



Inquiry into the Births, Deaths and Marriages Registration Bill 2022

**Report No. 41, 57th Parliament
Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

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Abbreviations

ACT	Australian Capital Territory
ACL	Australian Christian Lobby
AHRC	Australian Human Rights Commission
AD Act / Anti-Discrimination Act	<i>Anti-Discrimination Act 1991</i>
ATSILS	Aboriginal and Torres Strait Islander Legal Service
BDMR Act	<i>Births, Deaths and Marriages Registration Act 2003</i>
Bill	Births, Deaths and Marriages Registration Bill 2022
Building Belonging report	<i>Building Belonging – Review of Queensland’s Anti-Discrimination Act 1991</i>
committee	Legal Affairs and Safety Committee
department/DJAG	Department of Justice and Attorney-General
Effect provision	The Bill provides that if the record of a person's sex is altered, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State (the Effect provision).
HRA	<i>Human Rights Act 2019</i>
LRCWA	Law Reform Commission of Western Australia
LSA	<i>Legislative Standards Act 1992</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
QCAT	Queensland Civil and Administrative Tribunal
QCS	Queensland Corrective Services
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QPRIME	the integrated policing information and records management system
QPS	Queensland Police Service
registry	Registry of Births, Deaths and Marriages
the Strategy	<i>Queensland Women’s Strategy 2022-27</i>
surgery requirement	a person must have undergone sexual reassignment surgery to alter their reproductive organs to change their sex, or to correct or eliminate ambiguities about the sex of the person – as is the current requirement under Part 4 of the BDMR Act – in order to apply to note a reassignment of sex on their birth registration
TLRI	Tasmanian Law Reform Institute
WAAC	Women’s Action Alliance Canberra
Yogyakarta Principles	<i>Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity</i>

Note: for a glossary of terms, refer to Appendix D.

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Births, Deaths and Marriages Registration Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Bill seeks to modernise the existing *Births, Deaths and Marriages Registration Act 2003* and enhance the capacity of the Registry of Births, Deaths and Marriages so registration services remain relevant, responsive and contemporary. The Bill proposes to strengthen the legal recognition of trans and gender diverse people, and better recognise contemporary family and parenting structures.

As part of its inquiry the committee called for and received written submissions from stakeholders, was briefed by the Department of Justice and Attorney-General and heard evidence from both individuals and organisations at private and public hearings. I would like to thank these individuals for their strength and courage in providing the committee with valuable evidence, in particular from the aspect of lived experience.

On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed and has made 2 further recommendations designed to support the implementation of the Bill.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.



Peter Russo MP

Chair

Recommendations

Recommendation 1	5
The committee recommends the Births, Deaths and Marriages Registration Bill 2022 be passed.	5
Recommendation 2	11
The committee recommends 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 this report.	11
Recommendation 3	43
The committee recommends that Queensland Government agencies undertake an audit of the Queensland legislation within their remit to identify amendments required as a result of the introduction of the Births, Deaths and Marriages Registration Bill 2022.	43

Executive Summary

The Births, Deaths and Marriages Registration Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, and referred to the Legal Affairs and Safety Committee (committee) on 5 December 2022.

Summary of the Bill

The Bill repeals and replaces the existing *Births, Deaths and Marriages Registration Act 2003* to ensure registration services remain relevant, responsive and contemporary. The key objectives of the Bill are to:

- strengthen the legal recognition of trans and gender diverse people
- better recognise contemporary family and parenting structures
- facilitate improvements in the operations of the registry
- support fraud prevention and minimise misuse of the life event system
- clarify the information collection, use and sharing powers of the registrar.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- parenting descriptors and time frames for the registration of a birth
- change of name requirements
- women's rights and safety
- women's sports
- conflation of sex and gender
- accuracy of statistical information
- self-declaration vs medicalisation to alter record of sex
- reliance on Yogyakarta Principles
- safeguards for children applying to change their record of sex
- assistance to navigate registry and court processes
- compliance of the Bill with the *Legislative Standards Act 1992*
- compliance of the Bill with the *Human Rights Act 2019*.

Conclusion

The committee has recommended that the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The Births, Deaths and Marriages Registration Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, and referred to the Legal Affairs and Safety Committee (committee) on 5 December 2022.

According to the explanatory notes, the Bill repeals and replaces the existing *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) to ‘ensure registration services remain relevant, responsive and contemporary’.¹



The objectives of the Bill are to:

- strengthen the legal recognition of trans and gender diverse people
- better recognise contemporary family and parenting structures
- facilitate improvements in the operations of the registry
- support fraud prevention and minimise misuse of the life event system
- clarify the information collection, use and sharing powers of the registrar.¹

1.2 Background

The BDMR Act commenced on 1 February 2004 and established Queensland’s life event registration system. The explanatory notes advise that, since the BDMR Act commenced, ‘there have been changes to the social, policy and operational environment that have affected the way the Registry of Births, Deaths and Marriages (registry) delivers its services’.² These changes include:

- a number of social changes that have led to calls for the life event system to more appropriately accommodate the diversity of Queensland society (e.g., increased use of fertilisation procedures and greater awareness of the trans and gender diverse community)
- significant operational changes at the registry, including online applications processes for certain services and the development of several new data products and services to support the registry’s status as an entirely self-funded entity
- an increased focus by government on appropriate data use and protection, and the prevention of identity theft and fraud, including ensuring life event registration systems are not misused for fraudulent purposes.³

A review of the BDMR Act was undertaken to ‘ensure registration services in Queensland remain relevant, responsive and contemporary’⁴, commencing with the release of the first discussion paper and roundtables on the discussion paper with stakeholders in 2018. Two further discussion papers were released in 2019 with additional consultation including meeting with key agencies and roundtable and online discussions held in 2021 and 2022.⁵

¹ Explanatory notes, p. 1

² Explanatory notes, p. 1

³ Explanatory notes, p. 1

⁴ DJAG, written briefing, dated 5 January 2023, p 1.

⁵ DJAG, written briefing, dated 5 January 2023, p 2

Several Australian jurisdictions have already removed the legislative requirement for a person to have undergone a reassignment procedure to change their sex on their birth registration:

- The Australian Capital Territory (ACT) (since April 2014)
- South Australia (since May 2017)
- the Northern Territory (since December 2018)
- Tasmania (since September 2019)
- Victoria (since May 2020).

Tasmania and Victoria introduced reforms relying on the self-declaration model where a person is able to update their birth registration based on their self-declared identity. The ACT, South Australia and Northern Territory require 'a statement from a doctor or psychologist stating that the person has undergone sufficient clinical treatment, which may include counselling, in relation to the person's gender identity'.⁶

Additionally, Western Australia is currently considering recommendations by the Law Reform Commission of Western Australia for a person to nominate their self-declared gender and the New Zealand Parliament in December 2021 passed amendments to introduce a simple self-selecting administrative process that will come in to force by mid 2023.⁷

Regarding international human rights, the Department of Justice and Attorney-General (department/DJAG) advised:

The Yogyakarta Principles⁸, developed and endorsed by an international panel of experts, create a universal guide to the application of human rights principles and legal standards on sexuality and gender identity. They reflect international best practice and recognise that a person's gender identity is integral to their personality and that people of diverse sexuality and gender identities should be able to enjoy legal capacity in all aspects of life.

The Yogyakarta Principles stress the discriminatory impact of requiring surgery and recommend excluding any requirement that a person undergo medical procedures, including sexual reassignment procedures, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.

Subsequently, the Yogyakarta Principles plus 10⁹ were developed to build on and supplement the Yogyakarta Principles.

Australian representatives are signatories to the Yogyakarta Principles and the Yogyakarta Principles plus 10.¹⁰

1.2.1 Greater legal recognition of trans and gender diverse people

Under the current BDMR Act, if a person has undergone sexual reassignment surgery, they are able to apply to change their sex on their birth registration. However, this option is not available for transgender people who are unable to, or choose not to, undertake sexual reassignment surgery.

⁶ DJAG, written briefing, dated 5 January 2023, p 3

⁷ DJAG, written briefing, dated 5 January 2023, p 3

⁸ Yogyakarta Principles: Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, <http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf>

⁹ Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, <http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf>

¹⁰ DJAG, written briefing, dated 5 January 2023, p 3

There are a number of reasons people may choose not undertake such surgery, including potential health risks and complications, the cost and limited availability.¹¹

For those people whose birth registration doesn't reflect their transgender status, the production of their birth certificate can lead to their status being 'outed'. As a result, transgender people are likely to experience discrimination and much poorer mental health and wellbeing outcomes when compared to the general population.¹² According to the explanatory notes, 'For many transgender people the ability to update their identity records to reflect their sex affirms their identity and supports improved wellbeing'.¹³

1.2.2 Recognition of contemporary family and parenting structures

The BDMR Act currently requires the registration of a child's parents on a birth certificate so that:

- the child's parent, or one of the child's parents, must be registered as the child's mother or as the child's father
- no more than one person may be registered as the child's mother or as the child's father
- no more than two people in total may be registered as the child's parents (however described).¹⁴

As a result, for same sex parents there is no ability to record both parents as 'mother' or both parents as 'father', nor can both be referred to as 'parent'. Instead, one person may be recorded as either 'mother' or 'father' and the other person must be recorded as 'parent'.¹⁵

In addition, the explanatory notes advise that:

The current definition of 'birth' means that, where a person has given birth to a child, that person must be recorded as 'mother'. This fails to account for situations where a transman or non-binary person who retains the anatomical capacity to conceive gives birth to a child.¹⁶

1.2.3 Operation of the registry, fraud prevention and information collection, use and sharing

The explanatory notes advise that the BDMR Act 'contains a number of overly prescriptive requirements', which don't allow for flexibility in the collection of information, the type of information that is to be included in a certificate, and the notification and application process.¹⁷ For example, the BDMR Act:

... requires applications to register a registrable event to contain all the information prescribed under a regulation and that certificates issued by the registrar must state all of the information prescribed under a regulation that is in the register for that event.¹⁸

In addition, the explanatory notes refer to the importance of maintaining the integrity of the information held in the registers, particularly to minimise abuse and exploitation of the system, 'such as people changing their name a number of times to avoid detection by law enforcement authorities or for other fraudulent or improper purposes'.¹⁹

¹¹ Explanatory notes, p. 1

¹² Explanatory notes, p 2

¹³ Explanatory notes, p 2

¹⁴ Explanatory notes, p 3.

¹⁵ Explanatory notes, p 3.

¹⁶ Explanatory notes, p 3.

¹⁷ Explanatory notes, p 3.

¹⁸ Explanatory notes, p 3.

¹⁹ Explanatory notes, p 4.

In reference to information collection, use and sharing, the BDMR Act doesn't expressly provide for the collection and dissemination of statistical information or other information to support the discharge of its functions. Furthermore, Queensland is the only jurisdiction that restricts its registry from charging a fee beyond cost recovery for its data services.²⁰

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 *Legislative Standards Act 1992*

We examined the Bill and considered the application of fundamental legislative principles contained in Part 2 of the LSA. Where relevant, matters of fundamental legislative principles are discussed further in section 2 of this report. We considered the following matters:

- Rights and liberties of individuals:
 - Equality before the law – various clauses under which the Bill specifies different application requirements for acknowledging a person's sex and changing the person's first name depending on the person's age and place of birth (see section 2.4.4 for further discussion on this)
 - Abrogation of rights – clauses 67 and 67 (see section 2.4.3.4 for further discussion on this)
 - Right to privacy – clauses 105 and 118
 - Equality before the law – clauses 166 and 171 that would place a requirement on persons in custody and certain released prisoners that other members of the community are not subject to
 - Delegation of administrative power in relation to the delegation of power to the Chief Executive to decide whether to give permission to a prisoner in custody or a released prisoner permission to apply to alter the record of sex or for a recognised details certificate
 - Administrative power should be sufficiently defined and subject to review – clauses 166 and 171
 - Penalties should be reasonable and proportionate – various clauses
 - Administrative power in relation to the definition of terms 'prohibited name' and 'prohibited sex descriptor'
- Institution of Parliament:
 - Delegation of legislative power – regulation-making power – various clauses, including setting out fees and other matters
 - Delegation of legislative power – Application to be in form required by the registrar – enabling of the registrar to delegate any of the registrar's powers under this or another Act, other than this power of delegation, to an appropriately qualified officer under clause 101
 - Delegation of legislative power – policy about exercise of discretion – clause 107(12)

In conclusion, we are satisfied that the Bill has sufficient regard to individuals' rights and liberties and institution of Parliament.

²⁰ Explanatory notes, p 5.

1.3.1.1 *Explanatory notes*

Explanatory notes were tabled with the introduction of the Bill. We are satisfied the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 *Human Rights Act 2019*

Our assessment of the Bill's compatibility with the HRA is included below and discussed further in section 2 of the report. We find the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. In general, we are satisfied the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. However, we sought further information regarding the impact of the Bill on human rights in relation to provisions about 'restricted persons' (clauses 166 and 171). Refer to section 2.5 for more on this.

We considered the following clauses in relation to compliance with the HRA:

- Clauses 166 and 171 - The approval process for restricted persons (those in correctional facilities or who have been released on supervision): Section 15 HRA – Right to recognition and equality before the law; Section 25 HRA – Right to privacy; and/or Section 30 – Right to humane treatment in detention (see section 2.5 for further discussion on this)
- Clause 39 - The requirement for a supporting statement: Section 15 HRA – Right to recognition and equality before the law (see section 2.4.2 for further discussion on this)
- Clause 40 - The differentiated procedures for children under 16: Section 15 HRA – Right to recognition and equality before the law and Section 25 HRA - Right to Privacy (see section 2.4.3 for further discussion on this)
- Clauses 118 to 123 - Amendments to information sharing arrangements: Section 25 HRA – Right to privacy.

1.4 **Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Births, Deaths and Marriages Registration Bill 2022 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

The committee invited stakeholders and subscribers to make written submissions on the Bill. Three hundred and eighty-five submissions were received (see Appendix A for a list of submitters).

The committee received a public briefing about the Bill from DJAG on 30 January 2023 (see Appendix B for a list of officials at the public departmental briefing) and received a written briefing on the Bill from DJAG on 16 December 2022. The committee also received advice from DJAG responding to the submissions on 11 November 2022.

As part of the Inquiry, the committee held a public hearing on 24 January 2023 in Brisbane with stakeholders (see Appendix C for a list of witnesses) and a public briefing with DJAG on 30 January 2023 (see Appendix B for a list of witnesses).

The submissions, correspondence from DJAG and transcripts of the briefing and hearing are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses key issues raised during the committee's examination of the Bill.

2.1 Part 2 – Births

Provisions relating to registering births are set out in Part 2 of the Bill. Although Part 2 is mostly similar to the current BDMR Act, the proposed changes include amendments to the time frame for birth registration applications and parenting descriptors²¹, as discussed below.

2.1.1 Parenting Descriptors

The Bill proposes to facilitate the registration of multiple combinations of parental descriptors to better reflect contemporary family structures. These descriptors include any combination of mother, father and parent, for example, mother/father, mother/mother, mother/parent, father/father, father/parent or parent/parent.²² The Bill limits the number of parents that may be registered to not more than 2 people.²³

To provide for an inclusive approach, the Bill proposes to retain the term ‘mother’ in the context of how a child’s parent may be registered and uses the gender-neutral term ‘birth parent’ which refers to ‘the person, of any sex, who gave birth to the child’ for all other relevant clauses of the Bill.²⁴

The Bill proposes that the registrar may accept birth registration application completed by only one person under certain circumstances.

2.1.1.1 Stakeholders’ views

A number of submitters supported the proposed amendment to change the parental descriptors including the Queensland Law Society²⁵ (QLS), the Queensland Human Rights Commission²⁶ (QHRC), Multicultural Australia²⁷ and several individual submitters²⁸. Rainbow Families Queensland stated that a birth certificate reflecting a person’s biological father and biological mother ‘ignores the reality’ that for some children in Queensland, paternity is not known for various reasons and further submitted that:

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; and
- 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.²⁹

Some submitters raised concerns that the proposed parenting descriptors (being mother/father/parent) would reflect something other than biological parentage on the child’s birth certificate. The Coalition of Activist Lesbians Inc commented that ‘only biologically female people give

²¹ DJAG, written briefing, dated 5 January 2023, p 5.

²² Bill, clause 12; explanatory notes p 16.

²³ Bill, clause 12(1)(b).

²⁴ Explanatory notes, p 16.

²⁵ Submission 34, p 7.

²⁶ Submission 360, p 5.

²⁷ Submission 197, p 1.

²⁸ See, for example, submissions 51, 177, 211.

²⁹ Submission 343, p 2.

birth to human babies'.³⁰ R Harrison suggested limiting the option to 'mother' or 'birth parent' for the person who gave birth, and using 'father' or 'birth parent' for the parent who did not give birth, would give flexibility for parents regardless of how they identify while at the same time recognising 'that biological sex is fundamental to reproduction and birth'.³¹

Adoptee Rights Australia stated that 'Aligning birth certificates to the lived identity of social parents denies the genetic truth of the child at birth'.³² Family Voice Australia also submitted that 'Birth certificates should protect the right of children to know their origin by listing their biological mother and father'.³³

Some submitters including Just Equal Australia³⁴ and the LGBTI Legal Service Inc³⁵ expressed concerns regarding the limit on registering not more than 2 people as parents with Equality Tasmania stating that it 'ignores the social reality that more than two parents can care and have responsibility for a child'.³⁶

The LGBTI Legal Service proposed the Bill also clearly articulate that changes can be made to the parentage details on a child's birth certificate at a subsequent time and that once the child reaches the age of 12, their consent is required to change parentage details on their birth certificate.³⁷

Department's response

The department responded that under the current BDMR Act, the person who gives birth to the child, must be registered as the child's mother.³⁸ This limitation was highlighted by the 2020 Queensland Civil and Administrative Tribunal (QCAT) decision *Coonan v Registrar of Births, Deaths and Marriages* ([2020] QCAT 434) where the Registrar had registered the applicant as his child's 'mother' rather than 'father', in circumstances where the applicant had had the reassignment of his sex registered under a corresponding law but had retained the anatomical capacity to conceive and had given birth to his child. The department further stated that the amendments to the Bill will prevent this situation from recurring and that:

The definition of 'birth parent' means that anyone who possesses the anatomical capacity to conceive and gives birth, including a trans man or non-binary person, can be accurately identified as on their child's birth certificate with the most appropriate parenting descriptors.³⁹

The department also noted that the registry would retain information as a closed entry regarding the identity of a child's birth parents from information supplied by a responsible person, generally the hospital, and a child would be able to apply for that information if they wished. The department further stated:

These changes maintain the accuracy and integrity of statistics in relation to births in Queensland and provide Queensland parents with legal recognition consistent with their gender identity in their everyday family life...⁴⁰

³⁰ Submission 350, p 5.

