



Level 1, 20 Hocking Street, West End QLD 4101
P PO Box 3467, South Brisbane DC 4101
T 07 3124 7160 E reform@lgbtilegalservice.org
W lgbtilegalservice.org ABN 17 702 067 509

Our Ref: RH:AL

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

By Email only: attorney@ministerial.qld.gov.au

Dear Attorney-General

Re: Review of the Births, Deaths and Marriages Act 2003 (Qld)

The LGBTI Legal Service Inc. ("the Service") extends our congratulations to you on your recent appointment as Queensland's Attorney-General. We look forward to working with you and like-minded organisations across the state to continue to protect the rights of and promote inclusion for the lesbian, gay, bisexual, trans and intersex (LGBTI) community across Queensland.

We commend the progress made under the Palaszczuk government in recent years. This includes re-introducing civil unions prior to marriage equality, legislating trans marriage equality, introducing a legislative framework on the expungement of historical homosexual offences, the abolition of the 'gay panic' defence and the introduction of a ban on conversion therapy within a health context.

However, it is important to acknowledge that there remains a number of important areas of necessary law reform to prevent ongoing discrimination and exclusion of the LGBTI community within our society. One of the most pressing areas of reform, which is also gaining increased media coverage over recent months, relates to the regulation of legal identification documents within Queensland under the *Births, Deaths and Marriages Act 2003 (Qld)* ('the BDMR Act').

The Service recognises the difficulties faced by the LGBTI community and seeks to assist the Queensland LGBTI community to gain access to justice. The Service provides legal assistance across a broad range of legal areas such as criminal, family, domestic violence, employment and discrimination law. The Service also has an active Law Reform division that seeks to advocate for LGBTI-inclusive law reform and the protection of human rights in Australia.

The Service continues to assist clients with name change requests and applications to ensure that their sex/gender are accurately reflected on the Births, Deaths and Marriages Register ('the Register') and key legal documents.

Background

Between 2018 and 2019, we provided two submissions to the Queensland parliament in response to the Registering Life Events public consultation and its three associated Discussion Papers.

The purpose of this letter is to provide the Attorney-General with an update on recent reforms in other jurisdictions, re-state our core recommendations outlined during the public consultation process, and ensure that the Queensland Government maintains its intention to consider legislating necessary changes to the Births, Deaths and Marriages system in Queensland.

Similar to New South Wales, Queensland utilises an out-dated model for trans, gender diverse and intersex people registering a change in their legal sex/gender classification that requires medical intervention via surgery or sex confirmation surgery.

This approach involves unnecessary legal and medical barriers for members of the LGBTI community and fails to accurately reflect the lived experiences of the gender diverse community.

In addition, children should be accorded the legal and emotional security to have their gender identity accurately recorded within all major legal documents without being required to go through often traumatising legal processes.

There has been increased media attention on these issues, particularly due to the petition started by Lorelei Tuxworth. The concerns raised by Lorelei are common within the LGBTI community and there is a clear need for legislative reform to protect the mental and physical health of gender diverse Queenslanders.

Recommendations

The following table outlines our core recommendations as outlined within our submission 'Recognising LGBTI Diversity in Queensland' - our response to Discussion Paper 1.

1.	We recommend that the Queensland Government conduct a review of its policies in relation to collection of sex/gender with the intention of developing a uniform approach across departments and agencies, whereby sex/gender information is collected only when necessary and in an appropriate manner.
2.	Assuming the Registry continues to register a person's sex/gender, we recommend that options other than male or female be made available.

