

Births, Deaths and Marriages Registration Bill 2022

Submission No: 343
Submitted by: Rainbow Families Queensland
Publication: Making the submission and your name public

Submitter Comments:



11 January 2022

Dear Committee

Submission regarding Births, Deaths and Marriages Registration Bill 2022

Thank you for the opportunity to provide a submission regarding the Births, Deaths and Marriages Bill 2022 (the Bill). Our submission is made on behalf of rainbow families across Queensland, with a focus on representing the voices of the LGBTQ+ community as well as those of our children. Throughout this submission we have included the personal accounts of our community members to demonstrate the importance of these reforms to families.

Rainbow Families Queensland strongly supports the passage of the Bill. We commend the government on introducing these vital reforms and express our appreciation to the Department of Justice and Attorney General's strategic policy team for listening and engaging with our communities throughout the development of this legislation.

About Rainbow Families Queensland (RFQ)

RFQ supports, celebrates, and advocates on behalf of LGBTQ+ parents and carers and their children across Queensland. RFQ has a vision of a community where every family is included, respected, and valued. As a community organisation run on a volunteer basis by LGBTQ+ parents, we act as a support network for parents and carers as well as their children. We advocate on behalf of our community and are a strong and consistent voice for LGBTQ+ families to address discrimination, raise awareness and promote acceptance.

Families in which one or more parents or carers identify as LGBTQ+ are known as *rainbow families*. Our families are diverse and are formed in many ways, including through donor conception, surrogacy, step-parenting, and co-parenting.

Our families have always existed in society, but are now becoming more visible. With increased community acceptance and access to assisted reproductive technology, the numbers of rainbow

families are growing substantially. While the Australian Census does not correctly identify and record our families,¹ some information can be extrapolated from the 2021 data:

- 78,425 same sex couples lived together in Australia (67.7% increase since 2016)
- 1 in 3 were married (30%)
- 17.3% had children living with them

This means that there were at least 13,567 same sex parented families living with children in 2021 in Australia, although this figure is significantly lower than the number of rainbow families overall because of problems with the questions that were asked in the Census.

Nonetheless, this is a significant increase in four years: *an increase of 161% for male same sex couples with children, and 84% for female same sex couples with children.*²

Recognition of all our families

RFQ supports the Bill's objectives in strengthening the legal recognition of trans and gender diverse people and in providing better recognition and equity for the diverse, contemporary families that make up Queensland's society in 2023.

The effect of currently outdated legislation and subordinate legislation is that:

- Where there is a two-mum or two-dad family conceived by IVF or surrogacy, only one parent can be registered as 'mother' or 'father' and the second mother or father must be registered as 'parent'.
- Where a trans or gender diverse parent does not identify as female is a birth parent, they can only be listed as a 'mother'.
- Where a single parent who has conceived by donor conception has two or more children (that are often full blood relations), the birth certificates for the children do not reflect that they have any siblings because the information collected refers to 'previous children of the relationship'.

The passage of the Bill will mean that our child's birth certificates can reflect their families in the most accurate way possible. Our parenting roles and our children's siblings will be correctly recorded for the first time. For our families who already have children, there will be an opportunity to correct the register. This is beneficial for families and children but also for the accuracy of the public register of births.

¹ The Census did not collect gender, variations of sex characteristics, or sexual orientation and does not therefore reflect the full range of relationships and families. Where a child lives over one or more household, depending on where they were on Census night they may not be included as being in a same-sex parented family.

As reflected in the Explanatory Notes to the Bill, our children's birth certificates have 'deep social and emotional resonance'. Beyond their emotional significance, our children's birth certificates are the first and often the only identity document a child has. Having incorrect information leads to situations where a person must 'out' themselves when they or their child is accessing services, programs or education. For example, where a trans father signs up for a day care for his child, he will need to produce a copy of the birth certificate for his child on enrolment which lists his parenting role as 'mother'.

Having a birth certificate that contains the word 'mother' can exacerbate gender dysphoria for some parents. RFQ is aware of the trauma being so significant for some trans parents that they will not register their child's birth at all.