³¹ Submission 115, p 4.

³² Submission 297, p 2.

³³ Submission 314, p 5.

³⁴ Submission 183, p 3.

³⁵ Submission 363, p 2.

³⁶ Submission 307, p 2.

³⁷ Submission 363, p 2.

³⁸ DJAG, response to submissions, 23 January 2023, p 41.

³⁹ DJAG, response to submissions, 23 January 2023, p 42.

⁴⁰ DJAG, response to submissions, 23 January 2023, pp 42, 43.

In response to the LGBTI Legal Service, the department clarified that subsequent changes to a child's birth certificate could be made under clause 107 of the Bill and that clause 107(12) requires the registrar to publish a policy about how they exercise their discretion under this power. The department advised that the issue of whether consent of the child upon reaching a certain age would be required to change parentage details on their birth certificate would be considered as part of the development of the policy.⁴¹

In response to concerns for the limit on the number of parents able to be registered on a child's birth certificate, the department noted that no other Australia jurisdictions provide for this.

Committee comment

We note both the support from submitters regarding parenting descriptors for a child's birth registration, as well as the issues raised, including, for example, that the birth certificate will not reflect the biological parentage. We note the response from DJAG in relation to these matters and that the amendments will allow same-sex and gender diverse parents to record a parenting descriptor that reflects their parenting role.

We are satisfied that there is a genuine need for parents to be able to record parenting descriptors on a child's birth certificate that best reflect their parenting role and note the registry will retain information about the identity of a child's birth parent based on the notice of birth supplied by a responsible person (generally the hospital).

We also note the registry is developing a policy regarding subsequent changes to a child's birth certificate to provide guidance to members of the public.

2.1.2 Application for Registration of Birth

The Bill proposes that the birth of a child must be registered by both parents of the child, however the registrar may accept birth registration application completed by only one person under certain circumstances.⁴²

Clause 9 of the Bill provides that the birth registration application must be given to the registrar within 60 days of the child's birth or within 180 days of the child's birth where variations of sex characteristics have been identified. As stated by DJAG:

This amendment acknowledges that parents of children who are born with apparent characteristics outside the binary norm face complex issues arising from birth registration decisions that must be made within short timeframes, and accordingly allows them greater flexibility and time.⁴³

The registrar may also accept birth registration applications after these dates if the register is satisfied the birth happened.⁴⁴

2.1.2.1 Stakeholders' views

Some submitters suggested the provided examples in clause 8 were too narrow and recommended expanding the circumstances under which one parent could register the birth of a child. The QLS⁴⁵ and Multicultural Australia⁴⁶ both raised the issue of humanitarian entrants where the birth parent is in Queensland but the other parent is overseas and not practically able to sign the application within the prescribed timeframe. The Aboriginal and Torres Strait Islander legal Services also queried whether a

⁴¹ DJAG, response to submissions, 23 January 2023, p 42.

⁴² Bill, clause 8.

⁴³ DJAG, written briefing, dated 5 January 2023, p 5

⁴⁴ Bill, clause 9.

⁴⁵ Submission 34, p 6.

⁴⁶ Submission 197, p 2.

mother travelling from a remote community to a larger hospital to give birth would be able to make the application for the child's birth registration alone, and whether time limits for mothers from remote communities to register the birth of their child could be increased by at least 30 days.⁴⁷

While some submitters including Equality Australia⁴⁸ supported the 180 day timeframe to submit a birth registration application for children born with variations of sex characteristics, others expressed their concerns. Intersex Human Rights Australia submitted that 'any deadline for birth registration will lead to a spike in the prevalence of forced or coercive medical interventions aimed at making infants' bodies conform to social expectations for male and female bodies'.⁴⁹ Sisters Inside also expressed their concerns for children born with variations of sex characteristics and recommended the time frame be increased to 24 months.⁵⁰

Department's response

The department noted the importance of giving both parents the opportunity to sign the birth registration application for their child where possible and that accepting an application signed by only one parent would deprive the other parent of their legal right to participate in the naming of the child and their right to be named (or not) as the child's parent (subject to clause 10 of the Bill).⁵¹ The department submitted that acceptance of an application signed by only one parent therefore requires proper consideration of the full circumstances of the application. The department commented that although the situation contemplated by the QLS and Multicultural Australia was not specifically provided for in the legislation, the Bill was broad enough to encompass such a situation.⁵²

Responding to the query around timeframes for registering a child's birth, the department noted that the standard timeframe of 60 days, as used by other jurisdictions including New South Wales and Victoria, allow for accurate statistical data to be supplied to the Australian Bureau of Statistics and extending this time frame may impact on entities relying on this birth data. The department further noted that it is a human right for a child in Queensland to have their birth registered, and clarified that although it is an offence for parents to not submit a birth registration application, no penalty is applied by the registry for applications submitted outside of the 60 day time frame⁵³ or the 180 day timeframe for parents of children born with variations of sex characteristics.⁵⁴ The department stated that the draft Regulation formalises this position by the removal of the prescribed fee for applications which are submitted outside of the timeframe.⁵⁵

The department also stated that they had received feedback that some people, in particular in some First Nations communities, hold the perception they will be fined for submitting their birth registration application outside the timeframe. In response, the department advised that education campaigns are being employed by the registry as part of the Closing the Registration Gap project to help address misconceptions and increase birth registration rates among First Nations people.

⁴⁷ Submission 342, p 4.

⁴⁸ Submission 356, p 3.

⁴⁹ Submission 113, p 1.

⁵⁰ Submission 362, p 5.

⁵¹ DJAG, response to submissions, 23 January 2023, p 45.

⁵² DJAG, response to submissions, 23 January 2023, p 46.

⁵³ DJAG, response to submissions, 23 January 2023, p 46.

⁵⁴ DJAG, response to submissions, 23 January 2023, p 47.

⁵⁵ DJAG, response to submissions, 23 January 2023, p 46.

Committee comment

We note both the support from submitters regarding applications for birth registration, as well as the issues raised, including, for example, by Aboriginal and Torres Strait Islander Legal Service regarding time limits for mothers from remote communities to register the birth of their child and Intersex Human Rights Australia regarding the potential increase in medical intervention of children born with variations of sex characteristics.

We note the response from DJAG in relation to these matters and are pleased to note that parents who do not meet the 60 or 180 day timeframe will not be penalised, particularly for those from remote and regional areas or those choosing to delay registration due to unresolved concerns relating to variations of sex characteristic.

We are also pleased to note that an education campaign to address misconceptions and increase birth registration rates among First Nations peoples are being employed. We also note that *Closing the Registration Gap Strategy Plan 2021 – 24* seeks to have 80% of Aboriginal and Torres Strait Islander children’s births registered within 60 days of birth by 2024 and that as part of the strategy plan, the Queensland Government will visit and engage with people in communities, regional towns and urban centres to better understand their needs and how registry services could be more inclusive and effective.

Recommendation 2

The committee recommends 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 this report.

2.2 Part 3 – Adoptions and transfers of parentage

DJAG advises that:

Part 3 of the Bill retains, in substance, the provisions relating to registering adoptions, parentages orders (under the *Surrogacy Act 2010*) and cultural recognition orders (under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Act 2020*), which were formerly located in Part 7 of the BDMR Act.⁵⁶

These provision have been redrafted in a modernised style and relocated to have their own part.

2.2.1 Stakeholders’ views and department response

Several submitters commented on adoptees access to information about their biological parentage. In particular, Darryl Nelson⁵⁷ and Chris Mundy⁵⁸ both recommended Queensland have an integrated birth certificate, similar to that used in other states such as New South Wales, to record both biological origins and the subsequent adoption information.

The department responded that an integrated birth certificate framework was not included in the Bill. The department also noted the Bill continues the existing requirements relating to access of information from closed entries following the transfer of parentage, and does not prevent adopted children finding information about their biological parents.

⁵⁶ DJAG, written briefing, dated 5 January 2023, p 7.

⁵⁷ Submission 28.

⁵⁸ Submission 125.

2.3 Part 4 – Change of name

The change of name requirements formally located within Part 3 of the BDMR Act are provided for in Part 4 of the Bill. Although largely remaining the same, changes have been made to address different ways parental responsibility may be allocated by a court and to minimise misuse and support fraud prevention of the change of name framework.⁵⁹

The Bill proposes to allow a person to apply to the registry to change their name if they are born in Queensland, were adopted and the adoption is registered in Queensland, or has been ordinarily resident in Queensland for at least 12 consecutive months immediately before the person makes the application. Some exceptions apply including applications relating to marriage or divorce, or where the registrar is satisfied there are exceptional circumstances for accepting the application.⁶⁰

A person is unable to change their name if 3 or more changes to their name have already been registered in Queensland or another state, or the person has registered a change of name in Queensland or another state in the 12 months immediately before the application.⁶¹

2.3.1 Stakeholders' views and department response

Some submitters expressed concerns in particular for the requirement for a person to have been a resident in Queensland for 12 months prior to applying for a change of name. QLS raised the issue that humanitarian entrants who arrive with incorrect names recorded are unable to correct this until they have resided in Queensland for 12 months.⁶² Multicultural Australia further explained that often after the 12 months period has passed, the humanitarian entrants no longer have access to case management support to assist them in accessing and navigating the process which can be problematic given 'their English language and familiarity with Australian systems is still developing'.⁶³

The department noted that the 12 month residency requirement was consistent with other jurisdictions including New South Wales and Western Australia and that the purpose of the 12-month residency requirement was 'to limit opportunities for a person to create multiple identities in different places'. The department also noted that there is discretion for the registrar to process a change of name where the person has not met the 12-month residency requirement.⁶⁴

2.4 Part 5 of the Bill — new framework for acknowledgement of sex

The most extensive changes proposed in the Bill occur in Part 5 and include provisions relating to the requirements for altering a record of sex on the relevant child register. We received 385 submissions during the Inquiry; of these, 338 commented on Part 5 of the Bill with 151 for the proposed amendments and 187 against.

The Bill removes the current requirement under Part 4 of the BDMR Act that a person must have undergone sexual reassignment surgery to alter their reproductive organs to change their sex, or to correct or eliminate ambiguities about the sex of the person (surgery requirement), in order to apply to note a reassignment of sex on their birth registration. DJAG stated that this current surgery requirement 'unnecessarily medicalises the recognition of a person's lived identity' and its removal would improve 'the legal recognition of trans and gender diverse people'.⁶⁵

⁵⁹ DJAG, written briefing, dated 5 January 2023, p 7.

⁶⁰ Bill, clause 26.

⁶¹ Bill, clause 27.

⁶² Submission 34, p 7.

⁶³ Submission 197, p 3.

⁶⁴ DJAG, response to submissions, 23 January 2023, p 54.

⁶⁵ DJAG, written briefing, dated 5 January 2023, p 8.

The Bill introduces a new framework enabling people to apply to alter their record of sex. Under this framework, a person will be able to nominate a sex descriptor of their choice (male, female or any other descriptor of a sex such as trans man or trans woman, agender, genderqueer or non-binary). The registrar will be required to refuse the application if the descriptor nominated is a prohibited sex descriptor or if they reasonably suspect the change is sought for a fraudulent or other improper purpose, or if a record of the person's sex has been altered within the 12 months preceding the application.⁶⁶

In regards to the registration process, if the registrar alters a person's sex on the relevant child register, the registrar re-registers the person's relevant event (the persons' birth or adoption record). The registrar will close the original or current entry and make a new entry in the register that includes all of the information from the person's previous entry, except the information which has been superseded. Specific restrictions will apply in relation to who can access information from a person's closed record.⁶⁷

2.4.1 Stakeholder views and key themes

In regards to the new framework proposed under the Bill, submitters who supported the provisions stated the framework would uphold human rights and be beneficial to the wellbeing of the transgender and gender diverse community.

The QHRC stated that the Bill would 'ensure the privacy, freedom of expression, and equality before the law of people accessing Queensland's birth registration system', particularly trans and gender diverse people and diverse families. The QHRC further commented that the proposed new legal processes to alter the record of sex for children and young people where previously there were limited options would promote the right to equality and privacy, and the child's right to special protection, without discrimination.⁶⁸ The Queensland Family and Child Commission expressed similar views, stating that the Bill would 'remove a discriminatory regime and help reduce the distress, fear, discrimination and privacy violations that many people in our community face on an all-too-frequent basis'.⁶⁹

Equality Australia stated the Bill would 'remove cruel and unnecessary obstacles that prevent trans and gender diverse people from updating their legal gender' and improve their lives and mental health. Further, Equality Australia stated that having access to identity documents that reflect a person's gender would help ensure trans and gender diverse people are treated with dignity and respect when seeking services, education or employment opportunities.⁷⁰ Amnesty International expressed a similar view, stating 'international human rights law says that our laws should respect self-identification' and that this requires that 'trans, non-binary and gender diverse people have access to basic ID that is true to their gender regardless of what medical treatment they have (or have not) received'.⁷¹

Just.Equal Australia welcomed the ability for people to nominate gender identities other than male or female on their identity documentation as proposed under the Bill.⁷²

⁶⁶ DJAG, written briefing, dated 5 January 2023, pp 8, 9.

⁶⁷ Explanatory notes, p 12; see clause 11.

⁶⁸ Submission 360, pp 4, 5.

⁶⁹ Submission 359, p 1.

⁷⁰ Submission 356, p 2.

⁷¹ Submission 36, p 2.

⁷² Submission 183, p 2.

Many individual submitters also supported Part 5 of the Bill, including the ability to record a change of sex based on self-declaration.⁷³ For example, Callan Woods stated that ‘having the ability to update my birth certificate to acutely reflect my identity without the requirement of surgery will make it possible for me as surgery is completely outside my affordability’.⁷⁴ Jessica Rowe stated that under the legislation, she would be able to marry her partner without it ‘being falsely classified as a gay marriage’ and that the Bill was a ‘pure win for the progress of equality in Queensland’.⁷⁵ As a non-binary individual, Jack Murray stated that the Bill ‘would be a large step in the right direction in order for the state to be more inclusive as a whole’ and would ‘help thousands validate their identities on a wider scale’.⁷⁶ Sophia Holland stated that giving individuals ‘the agency to update a certificate that allows for legal recognition will be crucial in eradicating transphobia in Australia’.⁷⁷ Toby Brown stated, ‘this small change will go a long way to making trans people, non-binary folk, gender non-conforming people and everyone across the gender spectrum safer, and allow them to participate more equitably in society’.⁷⁸

Those opposed to the proposed framework as proposed in Part 5 were concerned about a number of matters, including the impacts on women’s rights and safety and the conflation of sex and gender in the Bill. These and other matters are discussed in more detail below.

2.4.1.1 Women’s rights and safety

A number of submitters were concerned about the impact of the Bill on women’s rights and safety. The key views from submitters included:

1. The Bill would give biological males access to women’s single sex spaces, including prisons, change rooms, shelters, rape crisis groups, women’s sports, same-sex schools, and lesbian dating sites, thereby potentially risking the safety of women, girls and children.⁷⁹

The Women’s Action Alliance Canberra (WAAC) stated that the Bill would significantly impact disadvantaged women who have few alternatives to community-funded domestic violence refuges and rape crisis centres, with Professor Patrick Parkinson stating that domestic violence and sexual assault services may be in breach of the law if they exclude natal males who have changed their sex as a result of the Bill’s provisions. While acknowledging the ‘reality that trans people may themselves be the victims of sexual violence and need protection’, WAAC clarified that it was the ‘obvious maleness’ of a self-declared transwoman that may be traumatising to victims of domestic and sexual violence in safe spaces designed for their care.⁸⁰

Gender Awareness Australia - Binary stated that some males in society will take advantage of the Bill’s proposed changes to law, which will lead to endangering women, girls and children.⁸¹

Active Watchful Waiting Inc stated women and girls remain an oppressed majority and subject to violence and discrimination based on their sex, which is why this cohort need specific protections

⁷³ For other examples of support for the self-declaration model, see submissions 202, 203, 206, 207, 209, 210, 236, 237, 238, 253, 254, 266, 291.

⁷⁴ Submission 5.

⁷⁵ Submission 54.

⁷⁶ Submission 129.

⁷⁷ Submission 130.

⁷⁸ Submission 239.

⁷⁹ See, for example, Australian Christian Lobby, submission 32; Gender Awareness Australia - Binary, submission 157; Women’s Action Alliance Canberra, submission 292; IWD Brisbane Meanjin, submission 295; Women’s Forum Australia, submission 204; LGB Alliance Australia, submission 313; FamilyVoice Australia, submission 314; Active Watchful Waiting Inc, submission 365.

⁸⁰ Submission 292, p 3; submission 56, p 2.

⁸¹ Submission 157, p 3.

and to have their sex class recognised and protected. Active Watchful Waiting Inc expressed the view that the Bill would have a harmful impact on single sex spaces.⁸²

Women’s Forum Australia recommended that female and male single-sex spaces be kept ‘for the functioning of our society and for the rights, safety and dignity of women and girls in particular’ but that gender-neutral spaces also be created ‘for people who fall along that gender identity spectrum that they can access and feel more comfortable in’.⁸³

2. The Bill would not uphold the rights of cultural groups for whom single sex spaces are important.⁸⁴
3. Women will lose the right to meet ‘in order to debate, organise, advocate, and campaign for female specific interests, without risk of harassment, violence, prosecution or loss of income’.⁸⁵
4. Women will not have the right to a single sex recovery space, service or counsellor.⁸⁶

LGB Alliance Australia stated that female patients will not be able to request a biological female for intimate care support, for example.⁸⁷

5. The Bill will impact on a person’s right to express their sexuality as same sex.⁸⁸

Active Watchful Waiting Inc stated that ‘there are attacks on lesbians who are asserting their rights as a protected group to be same sex attracted’.⁸⁹ The Coalition of Activist Lesbians Inc also raised this as a concern.⁹⁰

In response to a question about the commission’s role to safeguard everyone’s human rights under the HRA and *Anti-Discrimination Act 1991* (AD Act / Anti-Discrimination Act) and how the Bill may open the system to potentially be misused or abused by some parties, the QHRC advised that it did not consider that changing the record of a person’s gender or 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. QHRC advised that it had ‘not seen any safety issues’ or:

experienced any problems that have been suggested by people that transgender—a male to female person—is inappropriately accessing services. They have the right to access services just like anybody else in society. If they need a DV service, they should be able to access a DV service. If they need a health service, they should be able to access a health service. If they wish to go to school or work, just like everybody else, they have the right to work.⁹¹

Matilda Alexander from the LGBTI Legal Service also commented on the right of trans women to access women’s services, noting that trans women have accessed Queensland women’s services over the

⁸² Submission 365, p 6.

⁸³ Women’s Forum Australia, public hearing transcript, Brisbane, 24 January 2023, p 31.

