



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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## **BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL**

### **Second Reading**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.25 am): I move—

That the bill be now read a second time.

On 2 December 2022 the Births, Deaths and Marriages Registration Bill 2022 was introduced into the Legislative Assembly. The bill was subsequently referred to the Legal Affairs and Safety Committee for its consideration. I thank the committee members for their thorough examination of the bill. I would also like to thank the many stakeholders, organisations and individuals who made submissions to the committee and participated in the public hearing. I acknowledge those in the gallery today and those from Rainbow Labor.

On 24 February 2023, the committee tabled report No. 42 on its inquiry into the bill and made three recommendations. Subsequently, on 24 May 2023, I tabled the government's response to the committee's report. First and foremost, the committee recommended that the bill be passed. I thank them for this recommendation.

Recommendation 2 is that the Queensland government reports to the Legislative Assembly on its progress regarding the Closing the Registration Gap Strategy Plan 2021-24 within 12 months of the tabling of the committee's report. The government supports this recommendation and will provide a progress update. For the benefit of the House, I can advise a variety of targeted and culturally sensitive strategies and programs have been employed to encourage birth registration, developed with input, advice and direction from Aboriginal and Torres Strait Islander stakeholders and community members. This has included extensive community engagement, with over 40 community events since the initiative commenced. The Closing the Registration Gap Strategy will be subject to a full evaluation at the end of this calendar year so that we may reflect on the approaches taken and refine future service delivery to build on the program's successes.

Recommendation 3 is that the Queensland government agencies undertake an audit of the Queensland legislation within their remit to identify amendments required as a result of the introduction of this bill. The government also supports this recommendation. Each agency will undertake an audit of its portfolio legislation to identify and assess the use of gendered language and determine whether any amendments are needed in light of the bill.

The bill before the House repeals and replaces the existing Births, Deaths and Marriages Registration Act 2003 to ensure registration services remain relevant, responsive and contemporary. Some of the most important reforms in the bill will strengthen the legal recognition of trans and gender-diverse people by removing the discriminatory and unfair barriers to obtaining legal recognition of their lived identity. This bill will help reduce the distress, fear, discrimination and privacy violations that many people in our communities face on an all too frequent basis.

At a recent meeting of the United Nations Human Rights Council in March this year, 28 member states, including Australia, called on states to develop laws and policies that allow self-recognition of gender identity based on self-determination. I want to read to the House an excerpt of this call to action—

... human rights derive from the dignity and worth inherent in the human person, and are universal, inalienable and indivisible. As such, each person's self-defined gender identity is integral to their personality and a manifestation of self-identification, dignity and freedom.

Legal recognition of the gender identity of transgender persons is key to their enjoyment of human rights.

Today I am proud to say that Queensland answers that call. Today is a day we celebrate and embrace our trans and gender-diverse community through these landmark reforms.

The government's proposals for change and progress have caused much discussion and debate. The committee received 385 written submissions, some for the bill and some against. We know that some people have campaigned for such changes for years, and I pay tribute to the tireless advocacy of so many. However, I also know that others have concerns. I acknowledge their concerns and say to them today that this bill is not dangerous or reckless. It follows in the footsteps of reforms which most other Australian jurisdictions have already progressed. Today I ask that we lead by example and, as parliamentarians, set a tone of respectful debate. We can disagree without spreading stigma or being offensive or abusive. On that note, I would now like to address specific issues that were raised in the statements of reservation by non-government members and also as part of the committee's inquiry.

The member for Noosa and various submitters took issue with the consultation undertaken during development of the bill, stating that the introduction of this bill into parliament was the first time many heard of the proposed changes. With respect, these reforms have been canvassed widely and advocated for over a number of years. In 2021, a petition with over 10,000 signatures was lodged calling on the government to amend the Births, Deaths and Marriages Registration Act. The former attorney-general was asked about the status of these reforms at last year's portfolio estimates hearing before the committee. The development of these reforms has also been well ventilated and reported throughout the media over the last couple of years.

