

Sisters Inside Inc.
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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

12 January 2023

Committee Secretary
Education, Employment and Training Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lasc@parliament.qld.gov.au

Dear Committee Secretary,

Births, Deaths and Marriages Registration Bill 2022

Thank you for the opportunity to provide feedback on the Births, Deaths and Marriages Registration Bill 2022 (the Bill).

About Sisters Inside Inc.

Sisters Inside Inc. is an independent community organisation that exists to advocate for the collective human rights of all women, girls, and gender diverse people in prison, and to provide services and support to meet the needs of these people and their families, both in custody and upon release into the community. The organisation works alongside people to plan and establish safety, security, and stability, and includes support with parole, sourcing accommodation, accessing legal support, health services and identifying long-term goals for themselves and their families.

Sisters Inside Inc. is an abolitionist organisation that rejects the use of violent and colonial practices such as police and prisons systems as a means of addressing the inequitable distribution of wealth and resources. Abolition is the investment in strong and safe communities and individuals, that prioritises mental and physical healthcare, secure housing and stable income. Our submission is informed by our more than 30 years' experience supporting and advocating for the human rights of criminalised people.

Preliminary matter

Sisters Inside Inc. does not support the reference to 'correctional environment' rather than prison. In our view terminology is central to an abolitionist ideology and practice and as such we will make reference to prisons, rather than correctional environments throughout this submission.

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Approval process for 'restricted persons'

We welcome the opportunity to provide our views on the *Births, Deaths and Marriages Registration Bill 2022* (the Bill) introduced to the Queensland Parliament by the Attorney General on 2 December 2022. We support the proposed amendments to the *Births, Deaths and Marriages Amendment Act 2003* (the Act), however we are strongly of the view that significant improvements can be made to secure better outcomes for trans and gender diverse Queenslanders defined as 'restricted persons' currently in the custody of the chief executive of corrective services (chief executive) and previously incarcerated people released under a supervision order.

Scope and Context of the Births, Deaths and Marriages Registration Bill 2022

The Bill currently before the Committee for consideration was introduced on 2 December 2022 and proposes to amend the Act (and other listed Acts) with the intent of 'strengthening the legal recognition of trans and gender diverse Queenslanders'. The Bill contains provisions which, if enacted, will allow for:

- a. Greater recognition of trans and gender diverse people;
- b. Recognition of contemporary family and parenting structures;
- c. Improved operations of the registry;
- d. Support for fraud prevention;
- e. Clarification of information collection, use and sharing.

Sisters Inside Inc. supports the proposed commitments to ensuring a person's legal identity aligns with their lived experience and gender expression. Sisters Inside Inc. is an organisation committed to advocating for and working towards the human rights and safety of criminalised people. We see the Bill as an important step in reducing discrimination and harassment of trans and gender diverse Queenslanders.

There is a key area of concern in the Bill in its current form for trans and gender diverse people in prison or previously in prison. Our submission highlights these areas for consideration by the Committee when deliberating on the Bill and highlights the consequences the Bill will have for people in the trans and gender diverse community.

Statistics impacting the bill

A study by the Australian Law Reform Commission¹ reported the following statistics with regards to the disproportionate incarceration rate of Aboriginal and Torres Strait Islander

¹ Australian Law Reform Commission, *Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People*, Final Report No 133 (2017)

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people. By virtue of the mass incarceration of Aboriginal and Torres Strait Islander peoples, they will be most significantly impacted when attempting to have their legal sex descriptor match their gender identity and expression.

- 27% percent of the adult prison population are Aboriginal or Torres Strait Islander while making up only 2% of the broader population.
- Aboriginal and Torres Strait Islander incarceration rates increased by 41% between 2006 and 2016.
- Aboriginal and Torres Strait Islander women constituted 34% of the female prison population in 2016. The same year, the rate of imprisonment of Aboriginal and Torres Strait Islander women (464.8 per 100,000) was higher than that of non-indigenous women (21.9 per 100,000) and non-Indigenous men (291.1 per 100,000).

