



Level 1 Oxley House, 20 Hockings Street, West End

P PO Box 3467, South Brisbane BC QLD 4001

T 07 3124 7160

E [REDACTED]

W [lgbtilegalservice.org](http://lgbtilegalservice.org) ABN 17 702 067 509

Our ref: RH:S:BDMR

11 January 2023

The Hon Shannon Fentiman MP  
Attorney-General and Minister for  
Justice, Minister for Women and  
Minister for the Prevention of Domestic  
and Family Violence  
GPO Box 149  
BRISBANE QLD 4001

**Email: [attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au)**

Dear Attorney

**Re: Submission on the *Births, Deaths and Marriages Registration Bill 2022***

We refer to our previous submissions (**Prior Submissions**) made to your office and to the *Births, Deaths and Marriages Registration Bill 2022* (Qld) (**BDMR Bill**) that you introduced to Parliament on 2 December 2022.

Firstly, we highlight that we have been greatly comforted and encouraged by the fact that many of the recommendations set out in our Prior Submissions are reflected in the BDMR Bill.

We commend you in your efforts as Queensland's Attorney-General to elevate Queensland to a nation-leader by introducing progressive and inclusive legislation that recognises and dignifies trans and gender diverse persons, and for seeking greater rights and protections reflecting the varied compositions of modern Queensland families.

We welcome the opportunity to make further submissions and to that purpose, in this document, we have made several further recommendations in relation to key aspects of the BDMR Bill. The policy driver behind these further submissions and recommendations is to ensure that comprehensive safeguards for these traditionally vulnerable and marginalised communities are implemented.

Although the BDMR Bill, as it currently stands, incorporates much of our Prior Submissions, there are several discrete points we wish to raise to in order to guarantee that sufficient protections are available to and apply to *all* Queenslanders, noting the diversity of the Queensland community.

**Recommendations**

<b>Parentage and Family Structures</b>	
1.	<p>We note that pursuant to clause 12 of the BDMR Bill, a parent may now be registered as a ‘parent’ rather than exclusively a ‘mother’ or ‘father’.</p> <p>However, we recommend that the Bill clearly articulate that <u>changes</u> to parentage can subsequently be made to a child’s birth certificate. For example, a person registered as ‘mother’ can later change to ‘parent’.</p> <p>We recommend that once a child has attained 12 years of age, their consent must be required to change parentage details on their own birth certificate.</p>
2.	<p>Clause 12 of the BDMR Bill in its current form restricts parentage to a maximum of 2 people in total.</p> <p>We submit that this does not reflect modern family dynamics and we therefore recommend that there not be a cap on the total number of parents to a child as recorded on their birth certificate.</p>
<b>Medical Procedures for Intersex Persons</b>	
3.	<p>The BDMR Bill is presently silent on medical treatments for intersex persons (referred in the BDMR Bill as a child where ‘variations of sex characteristics have been identified’).</p> <p>We note that the present BDMR Bill acknowledges intersex persons, and at clause 9(2) allows for parents of intersex infants to register their child’s birth.</p> <p>We recommend that clear protections be introduced to ensure that deferrable and irreversible medical treatments are not performed on intersex infants and children unless and until they can provide free, full and informed consent, except in cases of absolute medical necessity.</p>
<b>Change of Registered Sex</b>	
4.	<p>Clause 39 of the BDMR Bill introduces an improved and streamlined process to alter the record of a person’s sex without needing proof of surgery or hormone treatment. However, clause 39, as it presently drafted, requires a ‘supporting statement’.</p> <p>We maintain our primary recommendation that there be no requirement for a supporting statement.</p> <p>The alteration of one’s recorded sex is a deeply personal and individual act that should not need external validation or independent ‘proof’ from another person. This would also bring Queensland into line with Tasmania as one of</p>

	the States with the greatest degree of self-identification and autonomy for the gender diverse community.
<b>Trans Persons in Custody</b>	
5.	<p>We understand that currently, the Queensland Corrective Services Custodial Operations Practice Directive: Transgender Prisoners (<b>QCS Directive</b>) requires that an Assistant Commissioner must consider a range of mandatory factors when determining where a transgender prisoner is to be placed. We understand that one of these mandatory considerations is ‘whether the prisoner has undergone or is undergoing a medical or surgical procedure...’.</p> <p>We are of the view that the QCS Directive is outdated and conflicts with the BDMR Bill.</p> <p>We note that the BDMR Bill at clause 166 presents a statutory pathway for a person in custody to amend their gender on their birth certificate, and that to do so, there is no mandatory consideration of a ‘medical or surgical procedure’.</p> <p>We therefore recommend that the QCS Directive be amended to make it consistent with clause 166 of the BDMR Bill. We recommend that the QCS Directive be amended to remove medical or surgical procedure as a mandatory condition. We agree that this is a relevant consideration that the Assistant Commissioner may consider when making a placement decision, but it should not be a determinative factor.</p> <p>We also recommend that the BDMR Bill clearly articulates that when placing a transgender person into a corrective services facility, whether or not the prisoner has undergone or is undergoing a medical or surgical procedure is not a determinative factor in making the placement decision.</p> <p>We also recommend that the requirement for the restricted person to have the “approval” of the Chief Executive to change their record of sex be removed.</p>
<b>A Child’s “Recorded Sex” in School</b>	
6.	<p>Clause 47 of the BDMR Bill as it is presently drafted appears to mean that where the record of a person’s sex in the relevant child register is altered, the person “is a person of the sex as altered” for the purposes of, but subject to, a law of the State.</p> <p>Whilst clause 40 of the BDMR Bill does propose a more accessible and straightforward mechanism to alter a child’s recorded sex than previous iterations of the BDMR Act, it nevertheless presents gaps under clause 47 for non-cis children who identify with a particular gender but whose parent(s) are yet to, or do not wish to, formally amend the relevant child register.</p>

	<p>This limitation is especially apparent in circumstances of school placement for children whose recorded sex in the relevant child register is different to that which a school accepts for enrolment.</p> <p>For example, the Service recently represented a parent on behalf of their female-identifying child who was recorded as male in the relevant child register and was therefore denied enrolment at a female-only school. We understand that the child experienced significant distress in response to their refusal of tuition.</p> <p>Clause 47 of the BDMR Bill in its current terms would offer no comfort to this child, unless and until a change of record was effected pursuant to clause 40 of the BDMR Bill. In our view, this is an unnecessary and artificial step when it comes to satisfying the basic need of receiving an education whilst feeling a sense of belonging in alignment with one’s identity and self-determination.</p> <p>As such, we endorse the view that a child or their parent(s) should not be required to formally “prove” their sex by way of a record in the relevant child register to obtain something as fundamental as education.</p> <p>We therefore recommend that clause 47 of the BDMR Bill be amended to expressly provide that a child be entitled to attend a single-sex school for the sex by which that child identifies, regardless of what the “record” reflects.</p> <p>In the alternative, a further provision could be introduced into the BDMR Bill that affords the clear and basic protection that schools cannot constrain a child from enrolment based simply on their recorded sex.</p>
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We reiterate our positive reception of the BDMR Bill as proposed.

We seek only for relatively minor “fine-tuning” to ensure that there are no gaps in the proposed protections to the remarkable diversity of people, relationships and family dynamics within Queensland.

We are confident that with the introduction of the amendments suggested above, Queensland will be the most inclusive and dynamic state in Australia for the broader LGBTIQA+ community.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our office.

Yours faithfully

[Redacted Signature]

**Renea Hart**  
Director/Principal Solicitor | LGBTI Legal Service Inc  
T (07) 3124 7160 | E [Redacted Email]