⁸⁴ See, for example, Women’s Action Alliance Canberra, submission 292 and Active Watchful Waiting Inc, submission 365.

⁸⁵ See, for example, Active Watchful Waiting Inc, submission 365, p 8.

⁸⁶ See, for example, Active Watchful Waiting Inc, submission 365, p 8; LGB Alliance Australia, submission 313, p 11.

⁸⁷ Submission 313, p 11.

⁸⁸ See, for example, Active Watchful Waiting Inc, submission 365, pp 8, 9.

⁸⁹ Submission 365, p 8.

⁹⁰ Submission 350, pp 5-7.

⁹¹ QHRC, public hearing transcript, 24 January 2023, p 10.

years and that she was unaware of any issues, including occurrences of cis gendered men accessing women's services and demanding to be seen.⁹²

Department's response

In its response to concerns about the Bill's potential impact on women's safe spaces, DJAG referred to recent evidence provided to the Scottish Government from the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz and his conclusion that 'in countries that have legal recognition based on self-identification, there is no credible evidence to suggest systemic risk of predatory men using the process of identifying and living as a woman as an opportunity to perpetrate gender or sexual-based violence'.⁹³ DJAG also referred to the evidence of 2 independent Australian law reform bodies tasked with considering the impacts that changes such as those proposed in the Bill have on other aspects of society, including the Tasmanian Law Reform Institute (TLRI) and the Law Reform Commission of Western Australia (LRCWA). The TLRI found:

- concerns regarding 'misuse' of the Tasmanian gender registration process are misplaced (applications to register a gender are not made lightly and, in other Australian jurisdictions where fairer birth certificate laws have been in place, there is no evidence of increased risk of misuse);
- there is no peer-reviewed evidence to suggest that individuals claim to be a particular gender in order to access locations or events (for example, a women's refuge) from which they may otherwise be prohibited; and
- no evidence was provided that supports the view that jurisdictions that have adopted self-identification gender laws have experienced any increase in assault against women by trans and/or gender diverse people.⁹⁴

The LRCWA indicated similar findings, noting it had not seen evidence that established trans women as posing an inherent risk to others in these spaces but that there was 'documented evidence of violence being perpetrated against trans and gender diverse people'. The LRCWA also stated that if there are concerns about trans women being included in family violence refuges, there should be 'appropriate policies and procedures to ensure all feel safe in such places, rather than simply excluding trans women'.⁹⁵

In regards to the Queensland Government's responsibility to ensure the safety of women and children in domestic and family violence shelters and refuges, DJAG advised that all shelters and refuges are required to comply with *the Domestic and Family Violence Support Services Practice Principles, Standards and Guidance* and noted that under Principle 6, all services have an obligation to ensure clients are protected and that they are client-centred, accessible for all and provide an appropriate and equitable response for all cohorts. DJAG advised it was not aware of any reported concerns regarding trans women's access to refuges.⁹⁶

⁹² Public hearing transcript, Brisbane, 24 January 2023, pp 27, 28.

⁹³ DJAG, response to submissions, dated 23 January 2023, p 13; Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27757>, p 13.

⁹⁴ DJAG, response to submissions, dated 23 January 2023, pp 13-14; Tasmanian Law Reform Institute (2020) Legal Recognition of Sex and Gender, https://www.utas.edu.au/__data/assets/pdf_file/0018/1342080/tlri-legal-recognition-of-sex-final-report.pdf, p 61.

⁹⁵ DJAG, response to submissions, dated 23 January 2023, pp 14, 15; Law Reform Commission of Western Australia (2018) Project 108 Final Report: Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics, <https://www.wa.gov.au/system/files/2021-02/LRC-Project-108-Final-Report.pdf>, p 75.

⁹⁶ DJAG, response to submissions, dated 23 January 2023, p 16.

In response to matters raised in relation to same-sex schools, DJAG advised:

The bill has an effect provision which provides that, once a child's sex is altered, they are taken to be that sex for the purposes of, but subject to, all Queensland laws. That has to be read in conjunction with the way the QHRC already interprets the single-sex exemption as published in its guide. When there are complaints, they interpret sex beneficially as an attribute already under the act.

...

The effect provision solidifies it [in legislation], yes, but if a matter went to them they are already very clear on the record about how they interpret the sex-protected attribute under the act. Yes, the effect provision reinforces that interpretation they are already applying in the way in which a trans student can access a single-sex school.⁹⁷

Committee comment

We note the submitters' concern that the Bill will adversely impact women and girls: for example, in relation to their safety in single sex spaces and the ability to request a 'biological female' for intimate or domestic violence support services. We also note the findings and comments from the QHRC, TLRI, LRCWA and Victor Madrigal-Borloz regarding a lack of evidence to show jurisdictions that have adopted self-declaration gender laws experience any increase in assault against women by trans and/or gender diverse people in single sex spaces. Further, we note Victor Madrigal-Borloz's evidence stating there was nothing to suggest a systemic risk to girls and women of predatory men identifying and living as women to perpetrate gender or sexual-based violence – internationally or within Australia. We also note QHRC's comment that transgender people have a right to access services as needed.

While acknowledging the broader legislative landscape that exists to protect people from harm and discrimination, such as the Anti-Discrimination Act, we note that the safety of patrons/clients in any setting falls under the responsibility of the business owner/organisation and their relevant policies and procedures. In regards to the safety of women and children in domestic and family violence shelters and refuges, DJAG advised that shelters and refuges are required to comply with the *Domestic and Family Violence Support Services Practice Principles, Standards and Guidance* to ensure clients are protected and that services are client-centred and accessible for all.

In conclusion, we acknowledge the concerns of submitters but note evidence from experts, peak bodies and government agencies that there is a lack of evidence suggesting that the safety of women and girls in single sex spaces will be compromised by the Bill's amendments to provide a new framework under which a person can apply to alter their record of sex. Further, we note that domestic violence and family refuges are required to comply with guidelines that detail their obligation to ensure the safety of their clients. In this regard, we are satisfied with the department's response to matters about women's rights and safety.

2.4.1.2 Conflation of sex and gender

Approximately one-third of organisational and one quarter of individual submitters expressed concerns about the conflation of sex and gender in the Bill.⁹⁸ The key concern with the Bill in this regard was the view that a person could not change their sex.⁹⁹ For example, Fair Go for Queensland Women stated that 'there is no objective or evidentiary reason to enable individuals to change the sex marker on their birth certificates, either as a result of surgery and much less based on self-

⁹⁷ DJAG, public briefing transcript, Brisbane 30 January 2023, pp 3, 4.

⁹⁸ See, for example, submission 306.

⁹⁹ See, for example, IWD Brisbane Meanjin, submission 295; Evelyn Williams, submission 306; FamilyVoice Australia, submission 314; Fair Go for Queensland Women, submission 327, Coalition of Activist Lesbians, submission 350.

declaration'.¹⁰⁰ Women's Forum stated that the Bill 'elevates gender identity over biological reality'.¹⁰¹ Professor Parkinson stated that 'identification as another gender does not alter a person's sex'.¹⁰²

Professor Peter Koopman expressed the view that the Bill is 'unworkable' as it needs 'to appreciate, preserve and articulate the distinction between sex and gender'. Professor Koopman stated that 'biological sex is the term that describes whether a person has the anatomical (that is, physical) features of a male or female, or a combination of both', and that 'gender relates to a person's psychosocial sense of themselves as a man, woman, a combination of these, or neither of these'. In this regard, Professor Koopman recommended that legislation should include a 'clear definition of what is meant by the terms 'sex' and 'gender', and should acknowledge the existence of these two distinct dimensions in each person'.¹⁰³

The Australian Christian Lobby (ACL) stated that the Bill would mean that 'sex' will no longer mean the 'biological and physiological characteristics that define humans as female or male but will become a purely social characteristic'. The ACL also stated that birth certificates should not be used as a vehicle to describe 'gender' as they provide accurate and factual data about the live birth of the person described.¹⁰⁴ IWD Brisbane Meanjin supported this view, stating that birth certificates, 'as the legal record of people's birth sex, must remain' and that 'if gender identity is regarded as important enough to be recorded it needs to be recorded in addition to, not instead of, sex'.¹⁰⁵ Professor Parkinson stated that 'birth certificates are matters of historical record ... babies are born either being boys or girls'.¹⁰⁶

In opposing the Bill and its conflation of sex and gender, some submitters specifically commented that 'trans women are not women'.¹⁰⁷

QLS noted that providing a distinction between sex and gender in the Bill would have been consistent with the *Australian Government Guidelines on the Recognition of Sex and Gender*, other Australian bodies, the World Health Organisation, other international jurisdictions such as the United Kingdom and Canada, and a number of Australian jurisdictions. QLS advised it supported the TLRI's approach to maintain a distinction between sex and gender and that 'the focus be on working to "eliminate discriminatory application of laws by careful and deliberate use of the appropriate terms"'. QLS acknowledged that the Bill's approach to not provide a legal distinction between sex and gender and allow a person to self-identify with their chosen sex descriptor, 'removes the need for further consideration of the effect of a legal distinction between sex and gender and the possibility that such a distinction may entrench a hierarchy of legal rights for trans people depending on whether or not they choose to undergo sexual reassignment surgery after the proposed reforms are introduced'. QLS was concerned that there may be unintended consequences that flow from the implementation of the Bill in its current form in regards to the removal of the distinction between the two concepts.¹⁰⁸

¹⁰⁰ Submission 327, p 6.

¹⁰¹ Submission 304, p 8.

¹⁰² Submission 56, p 4.

¹⁰³ Submission 366, p 1.

¹⁰⁴ Submission 32, p 4.

¹⁰⁵ Submission 32, p 4; submission 295, p 11.

¹⁰⁶ Public hearing transcript, Brisbane, 24 January 2023, p 1.

¹⁰⁷ See, for example, Sall Grover, submission 79; Russell Gray, submission 185; LGB Alliance Australia, submission 313; and Fair Go for Queensland Women, submission 327.

¹⁰⁸ Submission 34, p 4.

Department's response

The key points from the department's response to concerns about the Bill's approach to sex and gender are:

- The Bill adopts a broad, inclusive approach to what constitutes a person's sex, including the gender identity of a person.¹⁰⁹
- Australian courts have noted that biological factors are not the only relevant factors in determining sex, including the High Court which has held that both self-perception and how others perceive a person are also relevant factors in determining a person's sex and these are just as important as physical characteristics.¹¹⁰
- Common law has come to reflect a multifactorial approach that considers multiple biological, psychological and social factors when determining the legal sex of trans and gender diverse persons.¹¹¹
- During consultation on the drafting of the Bill, stakeholders advised the separation conceptually of sex and gender may have unintended consequences resulting in different treatment of trans and gender diverse persons that may in some instances manifest as discrimination, including:
 - the distinction could be used as a tool to exclude or otherwise reduce the rights and privileges of trans and gender diverse people;
 - much of the trans exclusionary advocacy efforts are fundamentally aligned to this distinction to erode rights and ultimately erase trans and gender diverse people's rightful recognition;
 - the distinction will have the unfortunate and unintended consequence of entrenching a hierarchy of legal rights for trans people depending on whether or not they choose to undergo sexual reassignment surgery (that is, it would create a two-tier class of legal recognition — those who have undergone sexual reassignment surgery and those who have not);
 - it would be inconsistent with the approach taken in most other Australian states and territories which do not separate out the concepts of 'sex' and 'gender' at law; and
 - it is inconsistent with the way the courts have evolved over time when interpreting sex and gender identity issues by determining that biological factors are not the only relevant factors in determining sex.¹¹²
- In regards to other jurisdictions:
 - There are inconsistencies with how other jurisdictions conceptualise the process that a trans or gender diverse person must complete in order to update their registered marker on their birth certificate.
 - Despite these differences in terminology and framing, there is greater consistency across the jurisdictions when it comes to the 'effect' that the registration of a new marker has for the purposes of the treatment of that person under other laws.
 - While each jurisdiction may have slightly different nuanced approaches to the distinction between the concepts, the net effect and outcome is that once a person updates the sex marker on their birth registration, the new marker is taken to be the person's sex for the purposes of all other laws in that jurisdiction.¹¹³

¹⁰⁹ DJAG, response to submissions, dated 23 January 2023, p 5.

¹¹⁰ DJAG, response to submissions, dated 23 January 2023, p 5.

¹¹¹ DJAG, response to submissions, dated 23 January 2023, p 6.

¹¹² DJAG, response to submissions, dated 23 January 2023, p 6.

¹¹³ DJAG, response to submissions, dated 23 January 2023, pp 6, 7.

- In its report *Building Belonging – Review of Queensland’s Anti-Discrimination Act 1991* (Building Belonging report), the QHRC found that a narrow interpretation of sex as meaning only ‘biological sex’ is unlikely to be compatible with human rights. It is DJAG’s view that the Bill’s approach in collapsing ‘sex’ and ‘gender’ is consistent with the preferred approach advanced by the QHRC and the approach of other jurisdictions and ‘reflects changing expectations of being able to accurately describe a personal identity beyond a rigid demarcation of two binary sexes’.¹¹⁴
- In relation to comments about ‘trans women not being women’, DJAG advised that the Bill is ‘consistent with the *Queensland Women’s Strategy 2022-27* (the Strategy) which outlines the Queensland Government’s approach to ensuring women and girls are safe, valued, and able to freely participate in the economic, social and cultural opportunities available’ and that a key principle underpinning the Strategy is that gender equality is inclusive.¹¹⁵ DJAG explained further:

The Strategy recognises all people who identify as women, including those who are transgender, as well as people who are non-binary or gender diverse and acknowledges that Queensland women and girls with diverse backgrounds and experiences have the right to be safe and be provided with the same opportunities as everyone else.

This foundational policy position guides and informs the framework adopted in Part 5 of the Bill.¹¹⁶
- In response to suggested alternatives to amending a person’s registered sex on a birth certificate through the proposed process, such as creating a separate ‘gender’ field on the birth certificate in addition to ‘sex’ or creating an alternative document for people who wish to identify their gender, DJAG advised that both options would ‘out people as trans or gender diverse and reinforce a culture of discrimination against trans and gender diverse people’.¹¹⁷

In summary, DJAG advised:

Collapsing the terms ‘sex’ and ‘gender’ is consistent with the approach advanced by the Queensland Human Rights Commission in its report *Building belonging: Review of Queensland’s Anti-Discrimination Act*, the approach of other Australian jurisdictions that have made changes in this area, and the way that the courts and common law have evolved over time. The approach taken acknowledges that sex as recorded on birth certificates is a social marker of identity, not simply a marker of biology. In this way, the bill reflects changing expectations of being able to accurately describe a personal identity beyond the rigid demarcation of two binary sexes.¹¹⁸

Committee comment

We note the key views of submitters in relation to the conflation of sex and gender in the Bill: a) people cannot change their sex and therefore the two concepts cannot/should not be conflated in legislation, and b) birth certificates should provide factual information about the birth of the person and therefore legislation should not allow the record of sex to be altered. We also note QLS’s view that the distinction between sex and gender should remain enshrined in law as this would provide consistency with the *Australian Government Guidelines on the Recognition of Sex and Gender*, other Australian bodies, the World Health Organisation, international jurisdictions such as the United Kingdom and Canada, and some Australian jurisdictions. However, we also note QLS’s acknowledgement that the Bill’s intentional approach to conflate the two concepts ‘removes the need for further consideration of the effect of a legal distinction between sex and gender and the possibility that such a distinction may

¹¹⁴ DJAG, response to submissions, dated 23 January 2023, pp 7, 8.

¹¹⁵ DJAG, response to submissions, dated 23 January 2023, p 11.

¹¹⁶ DJAG, response to submissions, dated 23 January 2023, p 11.

¹¹⁷ DJAG, response to submissions, dated 23 January 2023, p 8.

¹¹⁸ DJAG, public briefing transcript, Brisbane, 30 January 2023, p 2.

entrench a hierarchy of legal rights for trans people depending on whether or not they choose to undergo sexual reassignment surgery after the proposed reforms are introduced'.¹¹⁹

We note, however, the response from DJAG that the Bill adopts an 'inclusive approach' to what constitutes a person's sex, including gender identity, and that gender equality is the foundational policy position that guides and informs the framework adopted in Part 5 of the Bill. We also acknowledge the position of Australian courts that take a similar approach in considering biological factors are not the only relevant factors in determining sex but self-perception and how other's perceive a person are also relevant. Similarly, common law reflects a multifactorial approach that considers biological, psychological and social factors when determining the legal sex of a trans and gender diverse person.

Stakeholder feedback to DJAG contends that differentiating between sex and gender may result in different treatment of trans and gender diverse persons, including in some instances manifesting as discrimination. We also note QHRC's view that using 'biological sex' as the only factor for interpreting sex is unlikely to be compatible with human rights.

In regards to inter-jurisdictional consistency, DJAG's advice is that while there are differences in 'terminology and framing', there is greater consistency when it comes to the 'effect' of registering a new marker for the purposes of the treatment of that person under other laws with the net effect and outcome being that once a person updates the sex marker on their birth registration, the new marker is taken to be the person's sex for the purposes of all other laws in that jurisdiction.

In this regard, we are satisfied with the department's response to the submitters' concerns.

2.4.1.3 Self-declaration vs medicalisation approach to altering a record of sex

In general, submitters were supportive of the Bill to move from a medicalised approach to a framework based on an applicant's self-declaration, thereby removing the requirement for a person to undergo sexual reassignment surgery in order to alter their record of sex.¹²⁰ The UQ Ally Action Committee supported the 'self-declaration model' that would allow for the altering of the record of sex to legally recognise an individual's gender as it 'decouples medical transition from legal transition, supports social transition, and is important for the autonomy of the individual'.¹²¹ Just.Equal Australia was also supportive of the removal of the requirement for transgender people in Queensland to have genital surgery in order to access identify documentation.¹²² Associated Christian Schools based its support on their focus to maintain the safety and wellbeing of children and young people and 'surgical intervention carries risks'.¹²³

In its response, DJAG highlighted key points from QHRC's submission that:

- surgery or other medical interventions, such as hormone therapy, may not be desirable for or accessible to all trans and gender-diverse people
- a medicalised approach is inconsistent with the Anti-Discrimination Act.¹²⁴

¹¹⁹ Submission 34, p 4.

¹²⁰ See, for example, Jigsaw Queensland, submission 128; Multicultural Australia, submission 197; and QHRC, submission 360.

¹²¹ Submission 322, p 2.

¹²² Submission 183, p 1.

¹²³ Submission 361, p 1.

¹²⁴ DJAG, response to submissions, dated 23 January 2023, p 9.

Committee comment

We note support from submitters for removing the surgery requirement or other medical interventions in order to change a record of sex to the ‘quasi’ self-declaration framework adopted by the Bill.

