Births, Deaths and Marriages Registration Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Births, Deaths and Marriages Registration Bill 2022.

Policy objectives and the reasons for them

The *Births, Deaths and Marriages Registration Act 2003* (BDMR Act) establishes Queensland's life event registration system and commenced on 1 February 2004 based on a Model Law which was designed to provide nationally consistent legislation across Australian States and Territories.

Since 2004 there have been changes to the social, policy and operational environment which have affected the way the Registry of Births, Deaths and Marriages (the registry) delivers its services including:

- 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; and
- 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.

The Bill repeals and replaces the existing BDMR Act 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; and
- clarify the information collection, use and sharing powers of the registrar.

Greater legal recognition of trans and gender diverse people

Currently, under the BDMR Act, a person (or parents/guardians on behalf of their child) may apply to change their sex on their birth registration where the person has 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 at 30 April 2022, there have been 210 changes of sex on birth records, which have all been for adults.

Sexual reassignment surgery is a serious and invasive procedure that involves a number of health risks (such as bleeding and infection), results in sterilisation, is not readily available in Australia and is costly. Not all transgender people will want, or be able, to undergo sexual reassignment surgery, given its costs, limited availability and potential health and other complications.

The current surgery requirement unnecessarily medicalises the recognition of a person's lived identity.

Studies have shown that transgender people commonly experience discrimination when their transgender status is outed, and much poorer mental health and wellbeing outcomes than the general population. As part of a recent study undertaken by La Trobe University, it reported:

> *Overall, trans and gender diverse participants reported higher rates of psychological distress, suicidal ideation and attempts and poorer self-rated health than cisgender women and cisgender men… Less than one third of trans women and trans men and one 10th of non-binary participants, reported gaining legal recognition for their identity in their birth certificate.*[1]

An Australia-wide survey of 859 transgender people aged 14 to 25 years (Trans Pathways) found that 79.7% of respondents had engaged in self-harm and 48.1% had attempted suicide, and 41.9% of respondents had experienced issues with employment (e.g. being subjected to violence and discrimination once the person's transgender status was revealed).[2]

For many transgender people the ability to update their identity records to reflect their sex affirms their identity and supports improved wellbeing.

As one gender diverse Victorian reflected on the significance of recent birth certificate reforms in that jurisdiction: "For me, having Non-Binary displayed on my birth certificate means being recognised and respected. This change takes the fear out of having to present a birth certificate that does not match up to who I am. I will now be able to change my sex at my bank so that I can actually be spoken to and not be denied access to my account, I can now enrol in university, apply for a job without feeling unsafe and at risk of humiliation or worse."[3]

Recognition of contemporary family and parenting structures

The BDMR Act currently limits how parents can be registered on their child's birth registration by requiring that:

---

[1] Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University, page 41.

[2] Telethon Kids Institute (2017), Trans Pathways Summary, <https://www.telethonkids.org.au/globalassets/media/documents/brain--behaviour/trans-pathways-summary.pdf>

[3] Sage Akouri quoted in Equality Australia (2020), 'What the New Birth Certificate Legislation Means to Me', <https://equalityaustralia.org.au/what-the-new-birth-certificate-legislation-means-to-me/>

- 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; and
- no more than two people in total may be registered as the child's parents (however described).

This means, in the case of same-sex parents, one person may be recorded as either 'mother' or 'father' and the other person must be recorded as 'parent'. There is no ability to record both parents as 'mother' or both parents as 'father', nor can both be referred to as 'parent'.

Further, 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.

In a recent case the registrar was required to register a transgender man as the child's mother. This was confirmed by the Queensland Civil and Administrative Tribunal (QCAT) as the correct and preferable decision under the current parameters of the BDMR Act (see *Coonan v Registrar of Births, Deaths and Marriages* [2020] QCAT 434).

Acknowledging that a birth certificate has deep social and emotional resonance for people, the Bill will ensure that same-sex and gender diverse parents are able to record a parenting descriptor on their child's birth certificate that correctly reflects their parenting role.

Amendments which improve operations of the registry

As part of the repeal and replacement of the existing BDMR Act, opportunities to simplify, streamline and strengthen registry operations have been identified.

The BDMR Act contains a number of overly prescriptive requirements. For example, the current 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. No other Australian jurisdiction is this prescriptive.

There is benefit in having some flexibility in what is collected for a life event registration and subsequently included in a certificate. This will:

- enable changes to be made more easily to information on registrations and certificates, in ways that align with changes in community expectations and reflect additional information requirements emerging from public policy priorities; and
- enable the registrar to respond to individual cases where the inclusion or removal of certain information on a certificate may cause significant distress.

The Bill will also provide more flexibility in the notification and application process to support more customer focussed processes.

The registry currently engages in a range of community engagement activities to provide free certificates to disadvantaged groups in the Queensland community. Examples include assistance to victims of domestic and family violence, partnerships with the Institute for Urban Indigenous Health's Deadly Choices program, Homeless Connect and prisoner re-entry projects as well as those impacted by major emergencies (e.g. natural disasters such as cyclones and bushfires).

Consistent with the Queensland Ombudsman's 2018 *Report into the under-registration of Aboriginal and Torres Strait Islander births*, the registry has also developed a formal fee waiver policy for life event certificates and other registry processes.

The Bill ensures there is a clearer legislative basis and support for existing practice in relation to the waiving and refunding of fees.

Amendments which support fraud prevention

Maintaining the integrity of the information held in the registers is important as it is used to confirm a person's identity. Birth certificates and other certificates (i.e. change of name and marriage certificates) issued by the registry are used to verify a person's identity in the community for a range of purposes.

Therefore, the Bill adopts a more robust framework for the change of name process in order 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.

Amendments which clarify information collection, use and sharing

In recent years there has been increased demand for information held by the registry for a broader range of purposes. This high level of interest has been driven, in part, by the volume of information that is now held electronically, and the ease with which this data can be digitally transmitted and shared.

A key objective of the Bill is the collection and dissemination of statistical information. Information held by the registry contributes significantly to Australia's and Queensland's vital statistics, which are used for research and planning purposes (by agencies like the Australian Bureau of Statistics and the Australian Institute of Health and Welfare).

Equivalent legislation in New South Wales, Victoria, Tasmania and the Australian Capital Territory expressly provide for their respective registrars to collect and maintain records of information in addition to registrable information relating to registrable events.

As a result, the Bill will clarify that the registry may collect vital statistical information and other information to support the discharge of its functions.

While the Bill will maintain the legislative 'public interest' and privacy protection thresholds for data use and sharing arrangements, the Bill will more clearly articulate

the types of data use and sharing arrangements that would be in the public interest, in relation to sharing with law enforcement, government and the private sector.

Queensland is the only jurisdiction that restricts its registry from charging a fee beyond cost recovery for its data services. Removing this restriction is consistent with all other jurisdictions and will allow the registrar to undertake more detailed examination and explore future pricing schedules for existing, new or enhanced services. The prescribed fees for life event certificates are proposed to continue to be limited to cost recovery.

Achievement of policy objectives

Greater legal recognition of trans and gender diverse people

The Bill improves the legal recognition of trans and gender diverse people by:
- removing the requirement for a person to undergo sexual reassignment surgery in order to alter their record of sex;
- introducing a more accessible framework for persons aged 16 years and older to apply to alter their record of sex on the relevant child register (which means whichever of the birth register, adopted children register, parentage order register or cultural recognition register has an open entry for the person);
- introducing new processes that provide for the alteration of the record of sex for a child under 16;
- providing for the issuing of a recognised details certificate acknowledging the name and sex of a person whose birth is registered in a place outside of Queensland;
- enabling a person to nominate a sex descriptor of their choice (e.g., male, female, or any other sex) that is most appropriate and meaningful to them; and
- removing the automatic reference to a person's sex marker on their birth certificate and creating an 'opt in' approach that requires a person to request that their birth certificate include a reference to sex information.

The Bill also accelerates certain amendments to the *Anti-Discrimination Act 1991* (AD Act) which improve protections for the trans, gender diverse and intersex community.

New framework for persons 16 years and older

Application by persons whose birth or adoption was registered in Queensland

The Bill introduces a new statutory framework that enables a person aged 16 years and older, whose birth or adoption was registered in Queensland, to apply to the registrar to alter their record of sex.

The application must:
- nominate a sex descriptor;
- include a statement, verified by 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; and
- be accompanied by a 'supporting statement' 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 which states that the person making the supporting statement believes that

the person making the application makes the application in good faith; and supports the application.

The quasi 'self-declaration' model adopted by the Bill allows a person to declare their sex marker with no requirement for a medical statement from a doctor or psychologist. This avoids medicalising the process.

