



# **Births, Deaths and Marriages Registration Amendment Bill 2018**

**Report No. 8, 56<sup>th</sup> Parliament**  
**Legal Affairs and Community Safety Committee**  
**April 2018**

## **Legal Affairs and Community Safety Committee**

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### **Acknowledgements**

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## Abbreviations

BDMR Act	<i>Births, Deaths and Marriages Registration Act 2003</i>
Bill	Births, Deaths and Marriages Registration Amendment Bill 2018
LSA	<i>Legislative Standards Act 1992</i>
MADRF Act	<i>Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Cth)</i>
proposed Act	proposed Births Deaths and Marriages Registration Amendment Act
Sex Discrimination Act	<i>Sex Discrimination Act 1984 (Cth)</i>

## Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Births, Deaths and Marriages Registration Amendment Bill 2018.

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.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and gave evidence at the public hearing. The committee recognises the importance of these amendments to the LGBTIQ community and appreciates the personal evidence that was shared by stakeholders, especially Roz who shared her story at the public hearing. 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

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The committee recommends the Births, Deaths and Marriages Registration Amendment Bill 2018 be passed.

## 1 Introduction

### 1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Births, Deaths and Marriages Registration Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 7 March 2018. The committee is to report to the Legislative Assembly by 23 April 2018.

### 1.2 Inquiry process

On 9 March 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. Ten submissions were received (see Appendix A for a list of the submitters).

The committee received a public briefing about the Bill from the Department of Justice and Attorney-General on 19 March 2018 (see Appendix B for a list of officials).

The committee received written advice from the department in response to matters raised in submissions on 21 March 2018.

The committee held a public hearing on 23 March 2018 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage: <http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/BDMRABILL2018>.

### 1.3 Policy objective of the Bill

The objective of the Bill is to amend the *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) to remove the restriction in s 22 on noting the reassignment of a married person's sex on the register of births or the adopted children register.

### 1.4 Government consultation on the Bill

The explanatory notes advise that the Government did not consult on the Bill because the amendments to the Bill are consequential to the changes made by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) (MADRF Act). The MADRF Act amended the definition of marriage under the *Marriage Act 1961* (Cth) to enable same-sex couples to marry.<sup>2</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> Births, Deaths and Marriages Registration Amendment Bill 2018, explanatory notes, pp 1-2.

The explanatory notes further advise:

*... since the introduction of marriage equality, there have been increasing calls (including from sex and gender diverse stakeholders) for the amendment to section 22 of the BDMR Act to be made.<sup>3</sup>*

### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Births, Deaths and Marriages Registration Amendment Bill 2018 be passed.

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<sup>3</sup> Births, Deaths and Marriages Registration Amendment Bill 2018, explanatory notes, p 2.

## 2 Examination of the Bill

### 2.1 Section 22 and marriage equality

Section 22 of the BDMR Act provides that the reassignment of a person's sex after sexual reassignment surgery may be noted in the person's entry in the register of births or adopted children register only if the person is not married.

The requirement that a person not be married to have the reassignment of their sex noted in the register of births or the adopted children register reflects the definition of marriage that was in the *Marriage Act 1961* (Cth) until 9 December 2017 when amendments to the definition made by the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) (MADRF Act) came into effect.<sup>4</sup>

The MADRF Act also amended the *Sex Discrimination Act 1984* (Cth) to repeal (from 9 December 2018) an existing exemption from anti-discrimination law which allows for a refusal to alter a person's sex on an official record if a law of a state or territory requires the refusal because the person is married.<sup>5</sup>

The effect of the removal of the exemption will be that from 9 December 2018, if s 22 is not amended to remove the unmarried requirement, a state registry officer will not have legal protection from discrimination complaints brought to the Australian Human Rights Commission under the Sex Discrimination Act if they refuse to note the reassignment of a person's sex on the basis that the person is married.<sup>6</sup>

### 2.2 The proposed amendments

At present a married person must divorce their spouse if they wish to have the reassignment of their sex after sexual reassignment surgery noted in their entry in the register of births or the adopted children register.