2.4.1.4 Reliance on Yogyakarta Principles

Professor Patrick Parkinson, IWD Brisbane Meanjin, and some individual submitters, criticised the reliance on the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (Yogyakarta Principles) to support the amendments in Part 5 of the Bill.¹²⁵ DJAG referred to statements made by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, who stated that the ‘Yogyakarta Principles are cherished around the world as a major achievement of activism in the field of sexual orientation and gender identity’, and they ‘hold a singular value as a doctrinal source that has done great service to the furtherance of the human rights of lesbian, gay, bisexual, trans, non-binary and other gender diverse persons’.¹²⁶

2.4.1.5 Women’s sports

Another key issue for submitters who were opposed to Part 5 of the Bill was the view that it would impact negatively on women’s sport.

Professor Parkinson stated that the Bill would likely adversely impact women and girls who play competitive sport because of the interaction between the Bill and the Anti-Discrimination Act. Professor Parkinson explained further:

The proposed changes to the law will nullify the protections for women’s sports so far as natal males who are registered as female are concerned. Women’s sports organisations that run contact sports will have to risk either breaching the law, or expose their female participants to an unacceptable risk of serious injury, unless a special temporary exemption is granted by QCAT.¹²⁷

Active Watchful Waiting Inc stated the Bill would impact on the right for fair competition for women, which would adversely affect the health and benefits of sports for young girls, with some opting out as a result.¹²⁸ Women’s Forum Australia held similar concerns stating that, in allowing males who self-identify as female to participate in female-only sports, the Bill raises concerns around fairness and safety for female athletes at all levels. Women’s Forum Australia commented that this ‘would likely include elite sporting competitions, as the exemption in section 111 of the Anti-Discrimination Act which allows participation to be restricted to either males or females would likely be rendered meaningless by the Bill’.¹²⁹

Professor Noah Riseman of the Australian Catholic University held a different view, stating that reforms in this space have had ‘no effect whatsoever on the cisgender majority’, including that ‘it has not led to more assaults on cis women or destroyed schools or women’s sport’.¹³⁰

¹²⁵ Submission 36; submission 295.

¹²⁶ DJAG, response to submissions, dated 23 January 2023, p 10; Madrigal-Borloz, V (2022), Letter dated 13 December 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27757>, p 8 (footnote 46).

¹²⁷ Submission 56, p 1.

¹²⁸ Submission 365, p 7.

¹²⁹ Submission 304, p 4.

¹³⁰ Submission 88, p 4.

Department's response

In its response to concerns about women's sports, DJAG stated that the issue of inclusive participation in sport is complex, predates the Bill and already 'nuanced' in its approach. DJAG advised that the Anti-Discrimination Act provides specific exemptions to lawfully restrict participation in sporting activities to either males or females if the restriction is reasonable having regard to the strength, stamina or physical requirements of the activity.¹³¹

DJAG also noted that the Australian Human Rights Commission (AHRC) had developed *Guidelines for the inclusion of transgender and gender diverse people in sport* in partnership with Sport Australia and the Coalition of Major Professional and Participation Sports to provide guidance to sporting organisations.¹³² Other key points in DJAG's response include:

- Restricting participation in sport on the basis of sex or gender identity is about balancing competing individual rights, including the importance of sport participation in the mental and physical wellbeing of young people.
- The experiences of non-binary people and participation in sport must not be forgotten.
- The QHRC in its Building Belonging report found that the Anti-Discrimination Act should retain a sport exception in the same form as the current version on the basis that human rights considerations weigh in favour of not changing the approach.
- Scientific research about the relevance of strength, stamina and physique to particular sporting activities is a relatively new and emerging field.
- In summary, DJAG's position is that 'the inclusion of trans and gender diverse people and compliance with the Anti-Discrimination Act is a matter to be dealt with by individual clubs and sporting codes, having regard to the AHRC guidelines'.¹³³

Committee comment

We note concerns that the Bill may impact negatively on women's and girls' sports by allowing trans women to join, thereby creating an unfair competitive advantage for trans women and potentially leading to some girls and women leaving sports as a result. Furthermore, we note concerns that sports organisations risk potentially breaching the law by not permitting trans women to join their sporting activities and competitions, as well as exposing their players to serious injury unless exemptions are granted.

DJAG acknowledged that 'inclusive participation' in sport is a complex matter that predates the Bill with policies in this space continuing to evolve. We note the Anti-Discrimination Act provides the ability for sporting organisations to apply for an exemption to lawfully restrict participation in sporting activities to either males or females if the restriction is reasonable, having regard to the strength, stamina or physical requirements of the activity. We also note that the QHRC recommended in its Building Belonging report that a sports exemption under the Anti-Discrimination Act should remain. Clubs and sporting codes are currently able to manage specific matters having regard to the AHRC guidelines.

We acknowledge that this issue requires a balancing act between competing individual rights and expect that discussions will be ongoing as research evolves, with individual clubs and sporting codes

¹³¹ DJAG, response to submissions, dated 23 January 2023, p 20; Greg Bourke, Director, Strategic Policy, Policy and Legal Services, DJAG, public briefing transcript, Brisbane 30 January 2023, p 8.

¹³² AHRC, *Guidelines for the inclusion of transgender and gender diverse people in sport*, <https://humanrights.gov.au/our-work/lgbti/publications/guidelines-inclusion-transgender-and-gender-diverse-people-sport-2019>.

¹³³ DJAG, response to submissions, dated 23 January 2023, p 21.

continuing to manage matters on a case-by-case basis in adherence with the AHRC guidelines. In this regard, we are satisfied with the current measures in place to address individuals' matters in relation to women's sports and inclusive participation.

2.4.1.6 Quotas/affirmative action

A number of submitters expressed concern that the Bill could adversely impact affirmative action practices for women.

For example, the LGB Alliance Australia stated that 'males will skew the measurement of affirmative action programs for women'.¹³⁴ Active Watchful Waiting Inc stated that the Bill would impact on 'sex-specific awards and bursaries' established to address sexual discrimination with 'males' taking these spots and women 'put second'.¹³⁵ A number of individual submitters supported this view, including, for example, Lori Puster, who stated 'there are already disproportionate numbers of trans identifying males studying at historical Women's Universities, competing at every level of women sports, occupying short-listed spots, and taking sex-specific awards and bursaries of all sorts'.¹³⁶

DJAG noted that submitters did not provide any evidence to support these views and that jurisdictions with similar laws in operation 'had not reported any experiences with skewed data or any downstream impacts'.¹³⁷ However, DJAG stated that any instances of discrimination could be addressed with an exemption application, explaining the process as follows:

in certain areas of operations and functions, agencies will need to give separate consideration to relevant obligations and exemptions under antidiscrimination law. Options under the AD Act may be available for organisations able to demonstrate that discrimination against a person or group on the basis of any of the protected attributes is required to redress disadvantage. The onus will be on the organisation seeking the exemption to demonstrate any disadvantage that justifies the application of the exemption.¹³⁸

2.4.1.7 Accuracy of statistical information

Some submitters were concerned about the accuracy of data collection and statistics if sex and gender identity were not differentiated in the Bill.

Gender Awareness Australia - Binary and Fair Go for Queensland Women were concerned about the impact on crime statistics and that trans women would skew crime data.¹³⁹ Fair Go for Queensland Women stated that the Bill would undermine accurate data collection and 'efforts to address male violence against women'.¹⁴⁰ LGB Alliance Australia expressed concern about the accuracy and usefulness of scientific research.¹⁴¹ Active Watchful Waiting Inc stated that data collection would result in 'data corruption, especially for health, crime, political participation, and STEM programs'.¹⁴²

Women's Forum Australia stated that conflating sex and gender identity would 'inevitably impact and effectively falsify crucial data collection informing public policy and services in the areas of health, crime, employment and so on' and that 'accurate, sex-disaggregated data is essential in order to understand differences in the lives of women and men, and in order to combat sexism'.¹⁴³

¹³⁴ Submission 313, p 10.

¹³⁵ Submission 365, p 7.

¹³⁶ Submission 200, p 1. Also, for example, see submissions 33 and 118.

¹³⁷ DJAG, response to submissions, dated 23 January 2023, p 20.

¹³⁸ DJAG, response to submissions, dated 23 January 2023, p 20.

¹³⁹ Submission 157, p 3; submission 327, p 7.

¹⁴⁰ Submission 327, p 7.

¹⁴¹ Submission 313, p 10.

¹⁴² Submission 365, p 8.

¹⁴³ Submission 304, p 5.

DJAG considered that these views ‘overstate the role of birth certificates in data collection’, explaining further:

In most cases, giving information on one’s sex or gender is up to the individual and is not checked against what appears on their birth certificate. Other factors that influence the recording of sex and gender data include changing expectations around sex and gender, and the guidance given by the Australian Bureau of Statistics (ABS).

...

Accurate statistics can be collected by correctly framing the question of interest – for example, asking for a person’s sex recorded at birth, rather than their sex at the time of completing a survey. Further, DJAG notes there will be no change to the birth notification process or the initial birth registration process under the Bill. A child’s sex at birth on their birth registration will continue to be registered as either ‘male’ or ‘female’. The Registry of Births, Deaths and Marriages will maintain this record, even if alterations of sex are made later in the person’s life.¹⁴⁴

2.4.1.8 Violence against women

IWD Brisbane Meanjin and Fair Go for Queensland Women sought evidence supporting elements of the Attorney-General’s introductory speech about the Bill relating to the prevalence of violence against trans and gender diverse people and comparing this with rates of violence against women. DJAG responded by acknowledging that ‘violence against women is overwhelmingly perpetuated by men and that the true extent of violence against women in Australia is unknown’. DJAG stated that comments about the ‘discrimination, violence, hate and social hate and social exclusion experienced by trans and gender diverse people is not expressed to displace nor remove the significance of the violence that women and girls experience at the hands of male perpetrators’.¹⁴⁵ In response to queries about evidence to support the Attorney-General’s statements, DJAG noted a range of research that documented the experiences of trans and gender diverse people.¹⁴⁶

2.4.2 Framework for persons aged 16 years and above

Clause 39 of the Bill introduces a new framework for persons aged 16 years or more who apply to alter their record of sex with the person being required to include a statement, verified by a statutory declaration, that the person identifies as the sex specified in the application and lives, or seeks to live, as a person of that sex. A ‘supporting statement’ must also be made by a person who is at least 18 years old and who has known the person making the application for at least 12 months. The person making the supporting statement must declare their support of the application and that they believe the applicant makes their application in good faith.¹⁴⁷

In this regard, the Bill adopts a ‘quasi self-declaration’ model that would allow a person to declare their sex marker with no requirement for a medical statement from a doctor or psychologist. The Bill would also enable the applicant to apply at the same time to register a change of their first name in the name of change register.¹⁴⁸

2.4.2.1 Submitter comments and department response

In relation to this framework, submitters focused on the requirement for the applicant to provide a supporting statement from an adult who has known the applicant for at least 12 months.

While supportive of the Bill’s introduction of ‘an improved and streamlined process to alter the record of a person’s sex without needing proof of surgery or hormone treatment’, the LGBTI Legal Service Inc

¹⁴⁴ DJAG, response to submissions, dated 23 January 2023, p 22.

¹⁴⁵ DJAG, response to submissions, dated 23 January 2023, pp 16, 17.

¹⁴⁶ DJAG, response to submissions, dated 23 January 2023, pp 17, 18.

¹⁴⁷ DJAG, written briefing, dated 5 January 2023, p 8.

¹⁴⁸ Refer clause 39(4) of the Bill; DJAG, written briefing, dated 5 January 2023, p 9; explanatory notes, p 6.

did not support the requirement for a supporting statement as ‘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’.¹⁴⁹ Just.Equal Australia agreed, objecting to the provision on principle (gender identity is a matter of inherent personal identify); pragmatism (it may create an arbitrary barrier for young trans or gender people who seek to leave an unsupportive family, school and/or community); and precedent (if the Bill is passed, Queensland will become the third Australian jurisdiction to take this approach rather than relying solely on self-identification).¹⁵⁰ Equality Tasmania was also concerned that the requirement to provide a supporting statement from a third party undermines the principle of self-identification and will make gender affirmation more difficult for some trans and gender diverse people.¹⁵¹

Alternatively, Transcend Australia supported the Bill’s requirements that an application to alter a record of sex be made with a statutory declaration and supporting statement from a third party, stating that such requirements ‘while prescriptive, strike the right balance between true “self-id” and the current medico-legal model used in Queensland’.¹⁵² Amnesty International was also supportive of the ‘self-declaration’ model as it would remove the requirement for transgender people to ‘undergo invasive “sex reassignment surgery” before being able to correct their birth certificate’, which currently presents ‘immense social, economic, and access barriers to legal gender recognition’.¹⁵³ The UQ Ally Action Committee also supported the statutory declaration process as ‘any requirement involving medical personnel increases burden on both the individual seeking to alter their birth certificate and medical services’.¹⁵⁴ Just.Equal Australia welcomed the removal of the requirement for an application to include documented support from psychologists or counsellors.¹⁵⁵

Intersex Human Rights Australia Ltd stated that the Bill’s provisions to simplify changes to birth certificates would be ‘welcomed by people with innate variations of sex characteristics who transition gender or who otherwise need to update their records in line with their lived realities’.¹⁵⁶

DJAG noted that the Bill would not introduce a ‘pure “self-declaration” model’ but would ‘allow a person to declare their sex without requiring a medical statement from a doctor or psychologist’, which avoids medicalising the process and aligns with the Victorian approach. Further, it is DJAG’s view that the supporting statement will strike an appropriate balance between accessibility and the integrity of the system, and that the requirement is not considered ‘overly onerous’.¹⁵⁷

Committee comment

The right to recognition before the law is an important right; however, we note the purpose of requiring a supporting statement to protect the integrity of the register is also very important. We therefore are satisfied that the purpose of integrity outweighs the limitation on the right to equity and consider the requirement of the supporting statement is not an onerous one and is relatively straight forward to achieve (in contrast to the current requirement for medical certification).

¹⁴⁹ Submission 363, p 2.

¹⁵⁰ Submission 183, pp 2, 3.

¹⁵¹ Submission 307, p 2.

¹⁵² Submission 182, p 3.

¹⁵³ Submission 36, p 1.

¹⁵⁴ Submission 322, p 2.

¹⁵⁵ Submission 183, p 2.

¹⁵⁶ Submission 113, p 1.

¹⁵⁷ DJAG, response to submissions, dated 23 January 2023, p 23.

2.4.3 Framework for children under 16 years

The Bill proposes to introduce the following pathways to alter the record of sex on the relevant child register for a child under 16:

- Administrative: a person would be able to apply directly to the registrar on behalf of a child where particular criteria are met. In general, consent would be required from both the child's parents or persons who share parental responsibility for the child; however, the Bill does set out the circumstances in which one person with parental responsibility could apply directly to the registrar (refer Schedule 1, part 1). An application for a change of name can be made at the same time as an application to alter the child's record of sex.
- Court: this requires court involvement, and enables applications to be made to the Childrens Court by:
 - a supporting parent or person with parental responsibility on behalf of a child under the age of 16; or
 - a child, aged at least 12 years but less than 16 years but only in situations where the child has no supportive parent or person with parental responsibility (referred to as a child-initiated application).

The court must make an order directing the registrar to accept an application to alter the record of the child's sex if satisfied it is in the child's best interests. In making the determination, the court may have regard to the assessment of the child (see below), the views of the child and whether the child is sufficiently mature to understand the meaning and implications of the change. The Childrens Court may also approve a change of name at the same time.¹⁵⁸

A key element of both pathways is the requirement that a 'developmentally informed practitioner', who has a professional relationship with the child, assess the child. The type of professions permitted to act as a developmentally informed practitioner will be prescribed by regulation with the term designed to capture a range of professional practitioners.¹⁵⁹ The draft regulation currently proposes the following professions:

- persons registered under the Health Practitioner Regulation National Law to practise in the:
 - psychology profession
 - occupational therapy profession
 - nursing profession (within the registered nurse division)
- speech pathologists who are eligible for practising membership of the Speech Pathology Association of Australia
- social workers who are members of the Australian Association of Social Workers Ltd
- persons who are registered on the Australian Register of Counsellors and Psychotherapists
- school guidance officers with certain qualifications.¹⁶⁰

The assessment will require the developmentally informed practitioner to affirm that they support the application and that the child understands the consequences to their identity brought about by

¹⁵⁸ DJAG, written briefing, dated 5 January 2023, pp 9, 10, 11; explanatory notes, pp 8, 9, 10.

¹⁵⁹ Explanatory notes, p 7.

¹⁶⁰ DJAG, written briefing, dated 5 January 2023, p 9.

registering a change of their sex marker on the relevant child register or the issue of a recognised details certificate for the child.¹⁶¹

DJAG advised that the assessment was not intended to question the ‘appropriateness of a child’s transition’ but would be focused on ‘genuine engagement with a child and learning where the child is at in their journey’, including their understanding of the effect of changing their identity document to reflect their preferred name and sex within school or other environments.¹⁶²

The Bill also proposes a dispensation framework by introducing a legal mechanism to determine that the consent of a parent or person with parental responsibility is not required to proceed with an application to alter a child’s record of sex. This framework would apply if a parent or person with parental responsibility (consenting party) for a child under 16 is not able to register their child’s alteration of sex or supporting name change because the other parent or person with parental responsibility (non-consenting party) does not consent to the application. If the framework applies, the consenting party can apply to the Childrens Court for an order dispensing with the need for the application to be made with the consent of the non-consenting party. The application for a dispensation order must state the grounds on which it is made. A copy of the application must be served on the non-consenting party, unless the Childrens Court dispenses with the service requirement.¹⁶³

Jeremy Wiggins of Transcend Australia summarised its position in relation to the introduction of a framework for children under 16 years as follows:

The families that seek support from us, especially those based in Queensland, have expressed to me the critical importance of the law providing a more accessible and modern way to ensure identification documents reflect the identity of their trans children.

...

Without a birth certificate listing the sex that aligns with their gender identity, it jeopardises their safety and privacy and restricts their ability to be a whole person living in the world participating in life.

We feel the current draft of the bill includes appropriate provisions and necessary checks and balances to ensure an application to amend the sex listed on a birth certificate is a legitimate application.¹⁶⁴

Submitters raised a number of issues in relation to the framework for children under 16 years as detailed below.

2.4.3.1 Medicalisation of gender questioning children

Some submitters were concerned that by establishing a pathway to alter a child’s record of sex that is more accessible, the Bill would lead more children to seek medical transition.

LGB Alliance Australia expressed concerns that young people once they have transitioned socially will move onto the second stage of medical transitioning.¹⁶⁵ WAAC also expressed the view that the Bill may have the effect of ‘fast-tracking the medicalisation of gender dysphoric children’, with interventions that ‘risk irreversible damage including to a young person’s future sexual functioning’.¹⁶⁶

¹⁶¹ Explanatory notes, p 7.