3.	<p>Assuming the Registry continues to register a person's sex/gender, we recommend that applicants have the option to self-describe their sex/gender in a free-text field.</p> <p>In the alternative, we recommend that the following categories be prescribed by regulation: male, female, male and female, non-binary, unspecified, and that the final list of descriptors be developed in close consultation with trans, gender diverse and intersex communities including sistersgirls and brotherboys.</p>
4.	<p>We recommend that references to 'sex' in the BDMR Act and BDMR Regs be replaced with the term 'sex/gender'.</p>
5.	<p>We recommend that the Queensland Government introduce necessary consequential amendments to give effect to any proposed Bill, including clarification around a person's entitlement under a will or trust.</p>
6.	<p>We recommend that any reforms include additional privacy protections in relation to sex and gender information.</p>
7.	<p>We recommend that any reforms include reduced application costs for applicants experiencing financial hardship.</p>
8.	<p>We recommend that 'parent' be added to references to 'mother' and 'father' in the BDMR Regs and that these descriptors be available for use on the Register and birth certificates without discrimination and according to individual choice.</p> <p>We recommend that following a change of sex /gender on the register, that an application should be able to be made to change the description of a parent on a child's birth certificate (e.g. from father to parent). If a child has reached 12 years of age, we recommend that their consent be required to change their parents' details on their birth certificate.</p>
9.	<p>We recommend investment in information, education, training, IT and systems infrastructure change and community support services as part of the implementation of future reforms.</p>

10.	We recommend that further time be allowed for parents of intersex infants to register the child's sex at birth, including ensuring that any penalties for delaying the notification or registration of a child's sex at birth do not apply for parents of an intersex infant.
11.	We recommend that parents of intersex infants be provided with information, advice and support from medical practitioners and experts within the intersex community to explain relevant medical and human rights considerations to take into account when making decisions relating to their child's sex and gender identity.
12.	We recommend that the Queensland Government further consider legislative amendments to ensure that deferrable and irreversible medical treatments are not performed on intersex infants and children unable to provide free, full and informed consent, except in cases of absolute medical necessity.
13.	We recommend that section 42 of the BDMR Act be amended to allow an intersex person or the parents or guardian of an intersex child under 16 to apply to correct the sex recorded at birth on the Register through a simple administrative process.
14.	We recommend that the requirement that an applicant undergo gender affirmation procedures before changing their sex/gender be removed from the BDMR Act.

15.	<p>We recommend that change of sex be achieved through a simple administrative process that does not require medical or other evidence to be produced by the applicant. </p> <p>In the alternative, if the above recommendation is not accepted, we recommend that an applicant be required to provide a supporting statement from an adult known to them for more than 12 months.</p> <p>In the alternative, if the above recommendations are not accepted, we recommend that the applicant be required to provide a supporting letter from a medical professional (including a general practitioner or counselling psychologist) confirming that the applicant has received clinical treatment in relation to the applicant's sex or gender identity.</p>
16.	<p>We recommend that the process for registering a correction or change of sex of a child should be the same as an adult for a child aged 16 or over, and for parents or guardians to be able to make an application on behalf of a child's behalf where it is in the child's best interests.</p>
17.	<p>We recommend that the Queensland Government ensure that any reforms allow for sufficient flexibility for all people born or living in Queensland to have their sex and / or gender legally recognised, including consideration of residence restrictions and recognition certificates.</p>
18.	<p>We recommend that consideration be given to reviewing and amending the BDMR Act and BDMR Regs (together with the <i>Status of Children Act 1978</i> (Qld) and laws governing assisted reproductive technology and altruistic surrogacy, where relevant) to better recognise diverse family structures, such as allowing for more than two legal parents on a birth certificate.</p>
19.	<p>We recommend that the BDMR Act and BDMR Regs be amended to recognise children born to single parents through assisted reproductive technology as siblings on their birth certificates.</p>

The Service provided an additional submission in May 2019 that responded to the second and third Discussion Papers. That submission outlined the necessity for greater scrutiny of record-keeping for trans, gender diverse and intersex people due to the sensitive nature of such information. In addition, it is our submission that there

should be a prohibition of accessing earlier versions of documentation that were in place prior to a person transitioning.

The requirement for trans and gender diverse people to undergo treatment is also inconsistent with the *Anti Discrimination Act 1991* (Qld). ‘Gender identity’ is a protected attribute under that legislation and it is understood to apply on the basis of self-identification. This means that protections apply irrespective of whether surgical intervention has occurred.

The requirement for trans and gender diverse Queenslanders to undergo surgery to be legally recognised as the gender with which they identify, places them at greater risk of unnecessary mental health and financial strain.