Alongside the Australian Law Reform study, the La Trobe University report² referenced in the Bill reports the following statistics with regards to the trans and gender diverse population in Australia.

- Trans and gender diverse participants reported experiencing homelessness at higher rates than their cisgender participants. Over 34% of trans men, 33% of non-binary participants, 31% of trans women, 19% of cisgender women and 16.8% of cisgender men reported ever experiencing homelessness.
- More than 77% of trans and gender diverse participants reported being treated unfairly because of their gender identity in the past 12 months.
- Overall, trans and gender diverse participants reported higher rates of psychological distress, suicidal ideation and attempts, and poorer self-rated health than cisgender women and cisgender men in a previous study.
- Less than half of trans women (49.5%) and trans men (49.5%), and one quarter (25.8%) of non-binary participants agreed or strongly agreed with the statement, 'I have been easily able to access gender affirming care when I have needed to.'

Considerations

Effect of altering record of sex or issues of recognised details certificate

The Effect provision specifies the following:

“... it will facilitate provisions in other Acts which use gendered terms that are directed to the anatomical capacity of a person to be interpreted in a way that captures a person if that person

² Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University

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*retains the anatomical characteristics necessary regardless of what that person's registered sex may be.*³

We are of the view that prioritising a person's anatomical characteristics over their gender identity and expression will negatively impact the lives and safety of trans and gender diverse people in Queensland. This will reduce access of trans and gender diverse people to healthcare, housing, employment, and education opportunities. Aligning with the overwhelming intent of this Bill in the strengthening of legal recognition of trans and gender diverse Queenslanders, we see the need for a person's correct legal gender identity and expression to be used over a person's anatomical characteristics. We argue that this is especially relevant to the experience of trans and gender diverse people in prison.

Approval process for 'restricted persons'

*"Persons in the custody of the chief executive of corrective services (chief executive) under the Corrective Services Act 2006 (except prisoners released on parole) and prisoners released under a supervision order or interim supervision order (released prisoners) under the Dangerous Prisoners (Sexual Offenders) Act 2003 will be required to obtain the written permission of the chief executive (corrective services) prior to making an application to the registrar to alter their record of sex or for the issue of a recognised details certificate."*⁴

This process is purportedly designed to ensure the safety and welfare of the person themselves, the community, and to ensure the order and security of the prison by preventing applications with the intention to harm others, for secondary gain, or perpetuate 'offending'.

Of the trans and gender diverse community in Queensland, those in the custody of the chief executive of corrective services are at the highest risk of violence and discrimination. Sisters Inside Inc. sees the need for an equitable roll out of the Bill and for all trans and gender diverse Queenslanders to be able to apply to have their legal sex changed. We do not agree that implementing the above process will afford protection and ensure safety and welfare for those defined as 'restricted persons'. Instead, this goes directly against an equitable rollout of the Bill's intention of strengthening the legal recognition of trans and gender diverse Queenslanders.

In Sisters Inside Inc.'s role as frontline support, we are witness to the overwhelming marginalisation and oppression experienced by the trans and gender diverse people we support. All trans women in prison who are supported by us are incarcerated in men's prisons, and often experience gendered violence and abuse at the hands of other people in prison and

³ Queensland Parliament 2022, *Births, Deaths and Marriages Registration Bill 2022, Explanatory Notes*, pp 12-13.

⁴ Queensland Parliament 2022, *Births, Deaths and Marriages Registration Bill 2022, Explanatory Notes*, pp 13.

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correctional officers. Abuse and oppression of trans people is not limited to the experience of trans women in men's prisons; trans men and gender diverse people in women's prisons are often victim to the same assault. Previously incarcerated trans and gender diverse people also face difficulty accessing post-release support including gendered crisis or short-term accommodation and support programs. Additionally, trans and gender diverse people in prisons that do not align with their gender identity face barriers in accessing safe, appropriate and uninterrupted gender-affirming health care.