Personal account from a family that includes one transgender mum

We're a family of four, with two mums, a son and a daughter, conceived naturally. One mum is transgender. Being able to have the kids birth certificates reflect their trans mum's name, gender, and what they call her, would be so meaningful for us and also will make the kids' lives simpler in the future, as all of trans mums legal details have been changed as much as the government allows.

Personal account from a father of three

Being able to be father on their birth certificate will be a relief to know that I am legally entitled to be gendered in a way that is aligned to my sense of self. It will mean I can enroll my kids in school and daycare and not have to explain why my kids call me dad but on their certificate I am mother and hope they respect my wishes for how they refer to me. It will mean that I don't have to out myself as trans and my kids don't have to out themselves as having a trans father and expose ourselves to the potential discrimination that may cause.

Personal account from a non-binary birthing parent

We're a family of 3 - I'm a non-binary birthing parent. I do go by Mum with my baby, but I don't identify as "a mother" despite having to list myself as such on pretty much all official paperwork. It would mean so much to me to be able to simply be a "parent" rather than having to force myself into a box that doesn't really fit.

To be able to get a new birth certificate for my child (ideally, without their sex listed) with my own title as parent would mean being seen for who I really am, and showing my child that I'm able to stand up and be my full self rather than having to shrink into outdated roles because of a box ticked on a form. Every time I have to call myself something I'm not, it feels not only like I'm betraying myself, but that I'm not being the role model my child needs and deserves in life.

In our families, there is often a parent who shares no biological connection to their child. It can be a difficult and emotional journey for a non-biological parent, who may experience self-doubt about the extent to which they will connect with their child, fears about whether they will be properly recognised as their parent, and stigma from others who do not consider them to be a 'real' mother or father to their child. This experience can be compounded by receiving a copy of a birth certificate with the neutral term 'parent', when this does not reflect how they see their parenting role as a father or mother.

Personal account from non-biological mother of 7-year-old daughter

We're a family of two mums and a 7-year-old girl. It took a while to fall pregnant with her after my wife had an ectopic scare that still led to a curette. When we finally fell pregnant, I cried when I first heard her heartbeat on an ultrasound scan.

I had my emotional armour on when I saw the form only had a space for 1 mum and so I made my peace with "parent" for myself. But having the first birth cert come back listing me incorrectly as 'Father' upset me more than I thought. I was angry, in fact. Like I've already come to terms with the concession of "parent" and they can't even give me that.

Having said that, my daughter is now old enough to have a proper discussion with us and we can all come to an agreement when the time comes on whether I will be listed as 'Mother' on her birth cert, but it will be OUR family's choice.

Personal account from a couple trying to conceive

My wife and I are currently a family of two mums to a cat. We're hoping to try and convince a human child using donor sperm next year. It would mean the world to us if we could both be listed as 'mother' on our child's birth certificate. It would give more status and recognition to the non-birthing mum.

Personal account from a two-mum family with a toddler

We are a two-mum family with a toddler. We conceived through donor sperm as it was important to us that we were both recognised as parents and as the only parents for our child. Our son's birth certificate lists one of us as the mother and the other as "parent". Every time I see his birth certificate it feels like a punch in the gut, a reminder that we aren't both seen as his "real mothers". Even if the birth certificate only identified us as "parents" that would be less hurtful than the current format that alienates one parent. Having his birth certificate corrected to accurately reflect our roles would mean a lot to us as a family.

Protecting and promoting human rights

The *Human Rights Act 2019* recognises the importance of family as a fundamental group unit in society.² The right to respect for family is derived from the International Covenant on Civil and Political Rights (ICCPR) article 23. Under the *Human Rights Act 2019* the state is obligated to protect families. International human rights law recognises that the term ‘family’ should be broadly interpreted to include all persons who are understood as comprising a family within the society of the particular state.³ The proposed reforms in the Bill ensure that Queensland provides protection to *all* kinds of families.