At the committee's public hearing on the bill, the Queensland Human Rights Commission observed that the bill has been talked about for the last 10 years. The deputy commissioner acknowledged the Queensland Human Rights Commission, or the Anti-Discrimination Commission Queensland in its previous iteration, had been making submissions about the Births, Deaths and Marriages Registration Act since 2013 and that it has been a source of ongoing discussion. The consultation process which informed the development of these reforms was lengthy and extensive. In the words of the QHRC, there has been consultation across the whole community 'where many people have had an opportunity to try to put their point of view across to try to create the legislation that is necessary for the 21st century'. Queensland also had the benefit of considering the outcomes of reviews undertaken in this area by law reform bodies in other jurisdictions, including by the Tasmanian Law Reform Institute and the Law Reform Commission of Western Australia.

I also reject the assertion that an alternative consultation process would have avoided creating unnecessary divisions in our communities. Not every reform that government brings forward to this House has universal support. This is simply not how policy development works. Stakeholders have taken strong and polarising views in this policy area. There is no middle ground or no compromise position. To suggest there is misunderstands this reform package.

Those opposed to this bill advance the argument that sex is an immutable, biological fact and therefore, for example, a transwoman is not and cannot ever be a woman. Our government's position is clear: the government, as expressed in its *Queensland Women's Strategy 2022-2027*, recognises all people who identify as women, including those who are transgender, non-binary or gender diverse have the right to be safe and be provided with the same opportunities as everyone else. This foundational position underpins this bill.

One of the key issues explored by committee members during this inquiry was the conflation of 'sex' and 'gender' in the bill. In their statement of reservation, the LNP members questioned the appropriateness of drawing or not drawing a distinction between these terms and claim that this issue has not been adequately addressed, given the short examination period. For the benefit of the House, I can advise this issue was canvassed in detail and the resulting approach in the bill was a deliberate policy choice. Over recent years, international developments, changing common law and advancements in research have led to agencies with responsibility for human rights law taking a more expansive and purposive approach.

In Australia, the courts have noted that biological factors are not the only relevant factors in determining sex. Further, the QHRC's *Building belonging* report found a narrow interpretation of 'sex' as meaning only biological sex was unlikely to be compatible with human rights under the Human Rights

Act. There was also strong feedback from stakeholders throughout the development of the bill. They advised that legislating a distinction between biological sex and affirmed gender could propagate a culture of discrimination against trans and gender-diverse people. We listened to this feedback. The approach taken in the bill as introduced is consistent with other jurisdictions including both Victoria and the Australian Capital Territory.

In her statement of reservation, the member for Noosa also asked why the government has not investigated the option of omitting the 'sex' field from birth certificates or provided reasons why this was not viable. I note, as part of the committee's public hearings, the member explored with stakeholders the prospect of introducing an alternative document instead of enabling a person to amend their birth certificate. During the development of this bill, a wide range of options and proposals were put forward. Queensland is one of the last Australian jurisdictions to progress reforms in this area, so we were also able to look at the models established in other jurisdictions and learn from them. The various policy options and proposals were the subject of extensive research and consideration. The policy position taken in the bill provides greater legal recognition in a way that avoids 'othering' trans and gender-diverse people and exposing them to further harm.

In addition, the bill specifically adopts an opt-in approach to the inclusion of sex information on a person's birth certificate. This is designed to give people the greatest agency over what information they want recorded on their certificate. Providing these protections to trans and gender-diverse people does not pose a threat to others. The rights of women and others were put in opposition to the rights of trans and gender-diverse people by a number of submitters typically on the basis that these reforms undermine protections for women and may in fact lead to harm.

The LNP members of the committee in their statement of reservation noted the number of women's groups to come forward with concerns about the bill. This risk of harm, however, is not supported by the evidence. As part of extensive reviews, both the Tasmanian Law Reform Institute and the Law Reform Commission of Western Australia noted that they were not presented with any evidence which established that transwomen pose an inherent risk to others in female spaces.

A review of literature performed by the Scottish government in 2019, in the course of preparing an equality impact statement on its birth certificate legislation, found no empirical data to suggest the legal recognition of trans and gender-diverse people on the basis of self-identification results in increased levels of sexual violence against cisgender women and children in public spaces. The review found no empirical data to support the claim that transwomen are more likely than cisgender women to sexually assault other women in women-only spaces; nor any evidence supporting a link between women-only spaces being inclusive of transgender women and non-transmen falsely claiming a trans identity to access these spaces and committing sexual violence.