¹⁶² Explanatory notes, p 7. For further information on the proposed use of developmental informed practitioners to assess children in this circumstance, refer to the discussion between committee members and DJAG officers at the public departmental briefing: public briefing transcript, Brisbane, 30 January 2023, pp 8, 9, 10.

¹⁶³ Explanatory notes pp 8, 9.

¹⁶⁴ Public hearing transcript, 24 January 2023, p 5.

¹⁶⁵ Submission 313, p 22.

¹⁶⁶ Submission 292, p 4.

Active Watchful Waiting Inc stated that ‘social transition is not a neutral intervention’ with ‘many studies’ highlighting short-term risks and ‘no quality long-term peer-reviewed evidence about the impact of social transition’. Active Watchful Waiting Inc also listed some of the ‘consequences of “gender-affirming care”’, including sterilisation, surgical removal of breasts and reproductive organs, impaired sexual function, irreversible body modification, depression and mental health problems.¹⁶⁷

Department’s response

In response, DJAG stated that gender affirmation did not automatically mean that a person will undergo medical intervention, and that this is a pathway chosen by a small cross section of trans and gender diverse persons who feel it is necessary to their wellbeing and gender identity realisation. DJAG stated that support from clinicians for children presenting with gender dysphoria/gender identity issues and their families is vital to address the broad range of factors that contribute to a child’s distress and loss of wellbeing.¹⁶⁸ DJAG stated further:

Altering the record of a child’s sex is one of many different options that may be explored as a way in which gender variation could be expressed and may or may not be an appropriate pathway. The options for each child will differ on a case-by-case basis.¹⁶⁹

In response to concerns the Bill would fast-track the medicalisation of children, DJAG advised:

a diagnosis of gender dysphoria is usually deemed necessary before a child or young person can access medical interventions. Further, that medical interventions must be accessed through a medical professional and subject to the age of a child, with consent from both parents or persons with parental responsibility.

DJAG refers the Committee to the submission of Equality Australia which note that this Bill does not alter or affect the law on who can consent to medical treatment for a young person seeking gender affirming healthcare, with the prevailing authority being that both parents must consent to any gender affirming healthcare where a young person is under 18.

Rather, the Bill decouples legal affirmation from medical affirmation and preserves for the young person and their family full autonomy over medical decision making.¹⁷⁰

DJAG concluded that ‘the contention in submissions that the Bill, if passed, will fast track the medicalisation of children, with respect, misstates the purpose of the Bill’.¹⁷¹

Committee comment

We note submitters’ views that, by establishing a pathway to alter a child’s record of sex that is more accessible, the Bill would encourage more children to seek medical transition following on from social transitioning, which may adversely impact their lives. We understand the concern with medical transitioning centres on ‘gender-affirming care’ procedures that occur as a result, which are often irreversible if a person decides to retransition at a later stage in life.

We note DJAG’s advice that the Bill does not provide an ability to ‘fast-track’ medical intervention as the process will still require a diagnosis of gender dysphoria first. Further, medical interventions must be accessed through a medical professional and are subject to the age of a child and require consent from both parents or persons with parental responsibility. The Bill does not change the law on who can consent to medical treatment for a young person seeking gender affirming healthcare: the

¹⁶⁷ Submission 365, p 10.

¹⁶⁸ DJAG, response to submissions, dated 23 January 2023, p 24.

¹⁶⁹ DJAG, response to submissions, dated 23 January 2023, p 24.

¹⁷⁰ DJAG, response to submissions, dated 23 January 2023, p 25.

¹⁷¹ DJAG, public briefing transcript, Brisbane, 30 January 2023, p 2.

prevailing authority being that both parents must consent to any gender affirming healthcare where a young person is under 18.

We also note that under the proposed framework, medical intervention is not required to alter the record of sex and that, in this regard, the Bill would provide a young person and their family with autonomy over medical decision making and the ability to alter their record of sex without undergoing surgery. It is also noted that not every person will choose medical intervention. In this regard, we are satisfied with the department's response in relation to the submitters' concerns.

2.4.3.2 Co-occurring issues in trans and gender diverse people

Some submitters raised concerns about the Bill's potential impact on children who are neurodiverse, experiencing mental illness, or who have a history of trauma or family dysfunction. Professor Parkinson stated the Bill would 'damage' young people as 'legal registration as a sex other than their natal sex may concretise what would otherwise be a transient and relatively harmless identification beneath the broad transgender umbrella'.¹⁷²

WAAC and Women's Forum Australia stated that gender dysphoria in children can mask trauma and autism, as well as comorbid mental health issues such as depression and anxiety, that require other treatment options.¹⁷³ Women's Forum Australia stated that the Bill 'erodes safeguards for children' in this regard.¹⁷⁴ One submitter stated that the Bill could be considered 'reckless and negligent' as it would 'allow people to legally change their sex without a medical or psychological assessment, or even any medical documentation', thereby 'enabling a psychological condition'.¹⁷⁵

DJAG's key points in response to these concerns were:

- There are many views about how gender incongruence and gender-related distress in children and young people should be interpreted, and the research is evolving.
- Clinicians are best placed to undertake a comprehensive assessment of a child presenting with gender dysphoria/gender identity issues and their families to understand that child's particular circumstances.
- The presence of co-occurring factors is best addressed through early support to understand why that child/adolescent is experiencing gender diversity in order to support positive health outcomes and provide a thorough assessment to both those who are and those who are not seeking/requiring medical interventions.
- Assessment of the child by the developmentally informed practitioner, as proposed in the Bill, will provide 'an important independent safeguard of the child's general health and wellbeing and enables the particular vulnerabilities of children to be taken into account'.
- A parent or person with parental responsibility who seeks to oppose the young person's application is not prevented from introducing evidence of the presence of any co-occurring issues for the child/young person in relation to those matters that come before the Childrens Court.¹⁷⁶

¹⁷² Submission 56, pp 2, 3.

¹⁷³ Submission 292, p 4; Submission 304, pp 5-6.

¹⁷⁴ Submission 304, pp 5-6.

¹⁷⁵ Submission 300.

¹⁷⁶ DJAG, response to submissions, dated 23 January 2023, p 26.

Committee comment

During the Inquiry, we heard from many parents and parent support groups in relation to their children and the impact of gender dysphoria on their lives. One of the key views of these submitters was that gender dysphoria can mask trauma and autism, as well as comorbid mental health issues, and these require different assessment and treatment. In providing a framework to allow children under 16 years to alter their record of sex under the Bill, these submitters expressed the view that issues such as trauma and depression were less likely to be addressed as the focus would be on gender dysphoria.

We note DJAG's advice that research is evolving around how gender incongruence and gender-related distress in children and young people should be interpreted. DJAG advised that the Bill would not change the ability to access medical and mental health support for a young person presenting with gender dysphoria/gender identity issues and their family. In relation to providing safeguards for children, we note the Bill's introduction of the requirement for a developmentally informed practitioner to assess the child and that a parent or person with parental responsibility can provide evidence on co-occurring issues for matters that come before the court if they oppose the young person's application to record a change of sex.

We support DJAG's view that co-occurring issues should be addressed at an early stage by a qualified clinician to understand why the child/adolescent is experiencing gender dysphoria, so a thorough assessment can be undertaken with the aim of ensuring positive health outcomes for children and young people, and that the Bill does not change the ability of parents or persons with parental responsibility from seeking this support.

We note submitters raised issues with current health responses to cases of gender dysphoria, including co-occurring issues, and encourage the Queensland Government to consider other appropriate health responses, including other approaches to the gender affirmative model.

2.4.3.3 Gender identity may be transitory

In allowing children to alter their legal record of sex, some submitters were concerned the Bill did not take into account the sometimes transitory nature of gender identity.

Professor Parkinson stated that for most children who experience gender incongruence, it is not permanent, but a 'fad', and that allowing children and young people to alter their legal record of sex is 'not sensible public policy'.¹⁷⁷ Women's Forum Australia was also concerned about the Bill's framework for children as 'allowing children to concretise a transgender identity in law is at odds with developing approaches that recognise that gender dysphoria is often both transient and the result of underlying social and mental health issues'.¹⁷⁸

DJAG argued that its consultation indicated that 'being trans is not simply a trend or a phase' and for children and young people who experience gender identity issues, incongruence with their sex at birth or with gender dysphoria, 'it is a serious and persistent distress'. DJAG referred to the *Australian Standards of Care and Treatment Guidelines for trans and gender diverse children and adolescents* which states that 'every child who presents with concerns regarding their gender will have a unique clinical presentation and their own individual needs' and that options for intervention would be different for each child or young person. DJAG also referred to a statement made by Dr Stephen Stathis from the Queensland Children's Gender Service who advised that retransition after socially or

¹⁷⁷ Submission 56, p 6.

¹⁷⁸ Submission 304, p 6.

medically transitioning does occur but in small numbers, and for adults ‘external pressures associated with difficulties in society being trans are often cited as key factors’ for retransitioning.¹⁷⁹

2.4.3.4 Parental responsibility and children’s maturity

Some submitters questioned whether children were mature enough to make a decision about altering their record of sex. Submitters also expressed the view that the provisions of the Bill that would allow a child to alter their record of sex with the support of only one parent, or without any parental support, erode parental rights.¹⁸⁰

One submitter stated that clause 40 of the Bill not only undermines parental consent but ‘pits children against their parents and parents against one another’, a view shared by Women’s Forum Australia. It was the submitter’s view that this puts children at risk and ‘removes the ability of the parents to ensure their children are protected, especially if their child suffers from a history of childhood trauma, family dysfunction, sexual abuse, gender dysphoria and/or other mental health issues’.¹⁸¹

Evelyn Williams contended that a 12 to 15-year-old cannot understand the meaning and legal implications of altering their sex and perhaps not even people in their 20s.¹⁸² Fair Go for Queensland Women expressed a similar view, stating that young people ‘do not possess the assured cognitive capacity to fully understand the full repercussions that this Bill may entail’ as it is recognised that brain development continues to at least 25 years of age. In this regard, Fair Go for Queensland Women recommended that the age in the Bill to allow a person to alter their record of sex should be at least 18 years.¹⁸³

Active Watchful Waiting Inc also stated that the Bill works against the protection of the physical and psycho-social wellbeing of minors. Further, Active Waiting Watchful Inc contended the Bill would lead to the overriding of a parent’s or parents’ rights for those opposed to their child starting on the ‘gender affirmation pathway of social, medical and lastly surgical transitioning’ and that this interferes with the *UN Convention on the Rights of the Child*.¹⁸⁴

Department’s response

DJAG considered the provisions that extend legal recognition of trans and gender diverse people to children and young people ‘achieves an appropriate middle ground having regard to the age of the child and responsibilities of parents or persons with parental responsibility’. DJAG advised that during the development of the Bill, it examined good practices in legal frameworks in international jurisdictions and legal developments in this area within Australia.¹⁸⁵

DJAG also advised that the framework for children under 16 within the Bill ‘adopts the good practice from jurisdictions that operate on a model of self-determination for both adults and children’, which means there is no need for medical diagnoses or surgical change. DJAG stated the proposed framework ‘acknowledges the role of parents or other persons allocated parental responsibility, particularly in the exercise of parental responsibility about major long-term decisions that affect

¹⁷⁹ DJAG, response to submissions, dated 23 January 2023, p 27; Stathis, S (2022) Helping trans, non-binary and gender diverse kids thrive, <https://www.childrens.health.qld.gov.au/helpingtrans-non-binary-and-gender-diverse-kids-thrive/>.

¹⁸⁰ See, for example, Australian Christian Lobby, submission 32, pp 4, 5; submission 172.

¹⁸¹ Submission 300; Women’s Forum Australia, submission 304, p 7.

¹⁸² Submission 306, p 2.

¹⁸³ Submission 327, p 18.

¹⁸⁴ Submission 365, p 11.

¹⁸⁵ DJAG, response to submissions, dated 23 January 2023, p 28.

children'. Furthermore, DJAG stated that the process under the framework is modified to achieve the best interests of the child in line with their capacity.¹⁸⁶

DJAG also highlighted the concept of 'evolving capacities' of the child and its role as an 'enabling principle':

While it is presumed that parental responsibility for a child ends at the age of 18, as a matter of common law, parental authority diminishes as the capacity of a child to decide matters for themselves develops. This is referred to as the concept of 'evolving capacities' of the child.

...

As such, a child can be competent to decide a matter for themselves before they turn 18. The 'best interests of the child' acknowledges the child's legal personality and that a child should, as far as practicable, be involved in decisions about their life.

The alteration of sex provisions in the Bill that apply to children under the age of 16 adopts the concept of the evolving capacities of children as a guiding policy principle.¹⁸⁷

Abrogation of rights – clauses 66 and 67

We also considered whether the Bill could impact on the rights and liberties of certain parents, guardians or people with parental responsibilities from a fundamental legislative principle perspective. Clause 62 allows a parent, guardian or person with parental responsibility (relevant person) to apply to the Childrens Court for a dispensation order, which dispenses with the need for an acknowledgment of sex application¹⁸⁸ or a combined application¹⁸⁹ to be made with the consent of the other parent of the child, guardian or person with parental responsibility (stated party).

Clause 66 allows the Childrens Court to make a dispensation order if:

- it is satisfied the relevant person cannot locate the stated party or the conception of the child was a result of an offence committed by the party, or
- the Queensland Civil and Administrative Tribunal has made a declaration that the stated party does not have the capacity to give consent, or
- a tribunal of another jurisdiction, a Queensland court or a non-Queensland court has made an order or other direction that the stated party does not have capacity to give consent, or
- the court is satisfied it is in the child's best interest to make the order.

The effect of a dispensation order is that the registrar must consider and decide the application without the need for the application to be made with the consent of the stated party.¹⁹⁰

The explanatory notes acknowledge a dispensation order would restrict a parent's role and responsibilities to jointly make decisions (with the other parent or person with parental responsibility) about a major, long-term issue relevant to their child. The explanatory notes go on to state there is a

¹⁸⁶ DJAG, response to submissions, dated 23 January 2023, pp 28, 29.

¹⁸⁷ DJAG, response to submissions, dated 23 January 2023, p 29.

¹⁸⁸ Bill, clause 61 defines 'acknowledgement of sex application', for a child, as: (a) an application under section 40 to alter the record of sex of the child; or an application under section 51 for a recognised details certificate for the child. Clause 49 defines 'recognised details certificate' as a document that acknowledges the person's name and sex.

¹⁸⁹ Bill, clause 61 defines 'combined application', for a child, to mean: (a) an application under section 40 to alter the record of sex of the child and an application under section 42 to register a change of the child's first name; or (b) an application under section 51 for a recognised details certificate for the child and an application under section 53 to register a change of the child's first name.

¹⁹⁰ Bill, clause 67.

need to balance the wellbeing and best interests of the child with any right of the child's parents to make decisions about the child's long-term care.¹⁹¹

The explanatory notes point out that the Bill includes safeguards designed to limit the circumstances in which the consent of a parent or person with parental responsibility can be dispensed with, including that:

- an application for a dispensation order can only be made to a court
- except in specified circumstances, a stated party must be served with a copy of the application for a dispensation order
- a stated party served with a copy of the application for dispensation has the opportunity to challenge the application in court.¹⁹²

According to the explanatory notes:

Given the above considerations, and given the limits within which the court must exercise its power, the provision enabling the court to make an order dispensing with the need for a parent's consent is considered to be justified.¹⁹³

Committee comment

We note the submitters' concerns questioning the maturity of children and young people to make decisions in their own best interest in relation to altering their record of sex, as well as the impact on parental rights relating to provisions that would allow a child or young person to alter their record of sex with the support of one parent or without any parental support.

We note DJAG's advice that the self-determination model for adults and children adopted in the Bill is based on good practice legal frameworks, which means there is no need for medical diagnoses or surgical change to alter a record of sex. Further, we note DJAG's view that this approach would achieve an 'appropriate middle ground' by having regard to the age of the child and acknowledging the role of parents or other persons allocated parental responsibility in relation to major long-term decisions that affect their children. We also note that DJAG used 'evolving capacities' as an enabling principle in relation to developing a modified framework for the purpose of achieving the best interests of the child in line with their capacity. In this regard, we are satisfied with the department's response to concerns about the adequate maturity of a child/young person.

In relation to the potential limitation on a person's rights to be involved in a decision involving their child, we are satisfied the limitation is justified in the circumstances when balanced against the best interests of the child, and note the criteria the Childrens Court must meet before making a dispensation order.

2.4.3.5 Assessment by developmentally informed practitioner

Submitters held different views regarding the requirement that an application by a child under 16 to alter their record of sex be accompanied by an assessment from a developmentally informed practitioner, including the concern about whether this was an adequate safeguard for children and young people.¹⁹⁴

QLS recommended clause 41 (and corresponding clause 52) be amended to remove the need for an assessment by a developmentally informed practitioner as it was unclear how the assessment provides any substantive safeguard given there was no ability for the assessment to question the

¹⁹¹ Explanatory notes, p 23.

¹⁹² Explanatory notes, p 23; Bill, cl 63.

¹⁹³ Explanatory notes, p 23.

¹⁹⁴ See, for example, R Harrison, submission 115; LGB Alliance Australia, submission 313.

appropriateness of a child's transition.¹⁹⁵ Similarly, WAAC was critical of the assessment process on the basis that it 'ticks a box' and does not question the appropriateness of a child's transition.¹⁹⁶ LGB Alliance Australia stated that the Bill did not define or describe how a child's understanding about the meaning and legal implications of altering their record of sex could be ascertained.¹⁹⁷ Professor Parkinson held a similar view about the adequacy of the assessment to safeguard children, stating that the definition of developmentally informed practitioner is 'broadly defined', and there is no requirement for them to have medical or mental health qualifications. Further, he contended that with such a 'wide range of practitioners to draw upon to satisfy the regulation', applicants may 'shop around' to find a practitioner willing to provide the requisite assessment.¹⁹⁸

If the provisions remained, QLS recommended that consideration be given to amending the definition of 'assessment' to ensure it is practically useful to the court when deciding an application.¹⁹⁹

While the Aboriginal and Torres Strait Islander Legal Service (ATSILS) was of the view that the assessment by a developmentally informed practitioner would be consistent with the best interests of the child, ATSILS considered there was scope to add a safeguard, namely a requirement for a full psychological assessment, 'especially given how prone youth can be to peer and social influences'.²⁰⁰

Department response

DJAG clarified the underlying policy intent of including the assessment in the Bill is 'to provide assurance that the child or young person understands the practical consequences of the application to alter their record of sex' in a range of different settings, such as school, and not the 'appropriateness of a child's transition'. Furthermore, DJAG advised that the approach in the Bill is consistent for all children under 16 years whether they take the administrative or court pathway, which 'provides equity and a foundational safeguard to support the process'.²⁰¹

In response to QLS's recommendation to amend the definition of an assessment to ensure it is useful to the court when deciding an application, DJAG advised that it would consider the criteria proposed by QLS as part of the refinement of the draft regulation.²⁰²

In addressing comments about 'shopping around' for practitioners, DJAG advised that a developmentally informed practitioner must already have a professional relationship with the child and be providing support. Further, the list of professional practitioners was intentionally widened to ensure the pool of suitably qualified people was not necessarily limited to health professionals to address accessibility concerns raised over cost, location and long waiting lists. DJAG clarified, however, that 'a developmentally informed practitioner must be qualified or have experience working with children and understand child development'.²⁰³ In addition, DJAG advised that including a wide range of professions 'supports acknowledging that each child's transition is different—it may be medical; it may be social'.²⁰⁴ In response to questions about adequate qualifications, DJAG advised:

Just because you are listed as a professional group does not mean that the professional feels—the professional has responsibilities both under their professional standards and ethical responsibilities to

¹⁹⁵ Submission 34, pp 2, 9.