Other jurisdictions

Other States within Australia have commenced making amendments to their BDM regime to ensure that they more accurately reflect the lived experiences and sex and/or gender identity of LGBTI people. We provide the below summary of recent legislative change in Victoria and Tasmania for context.

1. Victoria

On 1 May 2020, reforms to the *Births, Deaths and Marriages Registration Act 1996* (Vic) (‘Victorian *BDMR Act*’) came into effect that removed barriers for Victorians seeking to change the record of sex in their birth registration.

Applications to change a record of sex in a birth registration must be made to the Victorian Registrar of Births, Deaths and Marriages (the Registrar).

Under the updated process:

- Victorians will no longer be required to undergo gender affirmation surgery to apply to change the record of sex in their birth registration;
- When changing the record of sex in their birth registration, applicants will be able to nominate a sex descriptor of their choice (which can be male, female, or any other descriptor);
- Parents will be able to apply on behalf of their child; and
- A person can change their record of sex once in a 12-month period.

While the Service welcomes these reforms, it is important to consider the potential emotional trauma and legal barriers that transgender, gender diverse and intersex people may face as a result of the requirement to provide the written ‘support’ of another person.

It is often the case for trans, gender diverse and intersex people the process of achieving legal recognition of their affirmed or preferred gender identity is traumatic and emotionally taxing, with this extra level of legal regulation likely to cause unnecessary hurdles for these individuals.

2. *Tasmania*

The Tasmanian approach adopted under the *Births, Deaths and Marriages Act 1999* (Tas) ('the Tasmanian *BDMR Act*') provides the greatest degree of self-identification and autonomy for the transgender, gender diverse and intersex community, compared to other approaches adopted under Australian law.

Under the Tasmanian *BDMR Act*, individuals over the age of 16, or with the written authorisation of their parents, can provide a statutory declaration to legally describe their gender identity without undergoing medical treatment or procedure, without the consent of medical professionals and without the 'support' of another person.

This model provides a self-identification system that ought to be adopted in Queensland.

3. *Recent Queensland updates*

In July 2020, the Queensland Police Service ('QPS') launched the 'Change of Personal Details Notification Form'. The online form provides members of the public the ability to ensure their correct name and pronouns are used during interactions with the police. The details will be updated on the Queensland Police Records and Information Management Exchange (QPRIME) computer system

This change illustrates just one arena where the legally registered gender / sex and name of an individual will be used within daily life. While it is welcome that the QPS recognise the need to ensure LGBTI people are appropriately addressed during police interactions, it further underscores the need to ensure the BDM regime in Queensland reflects the growing community understanding. The application form must be accompanied by either:

- A birth certificate showing affirmed sex as issued by an Australian Births, Deaths and Marriages Registry;
- A Recognised Details Certificate from an Australian Births, Deaths and Marriages Registry showing affirmed sex;
- Change of name certificate; or
- Passport.

This will continue to pose barriers for the Queensland LGBTI community due to the rigidity of the existing BDM regime in changing legal documents to ensure sex/gender are accurately recorded.

This again underscores the need to implement more systemic and widespread changes to the BDM system to ensure members of the Queensland LGBTI community are not exposed to situations that could cause humiliation or stress due to an inability to present as their true selves.

Our Clients

The Service has continued to assist clients who face legal barriers as a result of the current BDM regime operating in Queensland.

One of our clients sought assistance with respect correcting the classification of their gender and associated parental classification on their child's birth certificate. The currently rigid and out-dated model operating under the BDM regime caused considerable stress and humiliation as the documents resulted in misgendering within other contexts.

Another example involved a client facing discrimination while attempting to access the restroom at a public facility. Due to the barriers faced in updating their identification documents, a confrontation took place due to the failure of legal documentation to accurately record their gender identity.

Until the failures of the current legislation regulating births, deaths and marriage recognises the diversity of our community, we will continue to advocate for legislative reforms to reduce the shame and legal barriers that our clients continue to face.

This letter was drafted by Mr Alex Ladd, Law Reform Director, with the assistance of Ms Olivia Roney.

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

Yours faithfully



Renea Hart
Principal Solicitor | LGBTI Legal Service Inc.
T (07) 3124 7160 | E solicitor@lgbtilegalservice.org