The *Human Rights Act 2019* also protects the rights of the child to special protection, in their best interests, without discrimination.⁴ Although on wellbeing and development measures our children have been shown to have similar or even better outcomes when compared with their peers, children in rainbow families can experience stigma, social isolation and discrimination.⁵ This stigma, sense of shame and ‘othering’ is reinforced by having a birth certificate that does not reflect their family. In the same way that a child with a mother and father should have a birth certificate that is congruous with their real experience of their family, so should our children.

Further, ensuring that a person’s parental role is accurately reflected on their child’s birth certificate promotes the right to privacy⁶ of parents who are trans and gender diverse.

As noted in the Statement of Compatibility the reforms also promote the right to equality⁷ before the law regardless of sexuality or gender identity by ensuring that same sex couples and trans and gender diverse parents can choose a parental descriptor.⁸

Accurate birth certificates

There may be submitters to this inquiry who seek to compare the experiences of our children with those who were subject to unethical and traumatic experiences as adoptees or donor conceived children in the past, at a time where parents were often not honest with their children about their origins. While empathising with these groups, RFQ urges the Committee to consider the differences between the experiences of these individuals and the experiences of our children. In rainbow families, our children are never lied to about their parentage, and families are open and honest with children about their biology – in same-sex or single parented families it is not possible

² *Human Rights Act 2019* (Qld) s 26(1).

³ United Nations Human Rights Committee, General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art 23), 39th sess, 1990, 1 - 3.

⁴ *Human Rights Act 2019* (Qld) s 26(2).

⁵ Dempsey, C. (2013). *Same-sex parented families in Australia* (CFCA Paper No. 13). Melbourne: Australian Institute of Family Studies. Retrieved from <aifs.gov.au/cfca/publications/same-sex-parented-families-australia>; Crouch, S.R., Waters, E., McNair, R., Power, J., & Davis, E. (2014). Parent-reported measures of child health and wellbeing in same-sex parent families: A cross-sectional survey. *BMC Public Health*, 14,635.

⁶ *Human Rights Act 2019* (Qld) s 25.

⁷ *Human Rights Act 2019* (Qld) s 15.

⁸ Statement of Compatibility, Births, Deaths and Marriages Registration Bill 2022, 8.

to 'hide' the fact that a child has been conceived by donor conception or surrogacy. Adoption practices are now extremely rare in Australia, but the only kind of adoption that RFQ is aware is occurring is open adoption, which values the right of a child to know where they came from and wherever possible foster connections with biological family members.

Any suggestion that a birth certificate should only reflect a person's 'biological father' and 'biological mother' ignores the reality that:

- Many Queenslanders already do not have their biological father correctly recorded on their birth certificate, and paternity is not always known, may be unclear or is contested. Aside from DNA testing every parent on the registration of a birth, it is not possible for the register to ever be entirely accurate in this regard.
- Since the advent of assisted reproductive technology, the assumption that all children have a biological father, and a biological mother who is also the person who has carried the pregnancy, is false, even outside of rainbow families. Examples can include:
 - Where person uses an anonymous donor, and therefore is unable to provide the name and details of the sperm donor in order to complete the 'father' details.
 - Where one parent carries the embryo created from the egg of another parent and the sperm of a donor, so for the purposes of the law is a 'mother' but has no biological connection to their child.
 - Where a surrogate either births a child that is biologically connected to them (traditional surrogacy), or has no biological connection to them (gestational surrogacy), and the child is that of their intended parents.

Updating the Anti-Discrimination Act

RFQ is pleased to see the long overdue updates to the *Anti-Discrimination Act 1991* incorporated into the Bill, including:

- Update to the definition of gender identity to ensure it includes gender diverse people (including non-binary people) and people who have diverse gender expression;
- Ensuring the protection of people born with variations of sex characteristics from discrimination and vilification; and
- Removing the 'work with children' exemption that leads to unfair stigma and discrimination against people with protected attributes including trans and gender diverse people and sex workers.

We consider that these updates promote equality before the law and ensure strengthened protections from discrimination for our families. RFQ looks forward to the government

implementing the remaining reforms recommended in the Queensland Human Rights Commission's *Building Belonging* report.

Yours sincerely



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Rainbow Families Queensland Steering Committee