¹⁹⁶ Submission 292, p 4

¹⁹⁷ Submission 313, p 21.

¹⁹⁸ Submission 56, pp 7, 8.

¹⁹⁹ Submission 34, pp 2, 9.

²⁰⁰ Submission 342, p 2.

²⁰¹ DJAG, response to submissions, dated 23 January 2023, p 30; explanatory notes, p 7.

²⁰² DJAG, response to submissions, dated 23 January 2023, p 31.

²⁰³ DJAG, response to submissions, dated 23 January 2023, p 31.

²⁰⁴ DJAG, public briefing transcript, Brisbane 30 January 2023, p 9.

undertake an assessment. The list is provided to be clear when you are within scope, but just because you are within that professional group, managing gender-questioning children might not be within that professional scope of responsibility, and they may make a referral elsewhere. They may say, 'This is at the higher end, or there is a range of different issues that this child is experiencing.' For example, they could refer the child to the gender service where there is a range of different services. It is acknowledging the diversity of children. In some instances, some of those professions might be more than capable to make that determination. We have had regard to that.²⁰⁵

In response to ATSILS's submission for an added safeguard in the form of a full psychological assessment, DJAG advised that it considered 'an assessment undertaken by a developmentally informed practitioner is the most appropriate type of evidence' as it is consistent with the underlying policy of de-medicalising the framework, aligned with consultation feedback and a review of the various types of supports that a child and their family engage with throughout transition, and has regard to changes made by the World Health Organisation in the 11th edition of *the International Statistical Classification of Diseases and Related Health Problems*. DJAG noted that psychologists are also able to undertake the role of a developmentally informed practitioner.²⁰⁶

Committee comment

We note the submitters' concerns about the adequacy of an assessment by a developmentally informed practitioner to safeguard a child's wellbeing as proposed in the framework for children under 16 years. We also note concerns about the lack of medical or mental health qualifications required of the professional practitioners as proposed under the draft regulation and how this would be in the best interests of children and young people.

In its response, DJAG clarified the purpose of the provision was to ensure the young person understands the consequences of their decisions in all settings (school, social etc.

). We note that a developmentally informed practitioner must have an established professional relationship with the child, and agree that this would reduce the likelihood of young people 'shopping around' for someone to support their application without giving it due consideration. In regards to the types of professional practitioners who can undertake the role, we support the view that this broad scope will assist in addressing potential accessibility, cost, location and waiting list concerns. In relation to the adequacy of qualifications required of developmentally informed practitioners, we note the draft regulation outlines what professions can take on the role and what qualifications/memberships they require to do so: for example, persons have to be registered under the Health Practitioner Regulation National Law with such professions including qualified occupational therapists, nurses and psychologists.

In this regard, we are satisfied with the department's response to submitters' concerns.

2.4.3.6 Accessibility in regional and remote communities

Some submitters were concerned about the potential geographical and financial barriers for children in regional and remote communities and from other disadvantaged groups in regards to being able to use the framework to alter their record of sex, given the requirement that a developmentally informed practitioner, who has a professional relationship with the child, assess the child. Submitters considered this requirement may not be financially viable or may prove difficult in some areas of Queensland due to the availability of a suitably qualified practitioner.²⁰⁷

Multicultural Australia considered that the reforms 'must prioritise development of an equitable, non-discriminatory, and accessible registration framework that centres the focus on the human rights of

²⁰⁵ DJAG, public briefing transcript, Brisbane 30 January 2023, p 9.

²⁰⁶ DJAG, response to submissions, dated 23 January 2023, p 31.

²⁰⁷ See, for example, Queensland Law Society, submission 34, p 9; Multicultural Australia, submission 197, pp 2, 6, 7, 9.

the relevant person'. In this regard, Multicultural Australia recommended that safeguards be implemented for trans and gender diverse youths aged 12 to 16, without imposing the requirement to undergo an assessment with a developmentally informed practitioner, which can create barriers for disadvantaged youths.²⁰⁸

Sisters Inside was similarly concerned, noting that the 2 pathways proposed by the Bill by which a child under 16 may alter their record of sex (administrative/court) 'are limiting to children currently in custody, children with unstable and unsupportive guardianship or care, and children in rural, regional and remote areas', as well as Aboriginal and Torres Strait Islander trans and gender diverse children and young people. Sisters Inside stated these children are 'far less likely to access "developmentally informed practitioners" to attest to a change in gender markers on government identification'. In this regard, Sisters Inside called for the Bill to provide for trans and gender diverse children and young people who form these cohorts in order to lend 'an intersectional approach to the delivery of reforms as contained in the Bill'.²⁰⁹

Department's response

DJAG advised that a key aspect of developmentally informed practitioners is their accessibility to children that live in regional and remote areas and the existing relationship to the child, and noted that a child/young person was not required to see a developmentally informed practitioner in person, with support also able to be provided through tele-health, telephone counselling services or online. DJAG explained that the scope of who is qualified to undertake the role has regard to the difficulties faced by children and young people in regional and remote Queensland and may include school guidance counsellors or health practitioners who travel to these locations to deliver health services.²¹⁰

In response to Sisters Inside's concern relating to children in out of home care or in the care of the State, DJAG advised that the Bill does not preclude these children as they can apply under the pathways in the Bill, noting that Schedule 1 recognises the ways persons, other than parents, may be allocated parental responsibility for a child.²¹¹

Committee comment

We note the department's response in relation to the submitters' concerns and that a) access to developmentally informed practitioners does not need to occur in person, which may address geographical barriers, and b) guidance counsellors and health practitioners are able to undertake this role, which may address financial barriers.

2.4.3.7 Nature of the court proceeding

While welcoming of the creation of a pathway for unsupported minors to change their record of sex, Transcend Australia was concerned that the proposed framework would require a young person to seek formal legal assistance to prepare submissions and attend the Childrens Court. Transcend Australia queried the intention of clauses 45 and 46 of the Bill and whether the child would be subjected to a full, litigated hearing, or whether such an application could be considered on the papers by the Judge alone in Chambers, or alternatively via more informal, alternative dispute resolution methods such as mediation. Transcend Australia also sought clarification over whether a parent or person with parental responsibility has a right to provide submissions in response to the child's application and whether these will be considered by the court as part of its assessment of the child's best interests at clause 45.²¹²

²⁰⁸ Submission 197, pp 2, 6, 7, 9.

²⁰⁹ Submission 362, p 5.

²¹⁰ DJAG, response to submissions, dated 23 January 2023, p 31.

²¹¹ DJAG, response to submissions, dated 23 January 2023, p 32.

²¹² Submission 182, p 2.

In response, DJAG advised the following:

- The Childrens Court is considered the most suitable jurisdiction to adopt a child-centred approach.
- Clauses 45 and 46 provide for court proceedings to be initiated in and determined by the Childrens Court: the provisions do not include the ability that an application be determined on the papers or by way of mediation.
- Part 5, Division 5, Subdivision 1 of the Bill sets out how proceedings are to be conducted, including that the Childrens Court must regard the wellbeing and best interests of the child as paramount (clause 70) and that the Childrens Court may hear from the child in the way the court considers appropriate, including, for example, by hearing from the child without the other participants being present (clause 76).
- As a respondent to an application made by a child under clause 45, it is envisaged that a parent or parent with parental responsibility may make submissions to the court which it may consider in determining whether making the order is in child's best interests. However, clause 46 enables a child that makes an application under clause 45 to concurrently seek an order to dispense with the requirement to serve a copy of the application on one or more of the respondents. This takes into account, for example, where the parent rejects the child's gender identity or where the other parent has been a perpetrator of family violence and either the supporting parent or child is fearful of contacting them to obtain their approval.
- In making such an order, the court must be satisfied that the requirement to obtain the approval could reasonably be expected to adversely affect the child, including to their health and safety or the health and safety of another person related to the child.²¹³

2.4.3.8 Assistance for children navigating the process

Several submitters recommended that the Queensland Government provide assistance to children navigating the process to alter their record of sex. QLS recommended funding be allocated to community legal centres and relevant health services 'to ensure children under 16 can practically access assessments by a developmentally informed practitioner and the ability to make an application to the Childrens Court'.²¹⁴ Transcend Australia recommended the government continue to work with LGBTIQ+ groups, the QHRC and Legal Aid to prepare educational material outlining the process.²¹⁵ In order to ensure access to support for young people and their families, Equality Australia recommended that information be available on relevant pages of the Births, Deaths and Marriages website about how people can access and apply for support services, including legal support.²¹⁶

DJAG noted the feedback and advised that 'further work will be undertaken during the planning and implementation of the reforms that will include, amongst other things, consideration and development of guidelines, forms and supporting material to assist children and young persons, lawyers and developmentally informed practitioners to navigate the new processes'. In addition, DJAG advised that funding to support the reforms will be met from within existing resources and that it 'will work collaboratively with key stakeholders during implementation to ensure appropriate processes are in place for commencement'. DJAG will consider Equality Australia's recommendation regarding information on the Births, Deaths and Marriages website.²¹⁷

²¹³ DJAG, response to submissions, dated 23 January 2023, pp 33, 34.

²¹⁴ Submission 34, p 11.

²¹⁵ Submission 182, p 2.

²¹⁶ Submission 356, pp 8, 9.

²¹⁷ DJAG, response to submissions, dated 23 January 2023, p 34.

Committee comment

We are pleased to note DJAG will undertake further work during the planning and implementation of the reforms under the Bill, and that DJAG is considering Equality Australia’s recommendation for information about support services, including legal support, be provided on the Births, Deaths and Marriages website.

In this regard, we support submitters’ recommendation that the Queensland Government provide support to children and their families as they navigate the process to alter their record of sex.

2.4.4 Fundamental legislative principle – equality before the law

The Bill provides different application requirements for acknowledging a person’s sex and changing the person’s first name depending on the person’s age and place of birth. The Bill applies differently by:

- allowing a person who is 16 or more to apply to alter the record of their sex in the relevant child register,²¹⁸ or to apply for a recognised details certificate if born outside Queensland.²¹⁹
- requiring a parent, guardian or person with parental responsibility to make those applications for a person under 16 (unless the child has an order from the Childrens Court).²²⁰
- except in limited circumstances,²²¹ not allowing a person born outside Queensland to apply to change their first name when applying for a recognised details certificate.²²² The change must be sought from the jurisdiction where the person’s birth or adoption was registered.²²³

The Bill also imposes a minimum residency requirement of 12 months for adults and children born outside Australia wishing to register a change of their name.²²⁴

In this regard, the Bill raises issues of fundamental legislative principle regarding the right to equal treatment.²²⁵ Legislation should be reasonable and fair in its treatment of individuals; it should not be discriminatory.²²⁶ The explanatory notes do not address this issue, but the issue of equality before the law is addressed in the statement of compatibility. In that context, the following justification is offered regarding applications to alter the record of sex:

²¹⁸ Bill, schedule 2 defines ‘relevant child register’ as whichever of the following registers has an open entry for the person: the birth register, the adopted children register, the parentage order register, the cultural recognition register.

²¹⁹ Bill, clauses 39 and 50. Both applications must include a ‘supporting statement’, which is a statement made by a person who is at least 18 years, and who has known the applicant for at least 12 months, supporting the application and confirming the applicant is making the application in good faith.

²²⁰ Bill, clauses 40, 41, 51 and 52. Both applications must include an ‘assessment’ by a developmentally informed practitioner. Clause 37 defines ‘assessment’ as a written assessment of the child by a developmentally informed practitioner that the application is supported and the child understands the meaning and legal implications of the application. Clause 10 of the draft Birth, Deaths and Marriages Registration Regulation 2022 tabled with the Bill defines ‘developmentally informed practitioner’ as including, for example, a medical practitioner, registered psychologist or registered nurse.

²²¹ See Bill, clauses 50(4) and 53.

²²² Bill, clauses 48, 50, 51 and 52. A ‘recognised details certificate is a document that acknowledges the person’s name and sex.

²²³ Explanatory notes, p 6.

²²⁴ Bill, clauses 26 and 28 respectively.

²²⁵ LSA, s 4(2)(a).

²²⁶ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook), p 133.

While the pathways and requirements in the Bill for those under the age of 16 minimally impair the rights, they are considered proportionate and necessary to maintaining the best interests of a child whilst achieving the purpose.²²⁷

The statement of compatibility also notes that the requirement for a person born outside Queensland to apply to change their name in their originating jurisdiction aligns with ‘the best practice approach developed to minimise abuse of the change of name system’.²²⁸ Further, that a minimum residency in Queensland of 12 months is appropriate to safeguard the integrity of the change of name processes and is supported by appropriate discretions for the registrar; for example, the registrar’s ability to change a name in exceptional circumstances.²²⁹

Committee comment

We note the justifications provided and are satisfied that the provisions have sufficient regard to the rights and liberties of individuals.

2.4.5 Effect provision

The Bill provides that if the record of a person's sex is altered, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State (the Effect provision). If a recognised details certificate is issued for any person, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State. DJAG advised that ‘the ‘Effect’ provision is designed to be facilitative and flexible and will have implications for other laws across the statute book’. The proposed commencement date ‘is designed to provide sufficient time to further consider and manage the implications of the reforms’.²³⁰

2.4.5.1 General impacts

Several submitters queried the general impacts of the Effect provision in the Bill. QLS queried how clause 47 of the Bill would work given the explanatory notes provide an example that the clause ‘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 retains the anatomical characteristics necessary regardless of what the person's registered sex may be’.²³¹ QLS was concerned that this would effectively mean ‘that a person's sex registration may be overridden and unable to be enforced’ and provided an example under the *Police Powers and Responsibilities Act 2000* (PPRA), which require personal searches to be conducted by a police officer ‘of the same sex as the person to be searched’ (section 624(2)). QLS queried whether the interpretation of this would be on self-identification and being searched by a police officer, who, for instance, identifies as the same gender as the gender diverse person being searched or whether it would be based on an anatomical construction as the PPRA uses the term ‘sex’: the risks would be in ensuring the dignity of the person being searched and potentially the legality of the search. QLS noted that clause 47 makes no reference to situations where the legislation refers to ‘gender’. QLS also sought consideration being given to whether any consequential amendments would be required to the *Acts Interpretation Act 1954*.²³²

The QHRC also queried the intended meaning of the example in the explanatory notes regarding ‘anatomical capacity’ and anticipated situations ‘where it could be beneficial to trans and gender

²²⁷ Statement of compatibility, p 13.

²²⁸ Statement of compatibility, p 2. See also explanatory notes, p 6.

²²⁹ Statement of compatibility, p 20.

²³⁰ DJAG, written briefing, dated 5 January 2023, p 11.

²³¹ Explanatory notes, p 13.

²³² Submission 34, p 5; see also Rebecca Fogerty, vice president, QLS, public hearing transcript, 24 January 2023, pp 12, 13, 14.

diverse people to have flexible interpretations of other legislation which contains gendered terms', such as in correctional settings or policing legislation.²³³

Sisters Inside expressed 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', and reduce their access to healthcare, housing, employment and educational opportunities. Sisters Inside argued for a 'person's correct legal gender identity and expression to be used over a person's anatomical characteristics'.²³⁴

Department's response

DJAG noted that the language used in the Effect provision in clause 47 of the Bill is most consistent with the Victorian BDMR Act and also similar to the Tasmanian BDMR Act. In response to QHRC, DJAG advised:

It appears that the QHRC may have collapsed the two elements of the 'but subject to' component of the Effect provision highlighted in the Explanatory Notes into one.

First, the reference to 'but subject to' in the Effect provision will allow for an express contrary intent to be expressed in other legislation. Consistent with legislative interpretative principles, if such an express contrary intent was adopted in the future it would need to be clear, precise and justified.

Second, the reference to 'but subject to' in the Effect provision will allow for the new Births, Deaths and Marriages Registration Act to be read appropriately alongside other legislation (whether enacted before or after these amendments) to produce a logical reading.

This second element goes to the heart of the QHRC's request – it will facilitate flexible and beneficial interpretations of gendered terms in other legislation, where appropriate.²³⁵

In response to Sisters Inside, DJAG advised that the intent of the Effect provision 'is not to prioritise anatomical characteristics over gender identity and expression' but in fact the opposite:

in providing that a person is a person of the sex as altered for the purposes of, but subject to, a law of the State, clause 47 establishes that, from a general standpoint, in most instances where other legislation refers to 'sex', a trans or gender diverse person is to be treated for the purposes of that law in accordance with the sex as altered with the registrar.²³⁶

DJAG also noted that section 48 of the HRA requires courts and tribunals to interpret statutory provisions, to the extent possible that is consistent with their purpose, in a way compatible with human rights.²³⁷

2.4.5.2 Impacts for other Queensland legislation

Some submitters recommended an audit of Queensland legislation to determine and address the impacts of the Effect provision. For example, QLS specifically queried the intended interpretation of the personal search powers under the PPRA. QLS recommended 'an audit be undertaken of all Queensland legislation and associated government policies and procedures referring to "sex" or "gender" to examine whether any consequential amendments are required as a result of the ability to register a sex descriptor of any kind'.²³⁸ Professor Parkinson recommended that a public Inquiry or referral to the Law Reform Commission be undertaken to consider the effects of clause 47 across

²³³ Submission 360, p 7.

²³⁴ Submission 362, p 4.

²³⁵ DJAG, response to submissions, dated 23 January 2023, p 35.

²³⁶ DJAG, response to submissions, dated 23 January 2023, p 35.

²³⁷ DJAG, response to submissions, dated 23 January 2023, p 35.

²³⁸ Submission 34, pp 2, 5.