We must be clear that all the evidence tells us that the cause of violence against women and girls is predatory and abusive men, not trans people. It is important that we do not conflate the two. It is not just important; it is essential. There is no evidence that predatory and abusive men have ever had to pretend to be anything else to carry out abusive and predatory behaviour.

When considering the balance that is struck between competing rights then, on one side of the scales is an existing and ongoing limitation to the human rights of trans and gender-diverse people and on the other are a number of potential harms to women and others which have not eventuated in other jurisdictions with similar laws. The government is committed to advancing equality for women and protecting women's rights. That commitment is not affected by our support for trans and gender-diverse people's rights. I again draw on the recent statement of the Human Rights Council in which they 'strongly support all policies that combat violence and discrimination against all women and reiterate that these policies should be based on an intersectional approach, protecting women who are subjected to multiple forms of discrimination, including transwomen'.

I note that at the committee's public hearing, the QHRC advised that it did not consider that changing the record of a person's sex on a birth certificate would significantly impact the protection of people's human rights as the Anti-Discrimination Act has prohibited people discriminating against others based on their gender identity since 2002.

Another aspect of the reforms requiring careful consideration is how the rights of trans and gender-diverse children and young people may best be served. I am inspired by the words of a young trans girl who provided an oral submission during the committee's public hearing as part of Transcend Australia's submission. She stated—

My family and friends love and support me for who I am. I am proud of who I am, but every time I see my wrong name I feel a shock and I flinch. It's wrong. It's not who I am. It's not who I ever was ... I am female. I want to be seen for who I am and who I always have been—just like all the other girls. Please make this change to help me and the other young trans people like me who have less support. Help us to just be ourselves.

I want to say to that young girl: this parliament hears you; this government hears you.

I know some concerns have been raised about the application of part 5 of the bill to children and young people. Some submissions raised concerns about gender dysphoria and opined that establishing a pathway to alter a child's record of sex that is more accessible would lead more children to seek medical transition. Let me be clear: this bill is not about the medicalisation of trans and gender-diverse people. Trans and gender-diverse children and young people who feel an incongruence between their gender identity and sex assigned at birth sometimes experience distress known as gender dysphoria. Gender dysphoria is a medical condition. Medical treatment for gender dysphoria in children and adolescents is guided by clinical treatment guidelines and standards of care. I note surgery does not commonly occur before a person turns 18. Clinical responses including diagnosis of gender dysphoria and whether treatment is required is a health response and outside the ambit of this bill.

I want to say very clearly here that the bill does not change the ability of parents or persons with parental responsibility to seek the necessary supports for their children. Not all children who are gender questioning or who identify as trans or gender-diverse will exhibit symptoms of gender dysphoria. Transitions which can alleviate dysphoria or gender incongruence can be social, changes in presentation such as in hair, name or pronouns; legal, changes of name or sex or both; or medical through gender-affirming medical care. Some children or young people may only undertake one type of transition whereas others may choose to pursue medical, social and legal transitions. Each transition journey is unique and decisions, steps and pace should reflect an individual's needs and situation.

I acknowledge the distress parents may feel as they try to work out how to best support their child who is transitioning and how tensions and conflict may arise where parents and their child have different views. In no way do I wish to diminish the impacts of these experiences. However, every case is different and the bill before the House today is about creating an accessible process for legal affirmation. The bill does not alter or affect the law regarding who can consent to medical treatment for a young person seeking gender-affirming health care with the prevailing authority being that both parents must consent to any medical treatment where a young person is under 18.

I also note emerging evidence that shows children and young people with gender incongruence often have high rates of mental health concerns and neurodiversity, referred to in the research as 'co-occurring issues'. This was raised by some submitters. As the Australian Professional Association for Trans Health points out, identifying these issues early and putting in place strategies to identify them is appropriate. Other stakeholders also questioned and raised concerns around gender-affirming care. Australia has its own peer reviewed *Australian standards of care and treatment guidelines for trans and gender diverse children and adolescents*. This guide endorses gender-affirming care based on available evidence and clinician consensus. An affirmative approach is about listening to the individual and working with them to achieve the outcomes most appropriate for them. This is consistent with a person-centred approach to health care.