This approach generally aligns with recent statements that set out how human rights obligations are achieved for trans and gender diverse people, including the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.

The Bill allows a young person aged 16 years or over to apply on their own behalf to alter their sex marker on the relevant child register. This recognises that as young people aged 16 and 17 years old have in most cases developed the capacity to understand the implications of altering a record of sex, they should be afforded the autonomy to make that decision for themselves.

In addition, the Bill enables an applicant to apply at the same time to register a change of the applicant's first name. This acknowledges that the name change may be required to support the alteration of sex. In accordance with the requirements under Part 4 of the Bill (which deal with the registration of changes of name), the registrar must refuse to register a change of name to a prohibited name, or if the registrar reasonably suspects the name change is sought for a fraudulent or other improper purpose.

Recognised details certificates—persons born outside of Queensland

For persons 16 or older who were born outside Queensland and have been ordinarily resident in Queensland for 12 consecutive months, the Bill creates an equivalent pathway that results in the issue of a recognised details certificate.

The application and evidentiary requirements are largely the same (e.g., the applicant will be required to include a declaration and a supporting statement).

A key difference is that, for a person born in another Australian State or Territory, the person cannot apply to change their 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.

New framework for children under 16

The Bill establishes two pathways to alter the record of sex on the relevant child register for a child under 16, namely:

- Administrative: this enables a person to apply directly to the registrar on behalf of a child where particular criteria are met; and
- Court: this requires court involvement, specifically, the Childrens Court.

Key concepts used across Part 5 of the Bill

Parental responsibility
Due to the different ways in which parental responsibility for a child may be allocated by a court, the Bill prescribes the people, other than parents, who have been allocated parental responsibility (usually through a court order) who can make an application on behalf of a child.

This approach recognises that people with guardianship of a child under a child protection order, or with parental responsibility to make major long-term decisions in relation to a child are also able to use the administrative pathway.

A 'person with parental responsibility' is defined in schedule 2 of the Bill to mean:
- a guardian of the child under a relevant child protection order;
- a guardian of the child under an appointment by will; or
- a person who has parental responsibility to make decisions about major long-term issues for the child under a parenting order made under the *Family Law Act 1975* (Cwlth), part VII.

Assessment by a 'developmentally informed practitioner'
A key element of both pathways involves an assessment of the child by a *developmentally informed practitioner* that has a professional relationship with the child.

The assessment will require the developmentally informed practitioner to affirm that they support the application; and the child understands the consequences to their identity brought about by registering a change of their sex marker on the relevant child register or the issue of a recognised details certificate for the child.

A *developmentally informed practitioner* means a person who is a type of person prescribed by regulation. The term *developmentally informed practitioner* is designed to capture a range of professional practitioners and:
- acknowledges the wide-ranging ecologies of support available to a child on their transition journey;
- acknowledges that transition is experienced differently by each child; and
- attempts to meet the child where they are on their gender transition journey noting that a child may receive information, advice, and support from a range of professionals that are relevant to their transition experiences.

The term captures a person whose practice focuses on or involves children and young people; and where the practice is tailored to suit the development stage and age of a child. It is intended to catch a broad net of professionals so as to encompass the most diverse range of supports possible for a child subject to where the child is in their transition.

The assessment is not intended to question the appropriateness of a child's transition. Rather, it is geared towards genuine engagement with a child and learning where the child is at in their journey and their understanding of their identity and the effect of changing their identity document to reflect their preferred name and sex within school or other environments.

Although the assessment requirement makes the application process for children more restrictive, it provides an important safeguard for the child's health and wellbeing and takes into account the particular vulnerability of children.

Administrative pathway—application direct to the registrar

In general, to rely on the administrative pathway, consent is required from both the child's parents or persons who share parental responsibility for the child.

Under the Bill, both parents will be able to apply through the administrative pathway.

While it is anticipated that in most instances the application would be made jointly by both parents, the circumstances in which one parent can apply on the child's behalf include where:

- the parent is the sole parent listed on the births register;
- the other parent is dead and there is no other person with parental responsibility for the child; or
- under a parenting order made under the *Family Law Act 1975* (Cwlth), part VII, the parent has sole parental responsibility to make decisions about major long-term issues for the child.

Schedule 1, part 1 of the Bill sets out the circumstances in which one person with parental responsibility may apply directly to the registrar.

Schedule 1, part 2 of the Bill sets out the circumstances in which two or more persons with parental responsibility may apply directly to the registrar (e.g., two grandparents allocated responsibility to make decisions about major long-term issues for a child).

An application made on behalf of a child must be accompanied by:

- a statement that each applicant believes on reasonable grounds that the alteration of the record of the child's sex is in the child's best interests;
- an assessment of the child by a developmentally informed practitioner; and
- any other documents or information reasonably required by the registrar.

In addition, 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. This acknowledges that the name change may be required to better reflect the child's identity. However, the same restrictions apply here in relation to prohibited names or name changes sought for fraudulent or other improper purposes, as outlined above for persons 16 and over.

Dispensation framework

The Bill also provides 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.

The framework applies if a parent or person with parental responsibility (called the 'consenting party' in these notes) 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 (called the 'non-consenting party' in these notes) 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. The Court may dispense with service if the court is satisfied:

- the consenting party cannot locate the non-consenting party after making all reasonable enquiries;
- the conception of the child was a result of an offence committed by the non-consenting party; or
- it is in the best interests of the child to dispense with service.

The Childrens Court may hear and decide the application for the dispensation order in the absence of the non-consenting party if:

- the non-consenting party has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing; or
- the court dispenses with the requirement to serve a copy of the application on the non-consenting party.

The mechanism for the Childrens Court to dispense with consent is found in clause 66 and provides five grounds, at least one of which must be satisfied, for an order to be made dispensing with the need for an application to the registrar to be made with the consent of the non-consenting party.

The Childrens Court may make a dispensation order if:

- the consenting party can not locate the non-consenting party after making all reasonable enquiries;
- the conception of the child was a result of an offence committed by the non-consenting party;
- QCAT has made a declaration that the non-consenting party does not have capacity to give consent for an acknowledgment of sex application or a combined application for the child;
- a tribunal of another jurisdiction or a non-Queensland court has made an order or other direction, however described, that the non-consenting party does not have capacity to give consent for an acknowledgement of sex application or a combined application for a child; or
- it is in the best interests of the child to make the order.

If a consenting party obtains a dispensation order, the person may give the registrar a copy of the order, and the registrar must consider and decide the application to register the alteration of the record of the child's sex or change the child's name under the administrative pathway, without the need for the consent of the non-consenting party.

Court pathway - application to Childrens Court

The second pathway 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).

Application by one parent or person with parental responsibility – child under 16
One parent of, or one person with parental responsibility for, a child may apply to the Childrens Court for an order directing the registrar to accept an application to alter the record of the child's sex.

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 by the developmentally informed practitioner, the views of the child and whether the child is sufficiently mature to understand the meaning and implications of the change.

In addition, the Childrens Court may approve a change of name at the same time if:
- the name is not a prohibited name;
- the court is satisfied the change is in the child's best interests.

Application by a child – at least 12, but under 16
A child who is at least 12, but under 16, can make an application to the Childrens Court on their own if the child has no supportive parent or person with parental responsibility.

The Childrens Court may, on a child's application, make an order directing the registrar to accept an application to alter the record of the child's sex.

For child-initiated applications, each parent or person with parental responsibility for the child will be served a copy of the application. However, the Court may dispense with the service requirement if notifying the parent or person could reasonably be expected to adversely affect the child.

If a parent or person with parental responsibility does not support the alteration of the child's record of sex and this causes discomfort to the child, it will not meet the threshold of 'adversely affected'. A child may make submissions to the Court on this issue.

A child-initiated application must include a statement from the child that the child is aware of these requirements and the ability to make a submission.

If the Childrens Court decides that the child could not reasonably be expected to be adversely affected by the requirement to serve a copy of the application on the respondents, the court must provide the child with the court's reasons and give at least 28 days for the child to determine whether to proceed with the application.

The substantive application must be accompanied by an assessment of the child by a developmentally informed practitioner.

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 by the developmentally informed practitioner, the views of the child and whether the child is sufficiently mature to understand the meaning and implications of the change.

In addition, the Bill enables an application for the Childrens Court to approve a change of name to be made at the same time as the application for an order directing the registrar to accept an application to alter a record of sex in relation to the child. The Childrens Court may make an order approving the proposed change of name if satisfied:
- the name is not a prohibited name; and
- the court is satisfied the change is in the child's best interests.

