



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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BDM Act Review Team
bdmlegislativereview@justice.qld.gov.au

Dear Madam/Sir

Kindly accept this submission in relation to the Review of the *Births, Deaths and Marriages Registration Act 2003* Discussion Paper number 1.

The purpose of the discussion paper is to consider the changes necessary to the Act to appropriately recognise sex and gender diversity in our society.

Sexual orientation is at the core of self identity, and if its expression is denied it leaves a gap in life that cannot be filled in any alternative way¹. We also recognise, that individuals in our society of diverse gender face ongoing barriers to accessing basic services. The centrality of sexual orientation to our lives dictates that barriers to its expression be removed.

Current arrangements in relation to the recognition of diverse gender, have a tendency to reinforce these difficulties by not appropriately recognising gender diversity and hence stigmatising those of a diverse gender. A society committed to equality, would have a regime of equality that protects its members adequately against reasonable and undeserved feelings of loss of self-esteem through stigmatization and the like².

Registration of a person's sex/gender

We note the paper continues to maintain the distinction which has been established since the Second World War between sex and gender. We agree with that approach. There is an obvious and, on current technology, ineluctable biological basis for the social recognition of difference in relation to reproduction. Even if we give whatever credence is due to the idea that both the categories of sex and gender are entirely social constructions, it is still a long way from saying sexual attraction is entirely disconnected from sexual identity.

The application of this principle that expression of gender identity is fundamental to who we are and the concomitant obligation to remove barriers to its expression, would lead to the conclusion of principle that each person should be entitled to identify their gender as they wish.

Some have likened the requirement to register gender or sex to former requirements to register race. However, for others, recording sex or gender provides an opportunity to publicly affirm their gender identity.

¹ See Barry *Justice as Impartiality* Oxford University Press 1995 pp 82-86

² T M Scanlon *The Diversity of Objections to Inequality* Lindley Lecture University of Kansas 22 February 1996.

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GPO Box 2281, Brisbane QLD 4001 forum.qccl@gmail.com Enquiries: 0409 574 318

Media Enquiries: Michael Cope, President: 0432 847 154



We would also recognise that there are other social interests that may impinge upon the rights of individuals to identify their gender without restraint.

As was noted by the South Australian Law Reform Institute (SALRI) in its report *Legal registration of sex and gender and laws relating to sex and gender reassignment*³, sex is a fundamental demographic characteristic used in social and population analysis. It is a core cross-tabulation for practically all social statistical topics such as employment, education, and health. Sex, along with age, is also essential to the production of population estimates and projections. [para 68]

So that Institute, accepted that there should continue to be a requirement to register the sex or gender of a child at birth. The Institute found significant support for the use of the word 'non-binary' as a third category, "as it simplifies the third classification, while also being respectful both to people with non-binary gender identities, and to intersex people who are men or women" see paragraphs 73 and 74. We agree with that finding.

The Institute also recommended that the non-binary category of 'unspecified' should be available as an option for children born with intersex variants, as it would enable the parents of such children time to take advice before registering the child's sex. It would also provide an option for individuals who do not wish to record a specific sex or gender.

In the case of children or adults who wish to change their sex or gender, the Institute preferred the use of the term 'Other, please specify'. The Institute again recognised that there may be difficulties in creating administrative and other systems that allow this change. Clearly, given the legislation as now in force in South Australia, the government there took the view that there were administrative and other difficulties that could not be overcome. This seems to be a reasonable view. If the Queensland government takes the same view, we would again support the use of the term "non-binary".

Reassignment of a person's sex

The next issue raised by the Discussion Paper, is the recording of the reassignment of the person's sex.

It follows from the basic principles set out at the start of this submission, that there should be no need for a person who wishes to alter their gender to undergo a procedure or to show they are unmarried.

We agree with the SALRI that the BDMR Act should be amended to introduce a process for applying for a person's registered sex and/or gender to be changed, based on the current provisions relating to change of name to allow a person to change the gender by which they are identified by reference to the categories discussed above.

Provision should be made allowing the Registrar to require the applicant to provide evidence to establish to the Registrar's satisfaction (a) the identity and age of the person whose sex and/or gender is to be changed; and (b) that the change of sex and/or gender is not sought for a fraudulent or other improper purpose. This provision should also specifically provide that, subject to the above provisions, the Registrar must not require evidence that the applicant (a) is unmarried or (b) has undergone a sexual or gender reassignment procedure. The Registrar should also retain the power to refuse to register self-describing gender information that is offensive, obscene or contrary to the public interest.

Provision should be made for the issue of new Birth Certificate that must show the person's sex and/or gender as changed.

³ On which this submission draws heavily

The new legislation should also contain:

1. A process for the parents of a child whose birth was registered in Queensland, no matter where they are now living, to apply on behalf of the child to the Registrar to change the child's registered sex and/or gender.
2. Provision should be made for one of the child's parents, no matter where they are now living, to apply to a Magistrate for the child's sex and/or gender to be changed. The decision should be based on the best interests of the child. But that a change of a child's sex and/or gender must not be registered unless the child consents to the change.
3. An additional provision should be included to enable a child, no matter where they are now living, to apply directly to a Magistrate to change their registered sex and/or gender without the need to prove (a) are unmarried or (b) have undergone sexual or gender reassignment. The Court should be required to consider (a) whether the proposed change is in the best interests of the child and (b) that the child understands and consents to the change. The Institute recommended that a child be defined as someone under the age of 18. This seems to have been largely for reasons of uniformity. The QCCL has traditionally argued that the views of older children should be given more weight and would certainly not oppose the definition being that of a person under the age of sexual consent.

Recording of same sex families on Register

We see no societal interest which would restrict same sex parents from describing themselves on the register in whatever way they prefer.

We trust this is of assistance in your deliberations.

Yours faithfully


Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
15 November 2018