Queensland laws.²³⁹ Equality Australia also recommended an audit of Queensland laws ‘that use gender-specific language or language that refers to people’s sex characteristics or sex-related bodily functions to ensure all legal rights, entitlements, privileges and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex characteristics’.²⁴⁰ QHRC made a similar recommendation, explaining its reasons:

The legislative record is quite old. All our pieces of legislation in Queensland have been passed over many generations in times before we had a more nuanced understanding of sex and gender. Throughout the legislative record, there will be a whole list of terms that are both gendered and sex-based terms. If you go through the record, it may be appropriate to check where those names are listed or those terms are listed, to reflect with modern and contemporary understanding of these issues, whether that legislative record is still working the way it should be, should those terms be amended or changed to reflect what was intended in that legislation, and to reflect the new realities and understandings that we have.²⁴¹

DJAG acknowledged the Bill will impact other laws across the statute book, and explained that this was one of the reasons why the Bill is proposed to commence by proclamation: ‘to provide an appropriate implementation lead-in to enable all government agencies to consider their portfolio legislation to determine whether amendments are required because of the Bill’. DJAG will also use the audits conducted in other jurisdictions to identify key issues.²⁴²

QLS also noted the Effect provision does not refer to legislation that refers to gender.²⁴³ In this regard, DJAG advised:

Based on its ordinary meaning, existing legislative references to ‘gender’ (that is, how a person identifies and feels themselves to be) would be inclusive of transgender people and encompass persons beyond the binary conception of male and female.

DJAG notes that a person who alters their record of sex under the proposed reforms will be doing so to align with their gender.

References to ‘gender’ across the statute can be assessed on a case-by-case basis to determine whether any amendments may be required.²⁴⁴

Committee comment

We note submitters’ recommendation that an audit be undertaken of Queensland legislation to determine and address the impacts of the Effect provision in the Bill. We are pleased to note that DJAG anticipated the potential impact across the statute book and that is one of the reasons why the Bill is proposed to commence by proclamation. For this reason, we support the recommendation to conduct an audit of all legislation to identify amendments required as a result of the introduction of the Births, Deaths and Marriages Registration Bill 2022.

²³⁹ Submission 56, p 20.

²⁴⁰ Submission 356, p 10; see also Ghassan Kassisieh, Legal Director, Equality Australia, public hearing transcript, Brisbane, 24 January 2023, pp 47, 48.

²⁴¹ QHRC, public hearing transcript, Brisbane, 24 January 2023, p 9.

²⁴² DJAG, response to submissions, dated 23 January 2023, p 37.

²⁴³ Submission 34, pp 4, 5.

²⁴⁴ DJAG, response to submissions, dated 23 January 2023, p 38.

Recommendation 3

The committee recommends that Queensland Government agencies undertake an audit of the Queensland legislation within their remit to identify amendments required as a result of the introduction of the Births, Deaths and Marriages Registration Bill 2022.

2.4.5.3 Implications for QPRIME

QLS sought clarification on whether QPRIME, the integrated policing information and records management system, would be updated to align with the new process for altering a record of sex and whether a person could self-identify with their chosen sex descriptor, including in relation to bench charge sheets.²⁴⁵

DJAG advised that the Queensland Police Service (QPS) allows people to update personal information held in the QPRIME system where they have legally changed their name or sex and that QPS will be considering whether any changes to the current process are necessary as part of implementing the Bill, including how sex descriptors will be recorded.²⁴⁶

2.4.5.4 Impact on wills

QLS was also concerned about the Effect provision in relation to entitlements under wills, and used the example of where wills may leave class gifts to children by gender (clauses 47 and 58).²⁴⁷ QLS explained:

Under the legislation as it is currently drafted, once that certificate is amended then that sex changes. For the purposes of the construction of the will or the interpretation of the will then that creates some uncertainty. The position at law generally is that the beneficiaries are identified at the time the will is made, obviously because the will maker knows who they are talking about at that point. If this changes that law then that does create some uncertainty for the public at large who are preparing wills but also for practitioners who are executing them. Our concern would be that it could give rise to issues of construction which would have to go before a Supreme Court judge.²⁴⁸

DJAG noted that the wording of clause 47(3) is consistent with existing section 24(5) of the BDMR Act and with equivalent sections in the BDMR Acts of the ACT, Tasmania and South Australia. DJAG will consider QLS's issues in relation to wills further.²⁴⁹

Committee comment

We note the department's response in relation to the submitter's concerns and that government will consider the matter further.

2.4.6 Scope of sex descriptors

The Bill allows a person to register a sex descriptor of male, female or any other descriptor of sex, for example agender, genderqueer and non-binary. The registrar will be required to refuse the application if the descriptor nominated is a prohibited sex descriptor: a descriptor that is obscene, offensive, absurd, cannot practically be established by repute or usage or contrary to public interest. The registrar must also refuse the application if they reasonably suspect the change is sought for a

²⁴⁵ Submission 34, p 5.

²⁴⁶ DJAG, response to submissions, dated 23 January 2023, p 37.

²⁴⁷ Submission 34, p 11.

²⁴⁸ QLS, public hearing transcript, 24 January 2023, p 12.

²⁴⁹ DJAG, response to submissions, dated 23 January 2023, p 38.

fraudulent or other improper purpose, or if a record of the person's sex has been altered within the 12 months preceding the application.²⁵⁰

While there was support for introducing the ability to nominate gender identities other than male or female,²⁵¹ some submitters were opposed to including additional sex descriptors and giving the registrar the discretion to determine whether sex descriptors were genuine or not. For example, Christine Chehade stated the registrar having this power would change their role of 'recorder of sex to an assigner of sex as an identity category in accordance with government set rules', and that this would be a 'gross overstep'.²⁵² Another submitter was of the view that it was 'unreasonable and nonsensical to include terms such as "agender", "non-binary" and "genderqueer" under sex descriptors', and that 'a birth certificate should include "sex" as a descriptor, and if necessary for the fair and safe operation of society, a separate category for "gender" or "gender identity"'.²⁵³

DJAG explained its reasons for not including a 'catch all' category for people who have diverse gender identities:

Expanding the scope of sex descriptors that a person may nominate recognises that current male/female sex descriptors or 'core descriptors' fail to acknowledge the realities that exists within people's sex and gender identities. This reality is not satisfactorily addressed by the creation of a 'catch all' category for those that do not neatly live and experience sex identities within the male/female binary cisgender framework.

Collapsing the different ways of identifying as transgendered and living one's life into a 'catch all' category would ignore the differences within transgendered and gender diverse communities. It would also undermine the difference between gender diverse cohorts despite broadening the possibilities of sex identification from two to three or more; and conflate the disparate experiences of sex and gender diverse people without recognising and valuing the differences between their identities and experiences.

The Bill therefore enables a person to nominate a sex descriptor of male, female or any other descriptor of a sex so long as it is not a prohibited sex descriptor. This could include descriptors more commonly known and used in western societies, as well as terms used by gender diverse cultures such as Fa'afafine (Samoan), Hijra (South Asia), brotherboy and sistergirl (for First Nations communities). Allowing descriptors of this nature is an acknowledgement and promotion of a person's cultural rights which are protected under the *Human Rights Act 2019*.²⁵⁴

Committee comment

We note the department's response in addressing the submitters' concerns and that the policy framework that underpins the Bill aims to expand the scope of sex descriptors to recognise and value the gender diverse identities and experiences of Queenslanders.

2.4.7 Recognised details certificates

The Bill provides for the issuing of a recognised details certificate acknowledging the name and sex of a person whose birth is registered in a place outside Queensland. For those born outside Queensland who have been ordinarily resident for 12 consecutive months in Queensland, the Bill creates an equivalent pathway that results in the issue of a recognised details certificate. The process to obtain this certificate largely mimics the framework for alterations of sex i.e. the application and evidentiary requirements are largely the same (for example, a person aged 16 years or over will be required to provide a statutory declaration and supporting statement with their application). One key difference is that a person who was born in another Australian state or territory cannot apply to change their

²⁵⁰ DJAG, written briefing, dated 5 January 2023, pp 8, 9.

²⁵¹ See, for example, Just.Equal Australia, submission 183; Briar Wormington, submission 188.

²⁵² Submission 324, p 8.

²⁵³ Submission 325, p 1.

²⁵⁴ DJAG, response to submissions, dated 23 January 2023, p 39.

name at the same time. In this situation, a change of name must be sought from the originating jurisdiction where the person's birth or adoption was registered. This is to align with the best practice approach developed to minimise abuse of the change of name system.²⁵⁵

DJAG noted Multicultural Australia's support for the introduction of the framework for people born outside of Queensland to obtain a new recognised details certificate, acknowledging their name and sex.²⁵⁶

2.5 Part 12 of the Bill – Amendment of legislation

2.5.1 Amendment of Corrective Services Act 2006

A number of submitters were opposed to provisions relating to 'restricted persons', particularly the requirement for restricted persons to seek permission of the Chief Executive of Queensland Corrective Services (QCS) before applying to register a change of sex or issuing of a recognised details certificate.²⁵⁷ These submitters, including QLS, Sisters Inside, LGBTI Legal Service and Multicultural Australia, recommended these provisions be removed.²⁵⁸

DJAG advised that the purpose of requiring a prisoner or a released prisoner (restricted person) to obtain the Chief Executive's approval prior to altering their record of sex on the register or requesting a recognised details certificate reflecting an altered sex is to:

- provide an opportunity for the welfare and safety of trans and gender diverse individuals to be assessed and balanced against the safety of the community and of the environment that the person resides in;
- prevent secondary gain or unlawful activity; and
- prevent the registration of a change of sex that will cause harm to a victim of crime.²⁵⁹

DJAG clarified that the additional layer of decision making 'does not necessarily mean the individual will not be able to legally apply to change their sex on the register and/or receive a recognised details certificate' but that it 'provides an additional layer of administrative decision making while the individual is in QCS custody (not including a prisoner on parole) or being supervised in the community as they pose a serious risk of committing a serious sexual offence'. DJAG argued that this requirement supports a key objective of the Bill 'by providing an appropriate set of checks and balances to ensure that the process is legitimate, and the safety of victims, the correctional environment and the community is upheld'. DJAG concluded that the 'process is intended to protect and promote the human rights of individuals, victims and the broader community'.²⁶⁰

2.5.2 Compatibility with human rights

Several stakeholders, including the QHRC, QLS and Multicultural Australia, raised concerns that the requirement for restricted persons to seek the approval of the QCS Chief Executive to apply for a change of sex is a breach of the right to equality before the law.²⁶¹ QHRC queried why the additional process is necessary and justifiable, including what potential negative impacts on the community or victims of crime would result from a person changing their record of sex; what potential negative impact on the good order and security of correctional facilities would result from a prisoner changing

²⁵⁵ DJAG, written briefing, dated 5 January 2023, p 11.

²⁵⁶ Submission 197, p 8; DJAG, response to submissions, dated 23 January 2023, p 39.m

²⁵⁷ Bill, clause 166.

²⁵⁸ Submissions 34, 197, 362 and 364.

²⁵⁹ DJAG, response to submissions, dated 23 January 2023, p 49.

²⁶⁰ DJAG, response to submissions, dated 23 January 2023, p 50.

²⁶¹ Submissions 34, 197 and 360.

their record of sex while detained; and how the QCS Chief Executive would make a determination about whether the proposed change of sex process is legitimate.²⁶²

DJAG contended that the requirement for a prisoner or released prisoner to obtain the permission of the QCS Chief Executive prior to applying for a change of record of sex 'provides an appropriate set of checks and balances to ensure that the change of sex process is legitimate, and the safety of victims, the correctional environment and the community is upheld'. DJAG stated further:

In some circumstances, there is the potential for the registered change to be harmful or offensive to a victim. For example, it is conceivable that a prisoner registering a change of sex to female, who has been convicted of serious sexual offences against women, may be distressing to those victims. The new process ensures this can be considered, as and where it is appropriate.

Ultimately, this process serves to protect and promote the human rights of individuals, victims and the broader community.²⁶³

Committee comment

We note the statement of compatibility addresses sections 15 (right to equality) and 25 of the HRA (right to privacy) and provides justification for the limitations imposed on these rights. However, we sought further advice from DJAG in relation to the compatibility of the Bill and provisions relating to restricted persons. DJAG advised:

As outlined in the Statement of Compatibility, the amendments have 3 purposes:

- To provide an opportunity for the welfare and safety of trans and gender diverse individuals to be assessed for the welfare and safety of the community and the environment that the person resides in;
- To prevent secondary gain or activity that could be used to further an unlawful activity or purpose; and
- To prevent the registration of a change of sex that will cause harm to a victim of crime.

...

The amendments in the Bill are therefore designed to achieve an appropriate balance between the potential limitations placed on individuals and the importance of ensuring a safe environment for all.²⁶⁴

We note that certain rights of prisoners must (necessarily) be limited. For instance, a prisoner will have limitations on their freedom of movement and some aspects of their privacy (prison authorities can check and limit prisoner correspondence). However, it is not automatically the case that limitations of other rights of prisoners are accepted simply by virtue of the fact that they have committed a crime and are in prison. This is clearly stated in the UN General Assembly Basic Principles on the Treatment of Prisoners (1990). Principle 5 provides that:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.²⁶⁵

²⁶² Submission 360, p 9.

²⁶³ DJAG, response to submissions, dated 23 January 2023, p 50.

²⁶⁴ DJAG, correspondence dated 16 February 2023, p 1.

²⁶⁵ Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, Principle 5, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners> .

We note the proposed process for a restricted person to change their record of sex is similar to safeguards in relation to other significant life events such as applications for a change of name and lodging an intention to marry under the *Marriage Act 1961* (Cth). We also note the department's comments that each case will be considered on a case by case basis.²⁶⁶

We are satisfied that the approval process for restricted persons under clauses 166 and 171 is a proportionate limitation to the right to recognition and equality at law, the right to privacy and the right to humane treatment.

2.6 Matter raised outside the scope of the Bill

2.6.1 Framework in relation to deferrable surgeries

Some submitters recommended that the Queensland Government should progress reforms limiting medical intervention on children with variations of sex characteristics.²⁶⁷ LGBTI Legal Service recommended:

...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.²⁶⁸

Committee comment

We note the submitters' concerns regarding medical treatment, procedures and interventions of children and infants born with variations of sex characteristics. This issue is outside the scope of the Bill, and therefore we have not considered it further.

²⁶⁶ DJAG, correspondence dated 16 February 2023, p 3.

²⁶⁷ See, for example, Intersex Human Rights Australia, submission 113; Equality Australia, submission 356.

²⁶⁸ Submission 363, p 2.

Appendix A – Submitters

Sub #	Submitter
001	Name withheld
002	Name withheld
003	Name withheld
004	Avery Vide
005	Callan Woods
006	Name withheld
007	Amy Stephens
008	Name withheld
009	Name withheld
010	Name withheld
011	Name withheld
012	Matt Ross
013	Name withheld
014	Erin Campbell
015	Victoria Gee
016	Name withheld
017	Henry Morgan
018	Confidential
019	Evana Woods
020	Carlin Scoble
021	Name withheld
022	Name withheld
023	Thomas David
024	Name withheld
025	Seth McKellar
026	Katherine Jones
027	Nathan Matthews
028	Darryl Nelson
029	Kylie Cameron
030	Mitchell Corbett
031	Shane Bouel
032	Australia Christian Lobby
033	Dr Christina James

034	Queensland Law Society
035	Dr Sandra Pertot
036	Amnesty International Australia
037	Mark Bedwell
038	Lynda Kelly
039	Name withheld
040	Elke Lambert
041	Grazyna Czerwinska
042	Steve Cruickshank
043	Jan Bewes
044	CONFIDENTIAL
045	Jenny Brown
046	Name withheld
047	Name withheld
048	Name withheld
049	Genevieve Hardy
050	CONFIDENTIAL
051	Name withheld
052	Alex Allen
053	CONFIDENTIAL
054	Jessica Rowe
055	Name Withheld
056	Patrick Parkinson
057	Emma Baillie
058	Name withheld
059	Name withheld
060	Name withheld
061	Krista Wright
062	CONFIDENTIAL
063	Janine Daniell
064	Katrina Rivett
065	Margaret Modra
066	Name withheld
067	Name withheld
068	Name withheld

069 Kerrie Walsh
070 Fraser District Community Voice Inc
071 Brian Smith
072 Steve McGrath
073 Name withheld
074 Shae Karringten
075 Name withheld
076 Marilyn Davison
077 Name withheld
078 CONFIDENTIAL
079 Sall Grover
080 Name withheld
081 Name withheld
082 Dianne Allpike
083 CONFIDENTIAL
084 Amanda Harrison
085 Name withheld
086 Name withheld
087 Meghan Oliver
088 Noah Riseman
089 Steve Bramblet
090 Name withheld
091 Peter Hadfield
092 Name withheld
093 Donita Watson
094 Paul Modra
095 Name withheld
096 Angela O Neill
097 Name withheld
098 Sandra Nugent
099 Jacob Cash
100 Name withheld
101 David Wood
102 Susan Scott
103 Name withheld

104	Name withheld
105	Sandy O’Sullivan
106	Melanie Brown
107	CONFIDENTIAL
108	Name withheld
109	Philip Morris AM
110	Jacqueline Limque
111	Leah Whiston
112	Angela Dennis
113	Intersex Human Rights Australia
114	Name withheld
115	R Harrison
116	Geoff Maloney
117	Name withheld
118	Name withheld
119	Nerissa Pace
120	Danielle El Hayek
121	Louise Reiss-James
122	Lynne Passey
123	CONFIDENTIAL
124	Julie Zeller
125	Chris Mundy
126	CONFIDENTIAL
127	Name withheld
128	Jigsaw Queensland Inc.
129	Jack Murray
130	Sophia Holland
131	John Winkler
132	Number Not Used
133	Chris Guilfoyle
134	Name withheld
135	Jordan Cooper
136	Lavan Ruban
137	Bianca Bulley
138	Name withheld

139 CONFIDENTIAL
140 Erica Guilfoyle
141 Rachael Murray
142 Name withheld
143 Jim Smith
144 Nikola Lusk
145 CONFIDENTIAL
146 Name withheld
147 Marcy Krause
148 Name withheld
149 Cathryn Radclyffe
150 Patti Burton
151 Name withheld
152 Tom Patterson
153 Beth Maric
154 CONFIDENTIAL
155 Grace Auld
156 Karaline Jewell
157 Gender Awareness Australia - Binary
158 Jane Sliwka
159 Linda McCarthy
160 Donna Malone
161 Adela Brent
162 Angela Lee
163 Rhiannon Crowther Bragg
164 Mark Williams
165 CONFIDENTIAL
166 Number Not Used
167 Name withheld
168 Name withheld
169 Ollie Conti
170 Name withheld
171 Number not used
172 Name withheld
173 Name withheld