Recognised details certificates—children under 16 born outside of Queensland

For children under 16 who were born outside of Queensland and have been ordinarily resident in Queensland for 12 consecutive months, the Bill creates similar administrative and court pathways that result in the issue of a recognised details certificate.

The application and evidentiary requirements are largely the same (e.g., an assessment by a developmentally informed practitioner is required to accompany applications to the registrar or the Childrens Court).

A key difference is that, for a child under 16 born in another Australian State or Territory, an application to change the child's name cannot be made 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.

Sex descriptors

The Bill allows a person to register a sex descriptor of male, female or any other descriptor of a sex. Some of the more common descriptors which may be nominated include agender, genderqueer and non-binary.

However, the registrar will be required to refuse the application if the descriptor is a prohibited sex descriptor.

Schedule 2 defines this to be a sex descriptor:
- that is absurd, obscene or offensive;
- that could not practically be established by repute or usage (e.g., because it is too long or includes symbols without phonetic significance or for some other reason); or
- that is contrary to the public interest.

Obscene or offensive sex descriptors may include swear words or descriptions of lewd or sexual acts or ones that might be likely to insult, humiliate, offend or intimidate a person or group on the basis of a particular characteristic.

As part of implementation, it is proposed the registrar will engage with LGBTIQA+ stakeholders to inform an awareness of sex descriptors. The registrar may also consider other factors in making a determination including perceptions of the sex descriptor in the trans and gender diverse community (noting that community perceptions change over time) as well as relevant rights under the *Human Rights Act 2019* (including a person's right to equality).

Registration process

The registrar is also required to refuse the application if the registrar reasonably suspects the alteration 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.

If the registrar alters a person's sex on the relevant child register, the registrar re-registers the person's relevant event (i.e. the person's birth or adoption record).

This requires the registrar to 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. The registrar may only give information recorded in an entry that is closed to:

- the person;
- a child of the person;
- if the person is aged 16 or 17 years and gives consent to the release – a parent or person with parental responsibility for that person
- if the person is a child under 16—a parent of, or person with parental responsibility for, the child; or
- a person prescribed by regulation.

Effect of altering record of sex or issue of recognised details certificate

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.

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.

Some examples of Queensland laws referring to 'sex' include the following:

- *Electoral Act 1992*, section 58(3)(c) – which requires the Electoral Commission to record details of a person's 'sex' in the electoral roll; and
- *Photo Identification Card Act 2008*, section 26(1)(f) – which requires a photo identification register to be maintained recording details of a card holder's 'sex'.

The 'Effect' provision is designed to be facilitative and flexible. In particular, the reference to 'but subject to' will allow for an express contrary intent to be expressed in other legislation; and for the new Births, Deaths and Marriages Registration Act 2022, if enacted, to be read appropriately alongside other legislation (whether enacted before or after the Bill) to produce a logical reading.

For example, it 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 that person's registered sex may be.

Approval process for 'restricted persons'

Persons in the custody of the chief executive of corrective services (chief executive) under the *Corrective Services Act 2006* (except prisoners released on parole) and prisoners released under a supervision order or interim supervision order (released prisoners) under the *Dangerous Prisoners (Sexual Offenders) Act 2003* will be required to obtain the written permission of the chief executive (corrective services) prior to making an application to the registrar to alter their record of sex or for the issue of a recognised details certificate.

This is designed to protect the safety and welfare of the individual concerned, support community safety and ensure the good order and security of the correctional environment. It also aims to prevent applications that may harm another person, be made for secondary gain, or that may perpetuate a person's offending behaviour.

The requirement for approval is consistent with similar safeguards already applying in relation to applications for a change of name, lodging an intention to marry under the *Marriage Act 1961* (Cwlth) and making a declaration of civil partnership under the *Civil Partnerships Act 2011*.

People with impaired capacity

The reforms in the Bill are underpinned by human rights discourse that views sex as one of the core elements of a person's identity and of the manner in which a person perceives and understands themselves.

Consistent with this discourse, the Bill expands the definition of 'special personal matter' in Schedule 2 of the *Guardianship and Administration Act 2000 (*Qld) (GaA Act) and Schedule 2 of the *Powers of Attorney Act 1998* (Qld) (PoA Act) to include applications made by the person to alter the record of the person's sex or obtain a recognised details certificate. This provides an important safeguard which means a substitute decision-maker is unable to apply on behalf of a person.

The amendments also capture applications that require a parent or person with parental responsibility to support an application to alter the record of a child's sex or obtain a recognised details certificate for the child. A substitute decision maker cannot apply in the place of the parent or person with parental responsibility with impaired capacity.

Issue of certificates

After altering a record of sex, the Bill permits the person as well as other persons (including, for example, a parent of, or person with parental responsibility for, a child under 16 years, or a child of the subject person) to apply for a new birth certificate that includes the person's updated sex marker.

A birth certificate may also be issued with notations of any previous sex of the person, if the applicant requests this.

This acknowledges that there may be circumstances where a trans or gender diverse person wants or needs a certificate that shows their current and former sex. For example, a trans or gender diverse person may require this information to serve as a bridging document to verify their new identity and update records held by other agencies or organisations.

In the alternative, the Bill recognises that the registrar may provide additional services relating to information in the register. Under this power, the registrar will have the capacity to issue an official letter that assists a trans or gender diverse person to bridge their identity following alteration of their sex.

The Bill adopts an opt-in approach to sex information on a birth certificate. This means that a person's registered sex will only ever be presented on a birth certificate where the person requesting the certificate (including a parent of or person with parental responsibility for a child under 16 years of age) has opted in to include this information.

Timeframes for birth registration

Findings from interstate law reform bodies[4] all indicate 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.

In acknowledging the need for greater flexibility and time, the Bill will allow a parent of a child born with variations of sex characteristics to register the birth of the child within 180 days (six months) after the birth.

Changes to the Anti-Discrimination Act 1991

Part 12, Division 3 of the Bill includes discrete amendments to the AD Act to:

- modernise the definition of 'gender identity' so that it is more inclusive and aligns with international best practice;
- introduce a new protected attribute of 'sex characteristics' which provides protections for members of the intersex community; and
- repeal an exemption which allows unlawful discrimination in the area of working with children.

Definition of 'gender identity'
The new definition of 'gender identity' refers to:

[4] See Tasmanian Law Reform Institute (2020) *Legal Recognition of Sex and Gender*, Final Report No 31; South Australian Law Reform Institute (2016) *Legal Recognition of Sex and Gender*; and ACT Law Reform Advisory Council (2012) *Beyond the Binary: legal recognition of sex and gender diversity in the ACT*, Report 2.

(a) a person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and
(b) without limiting paragraph (a), includes—
  (i) the person's personal sense of the body; and
  (ii) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and
  (iii) other expressions of the person's gender, including name, dress, speech and behaviour.

This new definition implements recommendation 22.1 of the Queensland Human Rights Commission's *Building Belonging Report – Review of Queensland's Anti-Discrimination Act 1991* (QHRC Report) and aligns with international best practice understanding of 'gender identity', including the 2007 *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. It is also consistent with the definition adopted in section 213G of the *Public Health Act 2005* as part of the 2020 reforms to prohibit the practice of conversion therapy by health service providers.

Clause 152 of the Bill also amends the AD Act to create a new protected attribute of 'sex characteristics'. This implements recommendation 28.1 of the QHRC Report and aligns with actions taken by Victoria, Tasmania and the ACT.

'Sex characteristics' is defined to mean the person's physical features and development related to the person's sex, including:
- genitalia, gonads and other sexual and reproductive parts of the person's anatomy;
- the person's chromosomes, genes and hormones that are related to the person's sex; and
- the person's secondary physical features emerging as a result of puberty.

This definition aligns with international best practice understanding of 'sex characteristics', including the 2017 *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*.

The Bill also amends sections 124A, 131A and 134 of the AD Act to ensure the vilification protections in the AD Act are extended to the attribute of sex characteristics.

Lawful discrimination in area of working with children
The Bill omits section 28 of the AD Act so that it will no longer be lawful to discriminate on the basis of gender identity or lawful sexual activity in the context of work involving the care or instruction of minors.

In its *Building Belonging* report, the QHRC recommended that section 28 of the AD Act should be repealed in its entirety (recommendation 43.1). This includes the exemption allowing discrimination against a person in the areas of working with children if the person has been convicted of an offence of a sexual nature involving a child or has been precluded from working with children under another law of another State or Commonwealth.

The QHRC does not consider the working with children exception is necessary to protect children's rights, when the existing mechanism of the blue card system is in place. The QHRC further concludes that it is incorrect and offensive to suggest that people are a risk to children solely because of their gender identity or lawful sexual activity and there is no justification to retain the exception because it is redundant and stigmatising and may not be compatible with the HR Act.