New framework for children under 16

It is important that the Bill include provision for trans and gender diverse children and young people who may have limited access in seeking gender affirmation on government identification. This is critical in lending an intersectional approach to the delivery of reforms as contained in the Bill. This includes but is not limited to Aboriginal and Torres Strait Islander trans and gender diverse children and young people, those living in rural or regional communities, and/or trans and gender diverse children and young people who are currently in or have recently left youth prison.

The two pathways by which a child under 16 may alter their record of sex established by the Bill are through an administrative application to the registrar by a person on behalf of the child, or through an application through the Childrens Court.⁵ These pathways are limiting to children currently in custody, children with unstable and unsupportive guardianship or care, and children in rural, regional and remote areas. Additionally, we raise concerns that the above-mentioned persons are far less likely to access "developmentally informed practitioners" to attest to a change in gender markers on government identification.

Timeframes for birth registration

We support the need for greater flexibility and time for the parents of children who are born with the apparent characteristics outside the binary norm. Instead of 180 days to register the child's birth we see the need for this timeframe to be increased to 24 months. Children who are born with apparent characteristics outside of the binary norm are subject to invasive, high risk and permanent surgeries. These are serious and considered decisions that parents must make alongside medical professionals. 24 months is required to ensure no unnecessary pressure and time restraints are placed on parents and medical professionals. This will have a positive and significant impact on the lives of children born with apparent characteristics outside of the binary norm. Our concern lies that in the instance of a failure to register a child, guardians and carers face criminalisation and penalisation.

⁵ Queensland Parliament 2022, *Births, Deaths and Marriages Registration Bill 2022, Explanatory Notes*, pp 6.

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Despite this, we were pleased to see the 'opt-in option' included in the Bill to ensure that gender doesn't have to be listed on a birth certificate. This is overwhelmingly a good thing as it allows for people's gender not to be listed on their birth certificate.

Consultation

We note that only one Aboriginal and Torres Strait Islander organisation was involved in the consultation process and no organisation working within the Queensland prison system was involved in the consultation. This is a regrettable decision as people who come under the custody of the chief executive are significantly impacted by the proposed Bill. We also note that groups that practise hate speech have been engaged in the consultation process of this Bill, including supposed "women's rights groups". While Sisters Inside Inc. directly supports the majority of trans and gender diverse people in the custody of the chief executive in Queensland, and specifically Aboriginal and Torres Strait Islander trans and gender diverse people, we were not invited to the consultation process.

Overview of matters

This submission is underscored by three key themes and all observations and suggestions for improvement to the Bill ought to be read through this prism.

First, a person's chosen gender identity and expression must take priority over a person's gendered anatomical characteristics.

Second, people should not be required to obtain permission from a chief executive or any other delegated authority of the State to put in an application to change their name or sex/gender descriptor.

Lastly, the Committee needs to consider any impacts that the proposed changes to the Bill will have on trans and gender diverse children who are criminalised or whose parents or guardians are criminalised, or who face barriers in accessing Court applications.

Sisters Inside Inc. argues that the Bill does not go beyond the 'identifying' process and does not expressly contemplate socio/political factors that could impact a person's ability to self-identify.

Trans and gender diverse Queenslanders in prison or people who have previously been in prison are most at risk of violence and discrimination while having the most limited access to healthcare options. Upon release back into the community criminalised trans and gender diverse Queenslanders have the least access to housing, employment, and education options in relation to the broader trans and gender diverse community. Aboriginal and Torres Strait Islander people make up a large percentage of this prison population at 27% and will be most impacted by having to obtain the written permission of the chief executive (corrective services).

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There must be an equitable and just rollout of the Bill where all trans and gender diverse Queenslanders have equal opportunity to request a change of their sex descriptor.

Thank you for considering this letter. If you would like to discuss this letter further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely



Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc.