



Registering LGBTI diversity in Queensland

**Submission to the Queensland Department of Justice and
Attorney-General's Review of *the Births, Deaths and Marriages
Registration Act 2003* (Qld) Discussion Papers 2 and 3:**

**'Registering life events: Functions and powers of the Registrar
and the use and disclosure of information'**

and

'Registering life events: Registration and access'

May 2019

SUMMARY OF ANSWERS

| BDM Discussion Paper 2 | |
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| 1. | There should not be additional scrutiny of, or records kept about, gender diverse and intersex individuals. |
| 2. | No. |
| 3. | There should be a general prohibition on access to the earlier certificate of an individual who has transitioned. |
| 4. | No. |
| 5. | The current factors are adequate but the Registrar should have regard to LGBTI issues when making determinations on access. |
| 6. | No. |
| 7. | Possibly, after consultation with LGBTI community organisations and with an understanding of LGBTI issues. |
| 8. | No comment, other than there should be no disclosure of information of particular concern to the LGBTI community to private business. |
| 9. | In principle support of the NSW RBDM position but there should be regard to LGBTI issues and the history of the community with law enforcement agencies in Queensland. |
| 10. | In principle support but there should be regard to the legality and public support of the individual's LGBTI status. |
| 11. | Refer to our First Submission at 2.3 and have regard to LGBTI issues. |
| 12. | No. |
| BDM Discussion Paper 3 | |
| 1-6. | Refer to our First Submission at 1-2. |
| 7. | No, or in the alternate, a general limit. |
| 8. | Yes. |
| 9. | No. |
| 10. | A parent with legal responsibility or a child should be able to apply to change their name. |
| 11. | Yes, including an application from a child. |
| 12. | Yes, misuse and unintended consequences. |
| 13. | Yes, several changes should be made per our First Submission and the response below. |
| 14. | Yes. |
| 14a. | An annexure type model may be appropriate. |
| 15-18. | No comment. |

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Introduction

We thank the Queensland Government for inviting the LGBTI Legal Service Inc. (**Service**) to provide a response to the second and third discussion papers to arise from the Queensland Government's review of the *Births, Deaths and Marriages Registration Act 2003* (Qld):

- 'Registering life events: Functions and powers of the Registrar and the use and disclosure of information' (**BDM Discussion Paper 2**); and
- 'Registering life events: Registration and access' (**BDM Discussion Paper 3**).

Reference will be made throughout this current submission to our previous joint submission entitled 'Recognising LGBTI Diversity in Queensland' (**First Submission**) to the first discussion paper 'Registering life events: Recognising sex and gender diversity and same-sex families' (**BDM Discussion Paper 1**).

As stated in our First Submission, this review is a welcome step forward to promoting inclusion and recognising the diversity of lesbian, gay, bisexual, trans and intersex (**LGBTI**) people living in our communities. Every person in our community should have the freedom and independence to live their own lives. All people should be free to be legally recognised as who they are – reflecting the gender they live as. All children should have access to the legal and emotional security of having their parents legally recognised. All people should be able to correct inaccurate details about who they are without facing unnecessary legal barriers.

The Registry of Births, Deaths and Marriages (**the Registry**) was established to: (a) collect information; (b) create a person's legal identity; and (c) provide evidence of key life events. As identified BDM Discussion Paper 1 much has changed since the the *Births, Deaths and Marriages Registration Act 2003* (Qld) (**BDMR Act**) and *Births, Deaths and Marriages Registration Regulation 2015* (Qld) (**BDMR Regs**) were first introduced. This BDM Discussion Papers 2 and 3 are a welcome opportunity to update the dissemination and registration of sex/gender and diverse families to better align with its stated purposes.

This paper will limit responses to issues that concern the LGBTI Community.

A. BDM Discussion Paper 2

1. What changes, if any, should be made to the functions or powers of the Registrar?

The Service acknowledges that in other Australian jurisdictions there is a positive onus on the Registrar to maintain the integrity of the Register and seek to prevent identity fraud. In this regard, any additional powers recommended should not constrict the ability of members of the LGBTI community to affirm their gender or remove references to their sex or gender on birth certificates. The Service does not support the inclusion of an additional level of scrutiny on gender diverse or intersex people during a process that can often be emotionally and psychologically distressing.

The Service also does not support amendments that would expressly permit the Registrar to maintain records of information outside of the registerable particulars that are not at the consent of the relevant member of the LGBTI community. For example, the Service does not support the concept that the Registrar maintains a database of intersex or gender diverse people or, brotherboys and sistergirls, unless expressly consented to by those individuals.

2. Do you have any other comments on this issue?

No.