Changes to better reflect contemporary family structures

Recording parentage details

The Bill provides that, as part of registering parentage details, each of the child's parents may be registered as the child's mother, father or parent.

This will facilitate the registration of multiple combinations of parental descriptors, including mother/father, mother/mother, father/father, mother/parent, father/parent or parent/parent.

The Bill omits the current definition of 'birth'. No new definition is inserted in its place. Rather, reliance will be placed on the ordinary meaning of birth as 'the act of bringing forth young' (Macquarie Dictionary).

To provide for the most inclusive approach, whilst retaining 'mother' in the context of how a child's parent may be registered, a gender-neutral term of 'birth parent' which refers to 'the person, of any sex, who gave birth to the child' is used in all other relevant clauses of the Bill.

This acknowledges the importance of woman-centred care and makes clear that a woman who identifies as a 'mother' can continue to have this recognised on the register and child's birth certificate while also removing any legislative restriction which requires the registrar to record a person who gave birth to a child only as the child's mother (for example, a non-binary person who gives birth may register as parent). As part of the birth registration, the registrar will retain information about who is recorded as the child's birth parent.

For those persons who wish to update the recording of parentage details which occurred prior to the Bill commencing, the corrections power will facilitate these changes.

The Bill outlines how the registrar may correct the register. In particular, the registrar may correct a register, on application by a person, to ensure the particulars in an entry about an event conform with the most reliable information about the event that is available to the registrar.

The most reliable information about an event may differ from the information that was previously entered on the register in relation to that event, even though the information previously entered was correct at the time of its entry.

The corrections process will allow:

- a same-sex couple to correct a parenting descriptor on their child's birth registration which was registered prior to the reforms; and

- a parent who changes their record of sex after their child's birth to update their parenting descriptor on their child's birth registration.

The registrar may publish a policy about how the registrar exercises the discretion to correct an entry in the register. The registrar may use this to outline how different types of corrections will be dealt with and to set out the specific requirements and evidence for each type of correction.

Parental responsibility

Consistent with the new framework for altering the record of a child's sex, the Bill enables a person who holds a Family Court order which grants sole parental responsibility for all major long-term issues for a child (which encompasses the child's name) to apply directly to the registrar to register a change of name for the child without Magistrates Court approval.

Schedule 1, Part 1 of the Bill also sets out situations where persons with parental responsibility for a child (other than a parent) may apply to register a change of name for the child.

Amendments to improve operations of the registry

Simplifying and streamlining operations

The Bill removes the heads of power which require an application for registration of an event to contain all of the information prescribed under a regulation and that certificates issued by the registrar must state the information prescribed under a regulation.

In its place, relevant clauses of the Bill require the registrar to register an event by entering in the register the particulars prescribed by regulation for that event (whilst providing the registrar with the discretion to still register events based on incomplete particulars, if appropriate).

The Bill also provides that the registrar may issue a certificate certifying some or all of the particulars contained in an entry on a register.

Part 3 of the Bill streamlines provisions in relation to how the registrar registers adoptions and transfers of parentage under parentage orders and cultural recognition orders.

In addition, in line with other jurisdictions, the Bill supports more customer focussed processes by removing the requirements for notifications and applications to be in the approved form. Instead of these requirements, relevant clauses of the Bill provide that:

- applications must be in the form required by the registrar and be made in an approved way (being a way that is approved by the registrar, and published on the department's website or www.qld.gov.au); and
- applicants must satisfy the registrar of the person's identity.

Fees

The Bill provides that a regulation may provide for the registrar to waive payment of a fee or refund payment of a fee for certificates and other registry processes.

Amendments which support fraud prevention

Registrar's functions

In addition to retaining the existing functions of the registrar, the Bill introduces a new express function which requires the registrar to maintain the integrity of the registers and seek to prevent fraud associated with the registers.

Also, the Bill expands the registrar's power of inquiry to enable the registrar to conduct an inquiry to find out whether a person is seeking to use, or has used, the registration system for a fraudulent or improper purpose.

This will enable the registrar to actively take steps to prevent misuse of the life event system and ensure people are not seeking to register life events or obtain life event information for fraudulent or wrongful purposes.

Change of name framework

Part 4 of the Bill strengthens the name change system by tightening the eligibility requirements and introducing legislative limits on when a person can seek a name change, as well as exceptions to those limits.

Name change requirements for adults

An adult will only be eligible to register a change of name if:
- the adult's birth or adoption was registered in Queensland; or
- the adult was born outside Australia; and
    - their birth is not registered in another State or Territory; and
    - the adult has been ordinarily resident in Queensland for at least the preceding 12 months.

In situations where an adult does not meet any of the above criteria, the registrar may still accept an application if the registrar is satisfied there are exceptional circumstances for accepting the application.

Also, where an adult born outside Australia has not been ordinarily resident in Queensland for 12 months, the registrar may accept an application to register a change of name if the registrar is satisfied:
- the application relates to the marriage or divorce of the adult; or
- the application is for the purpose of protecting the adult or the adult's child, or another person associated with the adult.

Further restrictions are proposed which will limit the number of changes of name an adult can seek to three over the adult's life, and no more than one change every 12 months.

However, a change of name application for the following reasons will not count towards these limits:

- an application that is made at the same time as an application under part 5 or if the registrar is otherwise satisfied the change of name is an affirmation or expression of the person's sex;
- an application where the registrar is satisfied the application is for the purpose of protecting the adult, the adult's child, or another person associated with the adult;
- an application that relates to the marriage or divorce of the adult; or
- an application where the registrar is satisfied there are exceptional circumstances which warrant it.

Name change requirements for children

Similar requirements are proposed in relation to children. An application to register a change of a child's name may generally be made by the child's parents or persons with parental responsibility for the child.

Clause 29 and schedule 1 of the Bill also set out the circumstances in which 1 parent or person with parental responsibility can make a name change application for a child.

A child will only be eligible to register a change of name if:

- the child's birth or adoption was registered in Queensland; or
- the child was born outside Australia; and
    - their birth is not registered in another State or Territory; and
    - the child has been ordinarily resident in Queensland for at least the preceding 12 months (or, if the application is made within 12 months of the child's birth, at least one of the applicants has been ordinarily resident in Queensland for this period).

In situations where a child does not meet any of the above eligibility criteria, the registrar may still accept an application if the registrar is satisfied there are exceptional circumstances for accepting the application.

Also, where a child born outside of Australia has not been ordinarily resident in Queensland for 12 months (or, for a child under 12 months old, where at least one of the applicants has not ordinarily been resident in Queensland for this period), an application to register a change of the child's name will be permitted if:

- the application relates to the marriage or divorce of at least one of the applicants;
- the registrar is satisfied the application is for the purpose of protecting the child or a person associated with the child; or
- a non-Queensland court has directed the registrar to accept the application.

Consistent with the existing Act, further restrictions are proposed which will limit the number of changes of a child's first name to one until the child becomes an adult; and a change of a child's name, other than their first name, to no more than one change every 12 months However, a change of name application for the following reasons will not count towards these limits:

- an application that is made at the same time as an application under part 5 or if the registrar is otherwise satisfied the change of name is an affirmation or expression of the child's sex;
- an application that relates to the marriage or divorce of one of the applicants;
- an application where the registrar is satisfied the application is for the purpose of protecting the child or a person associated with the child;
- an application where the registrar is satisfied there are exceptional circumstances for approving the application; or
- where a Magistrates Court or non-Queensland court has approved the change of name.

Collection, maintenance and use of information

Adequate reason test for accessing information or certificate

An application by an entity for a certificate or for information held in the register is subject to the adequate reason test. This is consistent with the existing BDMR Act.

The adequate reason test requires that, in determining an applicant's eligibility to obtain the certificate or information, the registrar must have regard to:

- the relationship, if any, between the applicant and the person to whom the information or certificate relates;
- the reason that the applicant wants the information or certificate;
- the use to be made of the information or certificate;
- the age of the entry from which the information is obtained or the certificate is issued;
- the contents of the entry or source document from which the information is obtained or the certificate issued;
- the sensitivity of the information (for example, a person's sex is sensitive information);
- the provision of any Act, if relevant, that permits the applicant to obtain the information or certificate; and
- any other relevant factors.

The adequate reason test allows the registrar to prevent any unjustified intrusion on the privacy of an individual, while also preventing information from being obtained fraudulently or improperly. The test does not operate to prohibit persons who have a legitimate entitlement to the information or certificate.

The registrar must also maintain a written statement of the policies relating to who may obtain requested information or a certificate.

Registrar's powers to collect and manage a broader range of information

The Bill includes a power which expressly enables the registrar to collect and maintain records of information, other than registrable information, about life events. For example, this may include information collected as part of the birth registration process but not recorded on the birth register (such as information about a child's birth weight,

gestation period, and the Aboriginal and/or Torres Strait Islander status of a child's parents).

The registrar has discretion to, at the request of a person interested in the registrable event or on the registrar's own initiative, include the information in the records maintained. Also, the registrar must, as far as practicable, protect the persons to whom the information relates from any unjustified intrusion on their privacy.

Data services for law enforcement, government bodies and private companies

The Bill provides greater clarity and supports the registry's information sharing functions by:

- ensuring the registrar can enter into an arrangement for the provision of information which does not form part of the register; and
- providing guidance as to what type of arrangements with government, law enforcement and the private sector are in the public interest.

In particular, the Bill enables the registrar to enter into an arrangement with an entity for the provision of relevant information to the entity if the registrar is satisfied that the provision of that information is in the public interest. The provision of information captures the data sharing services provided by the registry.

In entering these arrangements, the registrar must, as far as practicable, protect the persons to whom the information relates from any unjustified intrusion on their privacy. Examples of the types of arrangements the registrar may enter with government, law enforcement and the private sector that may be in the public interest include:

- an arrangement between the registrar and a law enforcement body about providing information to the body for the purpose of supporting the performance of the body's activities related to the enforcement of laws;
- an arrangement between the registrar and a government agency about providing relevant information to the agency for the purpose of supporting the efficient delivery of the agency's services; and
- an arrangement between the registrar and a non-government organisation, private sector agency or government agency about providing relevant information to the organisation or agency for the purpose of removing the names of deceased persons from a database of the organisation or agency.

The examples identified in clause 118(3) of the Bill are not an exhaustive list.

The Bill makes clear that if the registrar enters into an arrangement with an entity, the registrar may charge a fee for providing information to the entity.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

Operational changes required by the registry to support the implementation of the reforms will be met from within existing resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential breaches of the FLPs are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2) Legislative Standards Act 1992)

Express power to collect information other than registrable information (clause 105)

The registry collects additional information to support the object of the existing BMDR Act (clause 3(e)) for *"the collection and dissemination of statistical information"*) and for administrative purposes (for example, to enable follow up action with customers to ensure the reliability of registrations). For instance, the registry provides data to vital statistic and research agencies, such as the Australian Bureau of Statistics and the Australian Institute of Health and Welfare.

The Bill enables the registrar to collect and maintain records of information, in addition to registrable information (clause 105). For example, this would capture information collected as part of the birth registration process but not recorded on a birth registration about a child's birth weight, gestation period, and the Aboriginal and/or Torres Strait Islander Status of a child's parents. This kind of statistical information is essential for key health and demographic statistics in the National Minimum Data Set and its provision by the registry to other entities meets its reporting obligations.

This proposed amendment is a potential departure from the FLP under section 4(2)(a) of the LSA that sufficient regard be given to the rights and liberties of individuals, specifically the right to an individual's information being kept private and confidential. However, the departure is justified because the proposed amendments ensure that the registry can adequately discharge its functions under the Act. In addition, further amendments will ensure that the registrar must, as far as practicable, protect the persons to whom the information relates from unjustified intrusion on their privacy.

Consistency with rights and liberties – capacity to consent (clause 66)

A further fundamental legislative principle is that legislation should not abrogate other rights, in the broadest sense of the word, from any source without sufficient justification.

The issue of capacity to consent arises within the dispensation mechanism found in Part 5, Division 4 of the Bill which allows the Childrens Court to determine that the consent of a parent or person with parental responsibility is not required to proceed with an application to alter the record of the child's sex or obtain a recognised details certificate. This raises concerns with respect to this principle.

The Bill provides that the Childrens Court may dispense with consent in limited circumstances, including where QCAT has made a declaration that the stated party does not have capacity to give consent for an acknowledgement of sex application or a combined application for the child; or a tribunal of another jurisdiction, a Queensland court or a non-Queensland court has made an order or other direction, however called, that the stated party does not have capacity to give consent for an acknowledgement of sex application or a combined application for the child; or the court is satisfied it is in the child's best interests to make the order (clause 66).

The dispensation of a parent's consent restricts a parent's role and responsibilities to jointly make decisions (with the other parent or person) about major long term issues relevant to their child's best interests. However, there is a 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.

The Bill includes a range of safeguards designed to limit the circumstances in which the consent of a parent or person with parental responsibility can be dispensed with. These include clauses that provide that:

- an application for dispensation can only be made to a court;
- a relevant parent or person with parental responsibility must be served a copy of the application for dispensation of consent which provides information about where and when the application is to be heard; and
- the opportunity for a person who is served with a copy of the application for dispensation of consent to challenge the application in court if they choose to do so.

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.

Offence provisions (clauses 5, 8, 87, 91, 94, 97, 108, 125, 126)

The Bill re-establishes a range of offences which exist in the existing Act. The offences relate to:

- Failure of a responsible person to notify of a birth (clause 5)
- Failure to apply to register a birth (clause 8)
- Failure of a civil partnership notary to provide notice of the making of a declaration (clause 87)
- Failure to apply to register a death (clause 91)
- Issuing a cause of death certificate where a doctor reasonably suspects that the doctor, or the doctor's spouse, may receive a benefit because of a person's death (clause 94)
- Failure to notify about disposal of a deceased person's body (clause 97)
- Failing to comply with notice given by the registrar to provide information relevant to an inquiry to ensure the register is correct (clause 108)
- Providing information that the person knows is false or misleading (clause 125)
- Unlawfully accessing a register or making, altering or deleting an entry in a register or otherwise interfering with a register (clause 126).

All offence provisions support the effective operation of the registry and are considered proportionate and reasonable. The maximum penalties to be imposed are consistent with current penalties.

Approval process for 'restricted persons' (clauses 166 and 171)

The requirement for a person in the chief executive's custody (except prisoners released on parole) (clause 166) or released prisoner subject to the DPSOA (clause 171) to seek permission prior to submitting an application to alter their sex, or request a recognised details certificate, may affect the rights and liberties of the person under section 4(3)(a) of the LS Act.

The requirement sufficiently defines the chief executive's discretionary powers by providing criteria that must be considered in decision-making.

This possible limitation on a person's rights and liberties must be evaluated in the context of the balance between the welfare and safety of the person, and their rehabilitation, care and treatment on the one hand, and the welfare and safety of others (including staff and the community), the need to ensure the good order and security of Queensland's correctional environment, as well the potential harm that may be caused to a victim of crime.

In these circumstances, the approvals process is considered to be justified.

Requiring a prisoner in custody or a released prisoner to request the chief executive's permission prior to submitting an application to alter their sex, or for a recognised details certificate, enables the chief executive to consider implications for the individual, victims, domestic and family violence considerations, safety and good order of the correctional environment, and assess whether the change is likely to be used for secondary gain or to further an unlawful activity or purpose.

The procedure for a prisoner in custody or a released prisoner to seek permission prior to submitting an application to alter their sex, or for a recognised details certificate, will be similar to the existing procedure for applying for a change of name. Where the decision maker's preliminary view is to not support the application, the decision maker must provide the prisoner with an opportunity to respond in writing, prior to a final decision being made. Prisoners are generally provided with 21 days to provide any additional information or submissions to the decision maker.

While there is no formal legislative review process for the decision, there is nothing preventing a person in custody or a released prisoner from making a subsequent application. There are also other avenues for a person to seek a review of the decision. This includes making a complaint under the AD Act or under the *Human Rights Act 2019* (HR Act). There is also no privative clause restricting a review under the *Judicial Review Act 1991*.

The chief executive of Queensland Corrective Services (QCS), or an appropriately qualified delegate under section 271 of the CSA, is the most appropriate person to undertake the balancing exercise to determine whether an approval should be granted.

If delegated, this will remain at a senior operational level, at Assistant Commissioner level or above.

As QCS is a public entity, the decision must also consider the individual's human rights in accordance with section 58 of the HR Act.

Definitions of 'prohibited name' and 'prohibited sex descriptor' (Dictionary, Schedule 2)

The Bill defines the terms 'prohibited name' and 'prohibited sex descriptor' to include a name or sex descriptor (respectively) that could not practically be established by repute or usage "for another reason".

This is a potential departure from the FLP that sufficient regard be given to the rights and liberties of individuals, specifically that legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LSA section 4(3)(a)).

However, this departure is justified because this limb of the definitions ensures that the registrar has sufficient flexibility and discretion to adequately discharge their functions under the Act. In addition, if a person is dissatisfied with a decision of the registrar that their selected name or sex descriptor is prohibited, they may apply QCAT for review.

Section 4(2) Legislative Standards Act 1992 – Whether legislation has sufficient regard to the institution of Parliament

Flexibility in the notification and application process (clauses 5, 9, 15, 23, 26, 29, 35, 36, 39, 41, 50, 52, 84, 92, 94, 97, 107, 110, 112, 159, and 161)

Under the existing BDMR Act, most notices and application forms to register a life event must be in the 'approved form' – i.e., a form approved by the chief executive or a delegate.

This means that where the BDMR Act specifies that something must be in the approved form, any online 'form' must be identical in substance and format to the hardcopy approved form. The requirements to apply 'in the approved form' or in writing creates operational limits to service delivery and innovation by preventing the registry from adapting the processes to an online framework in the most customer focussed and streamlined way.

The proposed amendments remove the requirements for applications to be made in writing or in the approved form and instead require them to be made in the form required by the registrar and in the approved way. The amendments provide more flexibility in the notification and application process to support more customer focussed processes, including expanding online applications and the use of digital verification services to verify a customer's identity.

This delegation of legislative power is a potential departure from the principle that sufficient regard be given to the institution of Parliament.

Giving the registrar maximum flexibility to alter forms ensures that legislation is not a barrier to new technologies. It also allows the registry to support efficient service delivery by enabling it to respond in a timely way to changes that may be required for applications and notifications related to registrable life events.

While the proposed amendments give the registrar flexibility as to the form notices and applications may take, transparency and accountability will be retained by requiring applications and notices to be given in the 'approved way'. An approved way for making an application or giving a notice means a way: approved by the registrar and notified on the department's website or the whole of government website.

Flexibility to prescribe matters by regulation (clauses 6, 7, 10, 15, 18, 20, 26, 34-37, 39, 41, 50, 52, 85, 86, 89, 93, 95, 104, 107, 110-113, 131 and Dictionary)

As the existing BDMR Act does, the Bill (clause 131) provides the Governor in Council may make regulations under the Bill, including to:

- impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation;
- prescribe information to be contained in a particular register;
- prescribe information that a court may consider when deciding or changing a child's name;
- prescribe fees; and
- provide for the registrar to waive payment of a fee or refund a fee paid.

Within the Bill, several clauses provide for matters to be prescribed by regulation, including fees (clauses 15, 18, 20, 26, 29, 35, 36, 39, 41, 50, 52, 107, 110 and 112), particulars of events (clauses 6, 7, 10, 34, 85, 86, 89, 93 and 95), information required (clause 37), documents required (clause 35), information that may not be included on a register or certificate (clauses 104 and 112), persons who may be 'developmentally informed practitioners' (clause 37), persons who may receive certain information (clauses 111 and 113), periods before which information in a register will be considered to be 'historical information' (Dictionary) and names that are prohibited (Dictionary).

This is a potential departure from the principle that sufficient regard be given to the institution of Parliament because a regulation is made without the same level of Parliamentary scrutiny as a Bill.

However, any departure from this FLP is justified in order to provide flexibility for the registrar to respond to changing circumstances. Prescribing matters by regulation also provides certainty and facilitates transparency in decision-making as the regulation is readily accessible by the public.

Consultation

Formal public consultation on the review of the BDMR Act occurred throughout 2018 and 2019. This included the release of three discussion papers which examined:

- how Queensland life events registration services can improve legal recognition of the trans and gender diverse community and their families;

- the functions and powers of the registrar and the disclosure and use of information; and
- the registration of life events including barriers to registration, information requirements, certificates and electronic registration/online lodgements.

Feedback was received from a range of stakeholders, including LGBTIQA+, advocacy, legal and health organisations; as well as responses to an online survey.

In relation to the legal recognition of the trans and gender diverse community, over 500 submissions and 6,500 online survey responses were received. While a significant number of these were critical of reforms in this area, key LGBTIQA+, legal and health bodies strongly supported amendments to improve legal recognition of trans and gender diverse people.

Consultation during the drafting of the Bill was largely informed by two roundtables with key stakeholders held in October 2021 and May 2022. The following organisations were represented at either one or both roundtables:

- Rainbow Families Queensland
- Australian Transgender Support Association of Queensland
- Intersex Human Rights Australia
- Equality Australia
- Queensland Council for LGBTI Health
- Transcend
- Queensland Action Group for LGBTIQ students
- Trans Health Australia
- LGBTI Legal Service
- Rainbow Labor
- Intersex Peer Support Australia
- Pride in Law
- QHRC
- PFLAG
- AusPATH
- Bar Association of Queensland
- Queensland Law Society
- Queensland Children's Hospital Gender Service
- Gar'ban'djee'lum Network
- Queensland Family and Child Commission
- Open Doors Youth Service

Consultation also occurred with a range of legal, health, advocacy and professional organisations on a draft Bill.

An overview of the reforms was also provided to representatives of Fair Go for Queensland Women and IWD Brisbane Meanjin.

Consistency with legislation of other jurisdictions

The ACT (since April 2014), South Australia (since May 2017), the Northern Territory (since December 2018), Tasmania (since September 2019) and Victoria (since May 2020) have all removed the legislative requirement for a person to have undergone a reassignment procedure to change their sex on their birth registration.

The ACT, South Australia and Northern Territory have replaced the surgery requirement with a requirement that a person provide a statement from a doctor or psychologist stating that the person has undergone sufficient clinical treatment, which may include counselling.

Tasmania and Victoria, the last two jurisdictions to introduce reforms in this area, have adopted more progressive models which rely on self-declaration (i.e. enabling a person to update their birth registration based on their self-declared identity). Victoria also requires an application to be supported by a statement, from a person who has known the applicant for at least 12 months, that states the person providing the supporting statement believes that the applicant makes the application in good faith and supports the application.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the short title of the Act will be the *Births, Deaths and Marriages Registration Act 2022*.

Clause 2 provides for the Act to commence on a date set by proclamation.

Clause 3 sets out the objects of the Act which are to provide for:

- collecting and maintaining, in registers kept by the registrar, information about births, deaths, civil partnerships, marriages, adoptions, changes of name, alterations of sex, transfers of parentage and any other matter the registrar is required to keep information about under another Act;
- issuing documents acknowledging the name and sex of a person who is resident in Queensland and was born outside of Queensland;
- providing access, where appropriate, to information kept in a register or collected and maintained by the registrar;
- issuing certified and uncertified information from a register; and
- collecting and disseminating statistical information.

Clause 4 provides that definitions for particular terms used in the Act are in the dictionary in schedule 2.

Part 2 Births

Clause 5 provides for notifying the registrar when a child is born in Queensland. A responsible person must give the registrar notice within 2 working days after the birth. A responsible person is defined in the clause, including in the first instance, as the person in charge of the hospital where the child was born or the hospital where the child was brought within 24 hours after birth. If neither of these events occur, responsibility moves on to another person as set out in the clause.

Clause 6 provides that a birth must be registered in Queensland if the child is born in the State or if a Queensland court finds the child was born in the State and makes an order directing the birth be registered. A stillborn child born after 30 April 1989 is captured by this clause. This is the date of commencement of the *Registration of Births, Deaths and Marriages Act Amendment Act 1989*, which provided for the registration of stillbirths.

Clause 7 sets out the circumstances in which births may be registered in Queensland. Registration must not take place where a birth has been registered in another State or country. This tries to avoid dual registrations.

Clause 7(1) provides for the registration of a child born in an aircraft or vessel outside Queensland and who was not first taken to another place (which does not include an aircraft or vessel) outside Queensland between their birth and arrival in the State. For example, the clause would allow for the registration of birth in Queensland of a child

born on a ship outside Queensland and flown by helicopter from that ship to the State for medical care.

Under clause 7(2) a child born outside Australia may be registered if the child's parents intend to live in Queensland. The child must be resident in Queensland and no more than 18 months old when the application for registration is made.

Clause 7(3) deals with the situation in which a non-Queensland court finds that a child was born in Queensland and makes an order directing the birth be registered.

Clause 7(5) allows for the registration of a stillborn child born in Queensland before 1 May 1989 if the registrar is able to register the death of that child at the same time.

Clause 8 sets out the requirements for registering the birth of a child in Queensland. Both parents or, in the case of a child found abandoned as a newborn, the person taking care of the child, must apply to register the birth. However, clause 8(2) allows the registrar to accept an application completed by only one parent in certain circumstances, including where the registrar is satisfied:

- the applicant is unable or unwilling to give information as to the other parent's identity or whereabouts; or
- the other parent is unable, unwilling or unlikely to sign the application; or
- where it would cause the applicant unnecessary distress to have the other parent sign, for example, because of a domestic violence situation.