The Bill proposes to amend s 22 of the BDMR Act to remove the requirement that a person not be married to have the reassignment of their sex after sexual reassignment surgery noted in their entry in the register of births or the adopted children register.<sup>7</sup>

Under the Bill, amended s 22 would apply to applications not finally dealt with that were made prior to the commencement of the proposed Births Deaths and Marriages Registration Amendment Act (proposed Act), as well as all applications made after the commencement, whether or not the person underwent sexual reassignment surgery before the commencement of the proposed Act.<sup>8</sup>

The Bill also proposes to make a consequential amendment to the Births, Deaths and Marriages Registration Regulation 2015, removing the requirement for an applicant who was married to provide either a document evidencing the death of their spouse or a document evidencing the dissolution of their marriage.<sup>9</sup>

<sup>4</sup> Births, Deaths and Marriages Registration Amendment Bill 2018, explanatory notes, p 1; *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), s 2, Schedule 1. The MADRF Act amended the definition of marriage to enable same-sex couples to marry: section 3 of Schedule 1 of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) omitted the words 'a man and a woman' from the definition of marriage and substituted '2 people'.

<sup>5</sup> Births, Deaths and Marriages Registration Amendment Bill 2018, explanatory notes, p 1; *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth), s 2, Schedule 2.

<sup>6</sup> Department of Justice and Attorney-General, public briefing transcript, Brisbane, 19 March 2018, p 2.

<sup>7</sup> Clause 3.

<sup>8</sup> Clause 4. If passed, the Births, Deaths and Marriages Registration Amendment Bill 2018 would commence on the date of assent: *Acts Interpretation Act 1954*, s 15A.

<sup>9</sup> Clause 6.

## 2.3 Stakeholder views

All stakeholders expressed support for the Bill.

Rainbow Rights Watch described the effect of current s 22:

*The Section 22 divorce requirement puts many gender diverse Queenslanders in a difficult position of being required to choose between legal recognition of their marriage, and legal recognition of their sex or gender. It also places gender diverse Queenslanders at a relative disadvantage to gender diverse Australians of other States who already enjoy simultaneous legal recognition of both their gender and marital state.*

*Even if a gender diverse Queenslander decides to prioritise the legal recognition of their sex or gender over their marriage, the only practical pathway for a married person to become unmarried is through [a] process of annulment or divorce. However, annulment is only available on very limited grounds, and divorce is not available to a couple in a loving, harmonious relationship.<sup>10</sup>*

The Human Rights Law Centre similarly stated:

*... we often present that there is an option for transgender people to choose between divorce or being legally recognised, but when it comes down to the Family Law Act it is not properly a choice because in order to apply for a divorce you have to swear or affirm that there are irreconcilable differences between you and your spouse. If there are not actually irreconcilable differences, if you still very much want to be married to your spouse, you are not able to apply for a divorce unless you perjure yourself.<sup>11</sup>*

The Queensland Aids Council and the Equality Campaign described having to choose between a person's marriage and changing their sex on official documents as an injustice.<sup>12</sup> The LGBTI Legal Service considered it 'a near impossible choice'.<sup>13</sup>

Mr Lawrie asserted that the existing requirement that a married transgender person must divorce their spouse before they are able to have the reassignment of their sex noted on the birth register is 'a gross violation of human rights';<sup>14</sup> fails to respect the right to personal autonomy and self-determination of trans and gender diverse people; fails to respect the ability of all people to choose who they marry, and then to decide between themselves whether they remain married; and contravenes Article 26 of the International Covenant on Civil and Political Rights.<sup>15</sup> Accordingly, he supported the Bill's amendments:

*The amendments proposed in this Bill will help address these human rights breaches. If passed, it will ensure that nobody is left in the impossible situation of having to choose between staying married to the person they love and being able to access identity documentation that reflects their gender identity.<sup>16</sup>*

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<sup>10</sup> Rainbow Rights Watch, submission 6, p 4.

<sup>11</sup> Public hearing transcript, Brisbane, 23 March 2018, p 5.

<sup>12</sup> Public hearing transcript, Brisbane, 23 March 2018, p 1.

<sup>13</sup> Public hearing transcript, Brisbane, 23 March 2018, p 2.

<sup>14</sup> Alastair Lawrie, submission 5, p 1.

<sup>15</sup> Alastair Lawrie, submission 5, p 1. Article 26 provides: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

<sup>16</sup> Alastair Lawrie, submission 5, p 1.

Rainbow Rights Watch supported the amendment but described it as ‘the absolute bare minimum reform necessary to prevent a conflict arising with federal law’.<sup>17</sup>

The Diversity Council submitted:

*We congratulate the Queensland Parliament for taking this step to repeal anachronistic clauses that required a married person who transitioned to divorce in order to have their gender-affirmed on state registries.*

*DCA supports marriage equality because we believe it will truly cement workplace fairness and inclusion for the LGBTIQ+ community. This is a simple and logical step to fully include transgender and gender diverse people in our communities.*<sup>18</sup>

The Anti-Discrimination Commission Queensland stated:

*The Commission supports the Bill, and commends the Attorney-General for acting quickly to remove the restriction. The inability of married people to have a change of gender noted on their records has long been [an] issue for LGBTI stakeholders. It has significant negative impact on those affected by it, and contributed to the hurt and sense of not being equal experienced by this group of people.*<sup>19</sup>

The Human Rights Law Centre commented on the effect of the proposed amendments:

*The bill before the committee will finally deliver full marriage equality to all of the transgender people like Roz Dickson and their families who are affected by these laws today and the countless more who will not have to face this injustice and indignity in the future. It is a small but significant change that will mean transgender people can be free to be who they are while maintaining their commitment to the person they fell in love with.*<sup>20</sup>

## **2.4 Further changes to the BDMR Act**

A number of submitters noted further changes they considered should be made to the BDMR Act.<sup>21</sup> The New South Wales Gay and Lesbian Rights Lobby and the Human Rights Law Centre, for example, commented that the BDMR Act ‘contains a number of other outdated, unnecessary and invasive requirements that significantly disadvantage transgender, gender diverse and intersex people in Queensland.’<sup>22</sup>

With respect to these proposed further amendments, the department advised:

*The Government is currently reviewing the BDMR Act and has released a Discussion Paper, ‘Registering life events: Recognising sex and gender diversity and same-sex families’, which examines how the BDMR Act can improve legal recognition of sex and gender diverse people.*

*Submissions made to the Committee on the Bill which raise broader issues about the BDMR Act will be considered as part of the review of the BDMR Act.*<sup>23</sup>

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<sup>17</sup> Rainbow Rights Watch, submission 6, p 1.

<sup>18</sup> Diversity Council Australia, submission 1, p 1.

<sup>19</sup> Anti-Discrimination Commission Queensland, submission 4, p 2.

<sup>20</sup> Public hearing transcript, Brisbane, 23 March 2018, p 3.

<sup>21</sup> See, for example, Alastair Lawrie, submission 5, p 2; Rainbow Rights Watch, submission 6; Confidential, submission 10, p 2; Michael Berkman, submission 8; Anti-Discrimination Commission Queensland, submission 4, p 2.

<sup>22</sup> New South Wales Gay and Lesbian Rights Lobby, submission 9, p 4; Human Rights Law Centre, submission 7, p 1.

<sup>23</sup> Department of Justice and Attorney-General, correspondence dated 21 March 2018, attachment, p 2.

Submitters were pleased that the department is inquiring into further amendments to the BDMR Act,<sup>24</sup> with some commenting favourably on the department's consultation.<sup>25</sup>

## **2.5 Committee comment**

The committee supports the amendments proposed by the Bill. We note the unanimous support of submitters for the Bill and we recognise that a small amendment to s 22 of the BDMR Act will have a significant positive impact for members of the LGBTIQ community.

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<sup>24</sup> See, for example, Stephen Page, submission 3, p 5; LGBTI Legal Service, public hearing transcript, Brisbane, 23 March 2018, p 2.

<sup>25</sup> See, for example, Anti-Discrimination Commission Queensland, submission 4, p 2.

### **3 Compliance with the *Legislative Standards Act 1992***

#### **3.1 Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are ‘the principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee examined the application of the fundamental legislative principles to the Bill and did not identify any issues.

#### **3.2 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Diversity Council Australia
002	Queensland Law Society
003	Stephen Page
004	Anti-Discrimination Commission Queensland
005	Alastair Lawrie
006	Rainbow Rights Watch
007	Human Rights Law Centre
008	Michael Berkman MP
009	NSW Gay & Lesbian Rights Lobby
010	Confidential

## **Appendix B – Officials at public departmental briefing**

### **Department of Justice and Attorney General**

- Mrs Leanne Robertson,  
Acting Assistant Director-General, Strategic Policy and Legal Services
- Ms Kim Chandler  
Acting Director, Strategic Policy and Legal Services
- Mr David John  
Registrar-General, Queensland Registry of Births, Deaths and Marriages

## **Appendix C – Witnesses at public hearing**

### **LGBTI Legal Service**

- Thomas Clark

### **Queensland Aids Council and The Equality Campaign**

- Peter Black

### **Local Advocate**

- Roz Dickson

### **Human Rights Law Centre (via teleconference)**

- Lee Carnie