174	Name withheld
175	Laura Rodriguez Castro
176	Name withheld
177	Natalie Osborne
178	Irene Richards
179	CONFIDENTIAL
180	Kelly ann Carr
181	Sue Clarke
182	Transcend Australia
183	Just.Equal Australia
184	Betty McLellan
185	Russell Gray
186	Chelsea Clarke
187	Daniel McKinnon
188	Briar Wormington
189	Name withheld
190	Lesley Mitchell
191	Name withheld
192	Name withheld
193	Name withheld
194	Name withheld
195	CONFIDENTIAL
196	Name withheld
197	Multicultural Australia
198	Name withheld
199	CONFIDENTIAL
200	Lori Puster
201	Kel Purcill
202	Michelle Honeybone
203	Maree Loader
204	Number Not Used
205	CONFIDENTIAL
206	Nathan Kearney
207	Pascalle Burton
208	Name withheld

209	Indigo Willing
210	Kristin O'Connell
211	Che Bishop
212	Danielle Chalmers
213	Ben Hueppauff
214	Renee Platts
215	Alex Durrant
216	Emma Hartley
217	Emma Townson
218	CONFIDENTIAL
219	Anneke Nehring
220	Shane Granger
221	Michael Cassimaty
222	Cieran Kent
223	Mina McLean
224	CONFIDENTIAL
225	Name withheld
226	Name withheld
227	Katrina Nurthen
228	Name withheld
229	Mark Barr
230	Ula Francis
231	Jade Darko
232	Name withheld
233	Catherine Greenhill
234	Name withheld
235	Name withheld
236	Nicholas Smith
237	Name withheld
238	Ar dovino Guerriero
239	Toby Brown
240	Sharon Zhang
241	Ronald Bennett
242	Name withheld
243	Jude Sauvage

244 Madeline Romcke
245 Matthew Carney
246 Sharon Hollis
247 CONFIDENTIAL
248 Number Not Used
249 Name withheld
250 Phoebe Autumn
251 Leela Bunting
252 Name withheld
253 Kiara Bulley
254 Jarod Woods
255 Sherri Moon
256 Name withheld
257 Name withheld
258 Name withheld
259 Name withheld
260 Name withheld
261 Name withheld
262 Name withheld
263 Name withheld
264 Anna Sri
265 Noel Kelly
266 Angus Ryan
267 Name withheld
268 Name withheld
269 Jo Craddy
270 Chelsea Morigan
271 Name withheld
272 Name withheld
273 Name withheld
274 Annika Rowlison
275 Name withheld
276 Name withheld
277 Name withheld
278 Ronnie Miles

279	Michelle Day
280	Susan Etheridge
281	Blaine Davis
282	Margo van der Voort
283	Jason Fernandez
284	CONFIDENTIAL
285	Alice Morgan
286	Name withheld
287	Name withheld
288	Ester Derks
289	Cin Webb
290	Name withheld
291	Damian Woodward
292	Women's Action Alliance Canberra
293	Name withheld
294	Carolyn Ride
295	IWD Brisbane Meanjin
296	Christine Carrigg
297	Adoptee Rights Australia Inc
298	CONFIDENTIAL
299	Name withheld
300	Name withheld
301	Cheryl White & Berenice Morrison
302	Name withheld
303	Katrina Smith
304	Women's Forum
305	Shane Carr
306	Evelyn Williams
307	Equality Tasmania
308	Name withheld
309	Tanja Gacic
310	Carole Allan
311	P McGee
312	Assoc. Professor Freddy Sitas
313	LBG Alliance Australia

314	Family Voice Australia
315	Srishti Chatterjee
316	Name withheld
317	Feminist Legal Clinic Inc.
318	Alison Haig
319	Graham Hill
320	Imogen Boyle
321	Name withheld
322	UQ Ally Action Committee
323	Bonnie McLean
324	Christine Chehade
325	Name withheld
326	Shanae Pas
327	Fair Go for Queensland Women
328	Isabella Doran
329	Rosalind Donovan
330	Name withheld
331	Alexis Pink
332	Scott Millman
333	Name withheld
334	Caroline Aazami
335	Name withheld
336	Esther Vale
337	Name withheld
338	Kara de Groot
339	Name withheld
340	Name withheld
341	Phoebe Muriwai
342	Aboriginal and Torres Strait Islander Legal Service
343	Rainbow Families Queensland
344	Cris Bonquin
345	Name withheld
346	Riley Seabrook
347	Sophie Richmond
348	Robert Fraser

349	Dr Helen Waite
350	Coalition of Activist Lesbians Inc (CoAL Inc)
351	Idin Aazami
352	Name withheld
353	Name withheld
354	CONFIDENTIAL
355	Name withheld
356	Equality Australia
357	CONFIDENTIAL
358	Carolynne Lozan
359	Queensland Family and Child Commission
360	Queensland Human Rights Commission
361	Associated Christian Schools
362	Sisters Inside
363	LGBTI Legal Service Inc
364	Name withheld
365	Active Watchful Waiting Incorporated
366	Peter Koopman
367	Pride in Law
368	Gail Hamilton
369	Pride in Law
370	Name withheld
371	CONFIDENTIAL
372	Dr Patrick Clarke
373	CONFIDENTIAL
374	Name withheld
375	LGB Defence
376	Phillip Dye
377	Save Women's Sport
378	CONFIDENTIAL
379	Kevin Heyne
380	CONFIDENTIAL
381	CONFIDENTIAL
382	CONFIDENTIAL
383	Name withheld

384 Melanie Whyte

385 Name withheld

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Greg Bourke, Director, Strategic Policy
- Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

Individual speaker

- Professor Patrick Parkinson, Emeritus Professor at the University of Queensland

Transcend Australia

- Jeremy Wiggins, Chief Executive Officer

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Bree Callanan, Senior Lawyer

Queensland Law Society

- Rebecca Fogerty, Vice President of the Queensland Law Society
- Angela Cornford-Scott, Chair of the QLS Succession Law Committee
- Brooke Thompson, Senior Policy Solicitor

Queensland Family and Child Commission

- Luke Twyford, Principal Commissioner

Multicultural Australia

- Rose Dash, Chief Client Officer
- Erika Jung, Program Manager, Humanitarian Settlement Program
- Emma Phillips, Research & Advocacy Manager

Individual speaker

- Professor Peter Koopman, Emeritus Professor at the University of Queensland

LGBTI Legal Services

- Matilda Alexander

Women's Forum Australia

- Rachael Wong, Chief Executive Officer
- Sall Grover, Founder/CEO of Giggle and Women's Forum Australia Petition Partner

Active Watchful Waiting Inc

- Catherine Anderson-Karena, Community Liaison and Public Officer

Associated Christian Schools

- Alistair Macpherson, Executive Director: Public Policy & Advocacy • Christine Hill, Executive Manager Educational Services at Carinity

Sisters Inside

- Necho Brocchi, Sisters Inside Inc. Policy Worker
- Sasha Jooste, Sisters Inside Inc. Policy Officer

Australian Christian Lobby

- Rob Norman, Queensland Political Director

Equality Australia

- Ghassan Kassisieh, Legal Director
- Ymania Brown, Strategic Adviser / Project Lead – Sydney WorldPride Human Rights Conference

Appendix D – Glossary of terms

agender	Refers to the situation where a person identifies as having no gender
brotherboy	A culturally specific term to describe Aboriginal and Torres Strait Islander transgender men
cisgender	Refers to people who identify their gender in the same way as was legally assigned to them at birth. 'Cis' is a Latin term meaning 'on the same side as'
deadnaming	Means referring to a trans person by the name that they used before they transitioned. This may be done either accidentally or intentionally.
gender	A social and cultural concept. It refers to the way in which a person identifies or expresses their masculine or feminine characteristics. A person's gender identity or gender expression is not always exclusively male or female or can be neither and may change over time.
gender affirmative model	A model that supports affirming the gender that matches a person's gender identify.*
gender dysphoria	A recognised medical condition in which a person's sex assigned at birth does not match their gender identity or expression, resulting in impaired functioning in daily life. One treatment for gender dysphoria is for the person to undergo a transition. Not all trans and gender diverse people have gender dysphoria and of those who have dysphoria, for many it ceases with access to gender affirming health care.*
gender expression	Refers to the way in which a person externally expresses their gender or how they are perceived by others. A person's gender expression may also vary depending on the context, for instance expressing different genders at work and home
gender identity	Is about who a person feels themselves to be. It refers to a person's deeply held internal and individual feeling of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms
intersex	Refers to people who are born with genetic, hormonal or physical sex characteristics that do not conform to medical norms for 'male' or 'female' bodies. Intersex people have a diversity of bodies and identities.
legal identity	Refers to the legal registration and documentation of a person that enables that person to access rights and benefits and incur responsibilities from the state
lived gender	Refers to each person's gender identity and its public expression over a sustained period of time

misgendering	Involves referring to a person as the wrong gender (either accidentally or intentionally).
non-binary	An umbrella term describing gender identities that are not exclusively male or female.
queer	An adjective used by some people, particularly younger people, whose sexual orientation is not exclusively heterosexual. Typically, for those who identify as queer, the terms lesbian, gay, and bisexual are perceived to be too limiting and/or fraught with cultural connotations they feel don't apply to them. Some people may use queer, or more commonly genderqueer, to describe their gender identity and/or gender expression. However, it is not a universally accepted term within the LGBTIQ+ community.
sex characteristics	Refers to a person's primary and secondary sex characteristics, for example an individual's sex chromosomes, hormones, reproductive organs, genitals, and breast and hair development
sex recorded at birth	Refers to what was initially determined by sex characteristics observed at birth or in infancy. This is an important indicator for statistical analysis in births and deaths, health statistics, calculating fertility rates and deriving counts for cis and trans populations
sistergirl	A culturally specific term to describe Aboriginal and Torres Strait Islander transgender women.
transgender or 'trans and gender diverse'	An umbrella term for people whose gender identity is different to the sex that was recorded for them at birth
transition	May involve social, medical and/or legal processes to affirm a person's gender identity.

Source: DJAG, written briefing, dated 16 December 2022, appendix 1.

* Source: QHRC, *Trans @ School. A guide for schools, educators, and families of trans and gender diverse children and young people*, p 6.

Statements of Reservation

Statement of Reservation – Laura Gerber MP, Deputy Chair, Member for Currumbin and Jon Krause MP, Member for Scenic Rim

The LNP wants to see a Queensland free from discrimination, where individuals are respected and free to live safely in their communities and we want to see the consideration of this Bill and the debate on this Bill be conducted in a respectful and considered manner.

The LNP is cognisant that many Queenslanders have not been respected for their lived identities. Their stories are powerful, and discriminatory behaviour should be called out. Our concerns with this Bill do not undermine this point. Rather, we seek to ensure the matters addressed in this Bill have been thoroughly considered, to ensure the safety and respect of all Queenslanders.

In the short consultation time, over the Christmas holiday period, the committee received 385 submissions. Of the submissions published, 159 were supportive of the bill, 181 were not supportive of the bill and 1 was unclear.

For significant changes like those proposed by this Bill, and one which has clearly sparked widespread community interest, it was not adequate for consultation on this Bill to occur over a small period of time over the Christmas holidays. We acknowledge that the topics in this Bill have been discussed for a long time. However, as noted by other stakeholders, the Bill differs to previous consultation and requires a fresh and detailed review. The comments of the Queensland Law Society are particularly relevant: *“The reforms proposed in the Bill are significant and will have wide-ranging implications for Queenslanders. It is in all our best interests to ensure proposed laws work as effectively and efficiently as possible, and this requires meaningful and robust consultation with stakeholders. Short consultations held during the Christmas and New Year shut down period will not yield the best legislation for the people of Queensland.”*

A large number of submitters sought to make confidential or anonymous submissions – of 385 submissions, over 140 submitters (or 36%) sought to make confidential submissions, or submissions where names were withheld. In comparison to other parliamentary inquiries, this appears to be a very high proportion. The anonymous submitters were opposed to the bill by a ratio of 2:1. These figures point to the fact that this bill addresses matters that are sensitive in nature. It also indicates some trepidation on the part of those opposed to the bill to speak out publicly. The non-government members warn that the Bill as currently drafted may give rise to some unintended consequences. Indeed, the committee has recommended an audit of Queensland legislation to work out any unintended consequences of the Bill. Again, the Queensland Law Society, while supporting the policy intent of the Bill, raised concerns *“about the lack of certainty around how the framework will operate in practice. Members of our Criminal Law Committee have queried how the law will apply where a person is required to be subject to an invasive search. Members of the Succession Law Committee have noted some uncertainty in the area of wills and estates.”* The Queensland Law Society also recommends the audit occur. These questions should have been dealt with prior to the Bill being introduced, so that stakeholders could adequately weigh its impacts.

A question that arose in consideration of this Bill is the appropriateness of drawing, or not drawing, a distinction between a person’s biological sex and their gender identity. Given the short examination period, this has not been adequately addressed.

The number of women’s groups to come forward with concerns about this Bill should not be dismissed. They are concerned about what this Bill will mean for their safe spaces, for bathrooms, same sex schools, refuges, prisons and other spaces. These concerns are significant.

Women's Action Alliance stated clearly, *"We ask the Committee not to misinterpret our concerns here. It is not that we believe that all self declared transwomen provide any greater safeguarding risk to women and girls than other male born people do, but rather that their obvious maleness is traumatising to victims of domestic and sexual violence...We acknowledge the reality that trans people may themselves be the victims of sexual violence and need protection. But the relevant question for the Committee is whether the bill as drafted creates a barrier to protections for either group."*

The submissions from IWD Meanjin and Women's Forum Australia also took issue with the lack of consultation. There should not be limits on who the Minister and policy staff will talk to based on their own agenda. The Government has an obligation to listen. To have ministers refuse to do this is unacceptable.

There is also concern around the application of part five of the Bill to children and young people. Of the 338 submissions that addressed part five of the Bill, 151 were generally supportive and 187 were not supportive. The divergent views on the impact of this proposal are worthy of consideration with further investigation needed. The timeframe for committee consideration of this Bill has not enabled these matters to be adequately discussed and deliberated upon in the broader community.



Laura Gerber MP
Deputy Chair
Member for Currumbin



Jon Krause MP
Member for Scenic Rim

Statement of Reservation – Sandy Bolton MP, Member for Noosa

This Statement of Reservation is in response to the Legal Affairs and Safety Committee's *Report No 41 on the Births, Deaths and Marriages Registration Bill 2022*.

While this Bill updates the register of Births, Deaths and Marriages to address significant operational changes at the registry as well as improving data protection, the key focus from submitters was on the amendments to allow Queenslanders to change their sex on birth certificates to reflect their lived identity without gender reassignment surgery.

These amendments saw 385 submissions and a diverse range of viewpoints in favour and against the proposed changes, with many groups and individuals seeking to give evidence to the Committee both in public and in private hearings, which highlighted significant failures with this legislation as follows -

Consideration of Alternatives

With broader community consultation and engagement during the development of this Bill, it would have been possible to identify alternative approaches that could have been investigated to achieve the necessary policy and outcomes sought in the Bill to address the discrimination and harm being experienced by trans Queenslanders.

Much time was spent unnecessarily during the Committee's inquiry to understand elements of concern from submitters including around adoption, and what impacts these amendments would have on birth record data and storage. This revealed that the birth certificate is an 'extract', hence the birth record would be unaltered, and that sex or gender is not necessary for the birth certificate as an identify document.

Ultimately, if an options analysis had revealed this, relevant questions could have been asked as to why Government does not, as has occurred previously with our driver's license, omit the sex/gender field from the certificates.

This would achieve the outcomes sought for trans-gender Queenslanders whilst not changing the common law approach to determining gender, nor the current situation to accessing women only spaces or the inclusive approach to women's sports. Removing superfluous information on documents that create angst or discrimination has been undertaken in many realms as part of an inclusive society, and we have to ask why this opportunity to update the birth certificate document was not considered.

The Department's own Explanatory Note stated that there were no alternative ways to achieve the policy objectives. Yet, this could have been investigated, and reasons provided why it was not viable.

Impacts on Children

This Bill allows for children under 16 to amend their sex as recorded on the birth certificate, either with parental consent, or without via the Children's Court. Submitters have outlined this is entangled with the issues of gender dysphoria, gender identity and gender transitioning for children.

Parents provided evidence to the Committee of teenage children during those years of much change and confusion, being advised by peers, counsellors, and professionals that they were experiencing gender dysphoria or gender identity issues.

These families shared the reality of their distressing journeys, including the often-irreversible legacies of blockers, hormones and/or gender reassignment. There were concerns raised that the current gender affirmative model is not responding to current data including on those who are re-transitioning, nor of children being diagnosed with gender dysphoria when impacted by depression, autism or experiencing same sex attraction. As stated in the just released study by psychiatrists and endocrinologists at the Westmead Children's Hospital: "the evidence-base pertaining to the gender-affirming medical pathway is sparse and, for the young people who may regret their choice of pathway at a future point in time, the risks for potential harm are significant".

The Cass review into the Tavistock Gender Clinic in the UK published in their interim report that there is lack of consensus and open discussion about the nature of gender dysphoria and therefore about the appropriate clinical response. This reinforces the need to look at the current approaches in Queensland, and question how many children will be adversely impacted whilst endeavouring to achieve the outcomes sought in this Bill. Ultimately, all concerns should be our concerns.

The Committees Report as it stands does not give voice to these parents and children, nor elevate their experiences and concerns and current reports such as from Westmead Gender Service to an appropriate level and a needed course of action by Government.

Consultation and Engagement

The introduction of this Bill into Parliament was the first time many heard of the proposed changes; however, we were advised work with key stakeholders had been occurring for years, with the Department stating that consultation occurred during 2021 and 2022. Despite this, Fair Go For Queensland Women reported they had only one meeting with the Department, which was more of an information session than actual consultation.

With legislation that can be contentious through misinterpretation and lack of lead in information, broad consultation and community engagement is vital to avoid creating unnecessary divisions in our communities.

This was exacerbated by the unnecessary and unreasonable timeframes imposed on this inquiry and being held over the Christmas holiday period. The Queensland Law Society submitted that the short timeframes were concerning and did not allow for adequate examination of the Bill, with the Department seeking extra time to respond to the large volume of submissions.

The development of this Bill could have benefited immeasurably by being conducted in a transparent, respectful and consultative manner with the whole community over an extended period of time. Instead, we have seen a Bill that has created needless angst and anger, with professionals requesting to be anonymous for fear of being labelled transphobic.

This is not the type of Queensland or society we aspire to which is compassionate, inclusive, and tolerant, and trust that lessons learnt will prevent these failings from happening again.



SANDY BOLTON MP
Independent Member for Noosa

Date – 23 February 2023