The clause also provides for the registrar to accept or require an application to register a birth from other persons in certain circumstances. This will ensure the registrar is able to set in place the birth registration process despite not receiving an application to register the birth under subclause (1) or (2).

Clause 9 details how to apply have the birth of a child registered. An application must be in the form required by the registrar and made in an approved way. An application must be given to the registrar within 60 days after the birth or, for a child born with a variation of sex characteristics, within 180 days after the birth. However, the registrar has the discretion to accept an application outside those timeframes if satisfied the birth happened.

If a birth is being registered under an order of a court, the application must be accompanied by a copy of the order.

Clause 10 sets out how a birth is registered by the inclusion of information in the register of births.

If the registration is directed by a court, the registrar registers the birth by entering in the register the particulars about the birth stated in the court's order and any other information the registrar considers appropriate to enter.

For another birth, the registrar registers the birth by entering in the register the particulars prescribed by regulation and any other information the registrar considers appropriate to enter.

Subclause (2) makes clear that the registrar may still register the birth even though some or all of the particulars are not available.

Clause 11 deals with registration of parentage details upon an application to register the birth of a child or a later application to include information about the identity of a child's parent in the register of births.

Clause 11(2) provides that the registrar must not include parentage details on the birth register unless the person signed the application for registration and the registrar is satisfied of parentage, or if the registrar is entitled by law to presume parentage.

Under clause 11(3) the registrar can include parentage details of a parent who did not sign an application in particular circumstances. These circumstances are where the registrar is satisfied the parent did not sign because they are dead, their whereabouts are unknown or they are, for another justifiable reason, unable to sign; the registrar is satisfied the parent does not dispute the correctness of the information; or the registrar is entitled by law to presume parentage.

Clause 11(4) provides that the registrar may require a person who claims someone is a parent of a child to prove it by providing a copy of a court finding mentioned in the *Status of Children Act 1978*, section 26.

Clause 12 sets out how parentage details may be registered. Each of a child's parents may be registered as a child's 'mother', 'father' or 'parent'. Only up to two people may be registered as a child's parents.

Clause 13 provides that a court, on its own initiative or on application by an interested person, may order the registrar to register the birth of a child born in Queensland or to include or correct particulars about a child's birth, except in relation to the child's name, in the register of births. For particulars about a child's parentage, the relevant court is the Supreme Court; while for all other particulars about the birth, the relevant court is the District Court.

Clause 14 requires that a birth registration application include a name for the child (other than for a stillborn child). If only one name is given, that name will be registered as the child's surname. If no name is given, the name given is a prohibited name or the parents cannot agree on the child's name, the registrar may choose a name for the child (other than for a stillborn child if the applicants have indicated they do not wish to name the child, including by not putting a name in the application) and enter it in the register.

Clause 14(7) requires that before entering a name in the register for a child under this clause, the registrar must give the applicants at least 14 days written notice of the registrar's intention to do so.

The clause also provides for either parent to apply to a Magistrates Court to decide a child's name, if the parents can not agree on a name; and for the Magistrates Court to choose a name that is in the child's best interests and order that the name be entered in the register of births.

Clause 15 details the application process to change a child's first name within one year of the child's birth. The application can be made by:

- a child's parents;
- one of the parents in defined circumstances;
- a person, other than a parent, as prescribed in Schedule 1, Part 1; or
- two or more persons, as prescribed in Schedule 1, Part 2.

An application must be in the form required by the registrar and made in an approved way and be accompanied by the prescribed fee. An application under this clause may also be made only once and within a year of the child's birth.

The registrar may register or refuse to register the change of name; and must refuse to register a change of a child's first name to a prohibited name.

Clause 16 allows a Magistrates Court to make an order approving a change of first name for a child whose birth or adoption is registered in Queensland. The application to the court for a name change may be made by an eligible person for the child, as defined in Schedule 2.

The Court may make the order if:

- the name is not a prohibited name; and
- the court is satisfied that the change is in the child's best interests.

Part 3 Adoptions and transfers of parentage

Division 1 Preliminary

Clause 17 inserts definitions for the terms 'relevant parentage register' and 'State' for the purposes of part 3.

Division 2 Registrar receives initial notice or initial order

Clause 18 sets out the circumstances in which division 2 applies.

These circumstances are where:

- the registrar receives under the *Adoption Act 2009*, a notice of the making of a final adoption order or to record an adoption granted in another country (clause 18(1));
- the registrar receives an order of another jurisdiction that corresponds to a final adoption order, or a notice of the making of an order corresponding to a final adoption order from another State, relating to a person whose birth or previous adoption is registered in Queensland (clause 18(2));
- a parentage order under the *Surrogacy Act 2010* (or a corresponding order of another Australian jurisdiction) is made in relation to a child whose birth is registered in Queensland and the registrar receives an application to register the order, accompanied by the prescribed fee and an original copy of the order (clause 18(3)); or
- a cultural recognition order is made under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* in relation to

a person whose birth is registered in Queensland and the registrar receives a copy of the order from the commissioner under that Act (clause 18(4)).

Clause 19 outlines what the registrar must do when they receive an order or notice mentioned in clause 18.

Clause 19(1) provides the registrar must register the event to which the notice or order relates by incorporating the notice or order into the relevant parentage register for the event.

Clause 19(2) clarifies that where a parentage order under the *Surrogacy Act 2010* (or a corresponding order of another Australian jurisdiction) is made in relation to a child whose birth is registered in Queensland, the registrar must also incorporate into the parentage order register information from the application mentioned in clause 18(3).

Clause 19(3) provides the registrar must close the person's birth entry and any previous entry for the person in the adopted children register by noting on that entry a reference to the registration mentioned in clause 19(1) and noting on the relevant parentage register for the event a reference to the closed entry or entries.

Division 3 Registrar receives discharge notice or discharge order

Clause 20 sets out the circumstances in which division 3 applies.

These circumstances include where:

- the registrar receives, under the *Adoption Act 2009*, a notice of the making of an order of the Supreme Court discharging a final adoption order (clause 20(1));
- the registrar receives an order of another jurisdiction, or a notice of the making of an order from another State, that corresponds to an order discharging a final adoption order (clause 20(2)), relating to a person with an entry in the adopted children register;
- the registrar has registered a parentage order under the *Surrogacy Act 2010* (or a corresponding order of another Australian jurisdiction) in relation to a person, an order is made discharging the parentage order, and the registrar receives an application to register the discharge of the parentage order accompanied by the prescribed fee and an original copy of the discharge order (clause 20(3)); or
- the registrar has registered a cultural recognition order under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* in relation to a person, an order is made discharging the cultural recognition order, and the registrar receives an application to register the discharge of the cultural recognition order accompanied by an original copy of the discharge order (clause 20(4)).

Clause 21 outlines what the registrar must do when they receive a discharge order or discharge notice mentioned in clause 20.

Clause 21(1) provides the registrar must re-register the person's birth by making a new entry in the births register that includes:

- the person's names as declared in the discharge order or discharge notice;

- all of the information that was in the entry closed under clause 19(3) other than information about the making or discharge of the order or notice referred to in clause 18;
- a note that the new entry was made under this clause; and
- a reference to the entry closed under clause 21(3).

Clause 21(2) provides the registrar must note on the entry closed under clause 19(3) that the person's birth has been re-registered under clause 21 and a reference to the new entry made under clause 21(1).

Clause 21(3) provides the registrar must close the entry in the relevant parentage register that was made to register the order or notice referred to in clause 18 by incorporating in the entry the discharge notice or discharge order, noting on the entry that the order or notice referred to in clause 18 has been discharged and that the person's birth has been re-registered under clause 21 and a reference to the new entry made under clause 21(1).

Clause 21(4) clarifies that where the registrar receives a discharge order discharging a parentage order registered under clause 19, the registrar must also incorporate into the parentage order register information from the application mentioned in clause 20(3).

Clause 21(5) clarifies that where the registrar receives an original copy of a discharge order discharging a cultural recognition order registered under clause 19, the registrar must also incorporate into the cultural recognition register information from the application mentioned in clause 20(4).

Clause 21(6) provides the registrar may make any other notations in the register that the registrar considers necessary to ensure the register includes the correct information for the person.

Division 4 Other provisions

Clause 22 applies if the registrar receives, under the *Adoption Act 2009*, a notice of a final adoption order or an order discharging a final adoption order and knows or suspects there is an entry for the adopted person's birth or adoption in a register kept under a law of another State (clause 22(1)).

Clause 22(2) provides the registrar must give notice of the making of the order to the appropriate officer in that State with responsibility for keeping the register.

