a safe and inclusive community for all of its members. With this bill and its recognition of the inherent human dignity in all of us, we move a step closer' (Fentiman, Explanatory Speech, 2 December 2022, p. 3934 -

https://documents.parliament.qld.gov.au/events/han/2022/2022_12_02_WEEKLY.pdf#page=24).

Does 'all of us' include the approximately 50 per cent of the population that is born female? Or are their rights to privacy, safety, dignity and freedom of speech and association inferior to those of trans and gender diverse Queenslanders?

Thank you for the opportunity to make this submission. We are happy to expand on any element of it if required.

Yours faithfully



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Feminist Legal Clinic