Regardless of where one's views and opinions lie in the very robust societal and cultural debate, it is important to remember that children lie at the centre of the framework in the bill and that the ongoing polarised debate undermines or, worse, silences the voices of children who seek or require support and care at what is likely to be a very crucial juncture in their life. What we do know is that children who experience gender incongruence are more likely than cisgender peers to experience anxiety or depression, have suicidal thoughts or self-harm. This is even more likely if they face barriers to expressing their gender identity or have negative experiences like bullying, stigma or discrimination.

As part of his oral evidence to the committee, Mr Luke Twyford, Principal Commissioner of the Queensland Family and Child Commission, said—

I spoke to young people specifically and directly this week in relation to what this bill would mean to them. One of them said, ... 'It will mean fewer young people committing suicide.' It was a confronting statement and a confronting conversation. Young people said that this change will deliver significant benefit to the mental wellbeing of transgender and gender diverse people.

It does not matter how many times I read that out, whether aloud or to myself, I still get goosebumps and get emotional about that statement. This is about saving lives—young people and adults—and we have a responsibility to do that, knowing that in doing so it does not cause harm to anyone else in the community.

I note the views of some submitters who question the maturity of children to make decisions about altering their record of sex. The framework for children in the bill recognises the important role of parents or other persons allocated parental responsibility, particularly in the exercise of parental responsibility about major long-term decisions that affect their child. It modifies that role only when necessary to achieve the best interests of the child in line with the child's evolving capacity.

While it is presumed that parental responsibility for a child ends when the child reaches the age of 18, as a matter of common law parental authority diminishes as the child's capacity to decide matters for themselves develops. A child can be competent to decide a matter for themselves before they turn

18. The 'best interests of the child' acknowledges that a child should, as far as practicable, be involved in decisions about their life. This principle is established on the premise that children acquire maturity at different rates and, apart from biological age, there is a range of other factors which influence children's maturity. The bill strikes an appropriate balance between the best interests of the child and the diminishing responsibilities of parents as children get older.

The reforms in the bill will have implications for other laws across the statute book. Some stakeholders, most notably the Queensland Law Society, the QHRC and Equality Australia highlighted the potential downstream implications of the bill. As I mentioned earlier in relation to the government's response to the committee's recommendation 3, each agency will undertake an audit of its portfolio legislation to identify and assess the use of gendered language.

This is a historic day for the LGBTQIA+ Queenslanders. The struggle for legal recognition of trans and gender-diverse Queenslanders has asked a lot of the LGBTQIA+ community and has taken a lot from them. It is interesting and somewhat fitting that the ordinary meaning of 'recognition' includes 'acknowledgement of the existence or legality or validity of'. It can also mean 'treating as worthy of consideration'. This bill acknowledges trans and gender-diverse peoples by giving them greater legal recognition through an administrative process that allows a person to alter their record of sex to align with their lived identity. I am privileged to be standing here today and I am hopeful that there will be occasion in the future to reflect on the progress that has been made in achieving legal recognition for our LGBTQIA+ Queenslanders.

I want to conclude by acknowledging the work of all those who have fought long and hard for the legal recognition of our LGBTQIA+ Queenslanders. There are people who have put their own lives into the public domain and opened them up for discussion in the pursuit of change. The real heroes are those many people not elected to parliament but navigating their everyday lives as part of the LGBTQIA+ community who have borne the brunt of disapproval, vitriol, discrimination and hate, often based on fear, and who have nonetheless chosen to stand up and fight for their legal recognition.

I also take a moment to acknowledge and remember those who are no longer with us, who have taken their own life over the years, who could not battle, those who found the battle too great to withstand. This bill is for all of them as well. To all of the rainbow community out there listening, to all who work tirelessly in the quest for change, we want to say to you: lives matter; your stories matter; your struggles matter. We see you, we hear you, and today we proudly stand beside you. Trans rights matter, and I am extremely proud to commend this bill to the House.