3. What changes, if any, should be made to the current access requirements for historical information?

Depending on the recommendations accepted by the Registrar in relation to the recording of a change in an individual's gender, the Service recommends that, in the case of an individual who has changed their gender then the original certificate is not accessible. As the Service has previously recommended in our First Submission at 2.3 there should be a general prohibition on access to an earlier certificate of someone who has changed their gender. The Service considers the same should apply to the access of historical certificates.

4. Do you have any other comments on the issue?

No.

5. What changes, if any, should be made to the current access requirements for non-historical registration information, including in relation to POI requirements?

The Service supports the factors the Registrar must currently have regard to when reaching a decision on access. We reiterate the recommendation in our First Submission at 2.3 that there are specific considerations for information about LGBTI when determining whether access should be given.

6. Do you have any other comments on the issue?

No.

7. Should the BDMR Act allow the Registrar to use the information RBDM holds to provided data matching services (including data cleansing and life event verification services) to private companies, provided privacy concerns are addressed and data security is assured/

The Service understands the utility to organisations including private companies of being able to data match. We note that there are significant privacy concerns that relate to the LGBTI community and require further consideration over the privacy concerns of the general public. Should the RBDM be allowed to provide data matching or cleansing services that effect the LGBTI community then there should be a requirement to consult relevant organisations that represent those communities.

For example, allowing data cleansing services to identify and remove people who have died from customer databased may unwittingly capture individuals who have changed the gender of their birth certificate but not sought to change customer information on other database. The process of changing a person's gender is one that may take several years.

With respect to this question, the Service does not support the release of information specific to the LGBTI community being released to private companies.

8. To support quality services and the development of innovative data products, do you support RBDM providing products to commercial and other entities at market value?

Aside from not supporting the disclosure to private companies of information of specific concern to the LGBTI community as above - no comment.

9. What changes, if any, should be made to support the sharing of data with law enforcement agencies?

The Service acknowledges the need of law enforcement agencies to monitor and detect identify fraud. The Service supports, in general, the position of the NSW RBDM Act to allow RBDM to enter MOU's with the head of a law enforcement agency to facilitate the efficient exchange of information to reduce identity related crime. However, the Service notes the considerable history of law enforcement struggling to adequately understand LGBTI issues or administer their functions in a way that is sensitive to those issues. As a result the Service recommends that any MOU entered into with law enforcement agencies should have regard to the range of issues faced by the community and ensure that the law enforcement officers who will have access to that information have received the adequate training. The Service does not want to see a situation where members of the community are being unjustly investigated for identity related crime based on the release of unnecessary information from the RBDM and a lack of understanding in law enforcement.

10. What changes, if any, should be made to expand the circumstances for sharing information with other Queensland government agencies and government agencies nationally and overseas?

Again, the Service acknowledges the need to share information between government agencies and recommends that, if RBDM seeks to release information to a government agency, then they have specific regard to the privacy of the person affected if they are a member of the LGBTI community. The Service notes that under this model there are situations where the RBDM may be seeking to release information to a jurisdiction that does not have the same laws as Queensland and may be effectively 'outing' an individual's transgender or intersex status or placing an individual at risk of criminalisation should the jurisdiction not support civil partnerships or a change of sex.

11. What additional protections and/or safeguards, if any, should be implemented if the powers of the Registrar to use and disclose information are expanded?

Again, as espoused in our First Submission at 2.3, there should be a general prohibition on accessing information about the gender or intersex status of an individual unless that information is expressly required. If the RBDM is seeking to disclose information of specific concern to the LGBTI community to another government agency, then the RBDM must have regard to the issues that affect the LGBTI community.

12. Do you have any other comments on this issue?

No.

B. BDM Discussion Paper 3

Questions 1-6.

These questions, to the extent that they are relevant to the LGBTI community are addressed at length in our First Submission at 1 to 2.

1. What, if any, limits should be placed on the number of times a person can apply to register a change of name during their lifetime?

The Service only recommends, in relation to this question, that should recommendations be made to amend the BDMR Act to limit the amount of times a person can change their name that it be a general limit only. The RBDM should be permitted to consider changes, if it were to be limited to 3 changes such as in NSW, where the request for change is based on someone's identity or intersex status. The Service recognises that gender is a fluid concept for people and it may be necessary for certain members of the gender diverse community to seek legal change to reflect that fluidity. This is particularly important for people who are non-binary or intersex.

2. Should the Registrar be provided with the discretion to register additional changes of name within a 12 month period?

Yes. As noted in BDM Discussion Paper 3, there are circumstances where this would be appropriate.

3. Do you have any other comments on this issue?

No.

4. What changes should be made, if any, to the current eligibility requirements for parents and guardians to apply to register a change of a child's name?

The Service supports RBDM adopting a model that a person who is a parent, or to which a court has allocated legal responsibility for a child, is able to make an application to change the name of that child.

Further, the Service supports any amendments that would facilitate a court to make an order directing the RBDM to change the name of a child should that court approve the change.

5. Should a person who has been granted sole parental responsibility to make decisions for a child be eligible to apply to register a change of name for their child, without requiring a separate court order?

Yes. It is unlikely that there is any utility in adding an additional level of complexity or expense to the process by involving the Magistrates Court to effectively rehear circumstances that have already been considered by the Family Court. However, if the issue is yet to be espoused in any court then the Service does not oppose the ability of a Magistrate to consider the issue we rather support the reduction of barriers for gender diverse young people to affirm their identity.

In our experience, the current requirements are particularly detrimental to gender diverse young people when one or both parents are not supportive. It is common for gender diverse people to refer to their birth name as a 'dead name' in reflection of the trauma associated with its former use. It is imperative that this changes are made to the regime to reduce the barriers for gender diverse young people to affirm their identity and avoid being misgendered.

Further, a child who wishes to undergo a gender transition or identifies as gender diverse should be able to submit an application for a change of name in their own right even when their parents are opposed. Often this occurs with the support of a medical professional, however, the Service supports the Tasmanian model whereby a child can make a change of gender with a statutory declaration which should also occur for name changes.

6. Do you have any other comments on this issue?

Yes, the Service is concerned that limiting the ability of a child to change their name more than once may result in unwarranted complications. Under this model, a child could effectively be barred from changing their name by a name change instigated by a parent or parents in bad faith opposed to a gender transition or otherwise. The transition process for young people can often result in serious acrimony between family members.

The Service is aware of transgender young people that have not been able to change their name due to a lack of support from parents and/or guardians including children who are in care. These situations cause children to endure unlawful discrimination by being addressed as a name that is consistent with their gender identity, being unable to protect their privacy by 'outing' or use of a 'dead name' where their gender identity would not otherwise be known, and receiving recognition from educational institutions, courses, activities and programs with certificates because they reflect the young person's 'dead name'.

7. What changes, if any, should be made to the information requirements for life event registration and life event certificates required under the BDMR Act and BDMR Regulation?

The Service has provided extensive submissions in relation to the different registerable particulars in our First Submission.

Further, the current requirements for registering siblings as children 'of the parent's relationship' are discriminatory against single parents and are not an accurate representation of the diversity of modern families.

Recently, Tasmania made changes to their corresponding regime to remove the requirement of 'sex' as a registerable particular. The Service supports this position as birth and hospital records provide relevant medical information and there is no need for the added complexity for gender diverse and intersex people to require those individuals to list a gender on their birth certificate. This requirement can, and often does, result in discriminatory treatment when an individual does not present as the gender recorded on their birth certificate. As a priority, the Service supports the exclusion of any information from birth certificates that is discriminatory in nature or results in discriminatory treatment. The Service notes that it has supported gender diverse young people who have had issues with their school after presenting an inaccurate birth certificate which caused unnecessary stress for the child and their family.

The Service further recognises that:

- intersex people may wish to understand their status without a visible record on their birth certificate or they may wish to be listed as a binary gender;
- modern families exist in numerous different combinations and may include more than two people as parents (including, but not limited to, situations of multiple parents, surrogacy arrangements, egg and sperm donation and adoption); and
- the fundamental purpose of cardinal documents is to provide confirmation of someone's legal identity.

Therefore, the Service supports a model where only information required to establish a person's legal identity is captured on a birth certificate. We support the expansion of options on the certificate for people to express further information regarding their identity as necessary, including multiple parents, sex, intersex status, siblings, step siblings, surrogacy or donor information. This information could be recorded separately and contained in an annexure capable of variation.

8. Should RBDM be able to issue any new types of certificates?

Yes. The primary purpose of birth certificates is to provide confirmation of legal identity. Under a multiple certificate model, the Service supports a situation where the primary birth certificate contains essential information only, and as per our submissions does not contain sex, and has the option of annexures. These annexures would sit under the primary certificate and would be produced in conjunction with the birth certificate.

14a. If so, for what purposes should these certificates be issued, and what access criteria should apply?

The reasoning behind this model is that some gender diverse people would like their transition or intersex status to be listed on a birth certificate but not in a way that would require them to 'out' themselves in every situation that required that individual to produce a birth certificate. It is also a way to address concerns of some members of the intersex community who would like the ability for parents to choose a binary gender on this 'primary certificate' but maintain a record of the infant's intersex status on an annexure.

In terms of access criteria to the suggested annexure model, the Service supports access being restricted to the individual and their parents to the annexure and as per the current model for access to the 'primary certificate'.

Questions 15 to 18.

No comment.



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