Clause 23 applies if a person applies to the registrar for requested information or a certificate about an entry for the person in the birth register and is at least 18 years old at the time of the making of the application; and a parentage order in relation to the person was registered in the parentage order register under clause 19 (even if the entry was later closed under clause 21); and the registrar gives the requested information or issues the certificate to the person.

Clause 23(2) provides the registrar must attach an addendum to the information or certificate stating that further information is available about the entry in the birth register.

Clause 23(3) provides that the registrar must not issue the addendum to any person other than the person mentioned in clause 23(1).

Part 4 Change of name

Division 1 Preliminary

Clause 24 inserts definitions for the terms 'adult person' and 'child' for the purposes of part 4.

Clause 25 provides a person's name may be changed through registration under part 4, unless the change has been registered under a corresponding law (clause 25(1)).

Clause 25 further provides it is no longer possible in Queensland to change a person's name by deed poll (clause 25(2)); and that part 4 does not prevent the change of a person's name by repute or usage (clause 25(3)).

Division 2 Change of adult person's name

Clause 26 provides an adult person may apply to register a change of the person's name only if the person's birth or adoption was registered in Queensland; or the person was born outside Australia, and their birth was not registered in another State, and the person has been ordinarily resident in Queensland for at least 12 consecutive months immediately before making the application (clause 26(1)).

Clause 26(2) provides despite any restriction in clause 26(1), the registrar may accept an application to register a change of an adult person's name if satisfied there are exceptional circumstances for accepting the application.

Clause 26(3) provides despite the restriction requiring a person born outside Australia to have been ordinarily resident in Queensland for at least 12 consecutive months immediately before making an application, the registrar may accept an application to register a change of an adult's name if the application relates to a marriage or divorce of the person, or if satisfied the application is for the purpose of protecting the person, a child of the person or another person associated with the person.

Clause 26(4) provides an application made under clause 26 must be in the form required by the registrar and made in an approved way and be accompanied by the fee prescribed by regulation.

Clause 27 provides the registrar must not approve an application to register a change of name for an adult person if the registrar is aware that three or more changes of the person's name have been registered in Queensland or another State, or the person has had a change of name registered in Queensland or another State in the 12 months immediately before the person makes the application (clause 27(1)).

Clause 27(2) clarifies that for the purpose of counting the previous registrations of changes of an adult person's name under clause 27(1), a change of name by the person when the person was a child is not to be counted.

Clause 27(3) provides that clause 27(1) does not apply if:

- the application is made at the same time as an acknowledgment of sex application under Part 5 in relation to the adult person or the registrar is otherwise satisfied the change of name is an affirmation or expression of the person's sex;
- the application relates to the marriage or divorce of the adult person;
- the registrar is satisfied the application is for the purpose of protecting the adult person, a child of the adult person or another person associated with the adult person; or
- the registrar is satisfied there are exceptional reasons for approving the application.

Division 3 Change of eligible child's name

Clause 28 defines the term 'eligible child' for the purposes of division 3.

Clause 28(1) provides a child is an eligible child if:

- the child's birth or adoption was registered in Queensland; or
- both:
    - the child was born outside Australia and the child's birth was not registered in another State; and
    - either the child has been ordinarily resident in Queensland for at least 12 consecutive months before the application is made, or the application is made within 12 months of the child's birth and at least one person who makes the application has been ordinarily resident in Queensland for at least 12 consecutive months before the application is made.

Clause 28(2) provides despite any restriction in clause 28(1), a child is an eligible child for an application to register a change of the child's name if the registrar is satisfied there are exceptional circumstances for accepting the application.

Clause 28(3) provides despite the restriction requiring a child born outside Australia to have been, or a person making the application to have been, ordinarily resident in Queensland for at least 12 consecutive months immediately before the application is made, the registrar may accept an application to register a change of the child's name if the application relates to a marriage or divorce of at least one of the applicants, the registrar is satisfied the application is for the purpose of protecting the child or a person associated with the child, or a non-Queensland court has directed the registrar to accept the application.

Clause 29 sets out the person or persons, and the circumstances in which the person or persons, may apply to register a change of an eligible child's name.

Clause 29(1) provides an eligible child's parents may apply to register a change of the child's name.

Clause 29(2) provides that one of the child's parents may apply to register a change of the eligible child's name if:

- the parent is the only parent of the child entered in the relevant child register or shown on the child's birth certificate;
- the other parent is dead and there is no other person with parental responsibility for the child;

- the parent has sole parental responsibility to make decisions about major long-term issues for the child or the child's name, under a parenting order made under the *Family Law Act 1975* (Cwlth); or
- a Magistrates Court approves the change of name under clause 30.

Clause 29(3) provides a person may apply to register a change of an eligible child's name, and clause 29(4) provides two or more persons may apply to register a change of an eligible child's name, if certain circumstances apply to the person or persons. These circumstances are set out in Schedule 1, Part 1 and Part 2, respectively.

Clause 29(5) provides an application made under clause 29 must be in the form required by the registrar and made in the approved way and be accompanied by the fee prescribed by regulation.

Clause 30 provides that a Magistrates Court may, on application by an eligible person for an eligible child, make an order approving a proposed change of name for the child if the name is not a prohibited name and the court is satisfied the change is in the child's best interests.

Clause 31 provides the registrar must not approve an application to register the change of the name of an eligible child who is 12 years old or more unless the registrar is satisfied the child consents to the change of name or is unable to understand the meaning and implications of the change of name. However, this clause does not apply if a Magistrates Court has approved the change of name.

Clause 32 provides the registrar must not approve an application to register the change of a child's first name if the registrar is aware a change of name, other than a change of name under clause 15, has already been registered for the child in Queensland or another State; or register the change of the child's name, other than the child's first name, more than once in a one year period (clause 32(1)).

Clause 32(2) provides that clause 32(1) does not apply if:
- the application is made at the same time as an acknowledgment of sex application under Part 5 in relation to the child or the registrar is otherwise satisfied the change of name is an affirmation or expression of the child's sex;
- the application relates to a marriage or divorce of at least one of the applicants;
- the registrar is satisfied the application is for the purpose of protecting the child or a person associated with the child;
- the registrar is satisfied there are exceptional circumstances for approving the application; or
- a Magistrates Court or non-Queensland court has approved the change of name.

Division 4 General

Clause 33 provides before registering the change of a person's name, the registrar may require:
- evidence of the identity, age and residence of the person; and evidence that the change of name is not sought for a fraudulent or other improper purpose;
- if the person may only make the application with written permission under the *Corrective Services Act 2006*, section 27; the *Dangerous Prisoners (Sexual*

Offenders) Act 2003, section 43AB; or the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 74A – a copy of the written permission; and

- other information the registrar believes is relevant to the application.

Clause 33(2) provides the registrar may register or refuse to register a change of the person's name.

Clause 33(3) provides the registrar must refuse to register a change of name if the registrar is not satisfied of the identity of the applicant (or each of the applicants) or the identity of the person whose change of name is to be registered; or if the registrar reasonably suspects that the change of name is sought for a fraudulent or other improper purpose; or if the proposed name is a prohibited name.

Clause 33(4) provides that if an application to register a change of a person's name states only one name for the person, the name is taken to be the person's surname.

Clause 33(5) provides if the change of name of a person is being registered under an order of a court directing the change of name to be registered, the application must be accompanied by a copy of the order.

Clause 33(6) provides the registrar must notify the registering authority under a corresponding law of a change of name under this Act.

Clause 34 outlines how the registrar registers the change of a person's name.

Clause 34(1) provides that for a change of name ordered by a court, the registrar enters in the change of name register the particulars about the change of name contained in the court's order and any other information the registrar considers appropriate to enter. For another change of name, the registrar enters in the change of name register the particulars prescribed by regulation and any other information the registrar considers appropriate to enter.

Clause 34(2) provides that the registrar may register the change of a person's name even though some or all of the prescribed particulars for the change are not available to the registrar.

Clause 34(3) provides if the registrar registers a change of name of a person whose birth or adoption was registered in the Queensland, the registrar must also note the changed name in the relevant child register (if the person requests the change be noted in the relevant child register) or, otherwise, note in the relevant child register that a change of name has been entered in the change of name register.

Clause 34(4) provides the registrar must note the change of the person's name on any previous entry for the person in the change of name register.

Clause 35 applies if a person's birth or adoption was registered in Queensland and the person's name has been changed under the law of another State or other legal process (clause 35(1)).

Clause 35(2) provides an adult person may apply to the registrar to note the change of the person's name.

Clause 35(3) provides a child's parents may apply to the registrar to note the change of the child's name.

Clause 35(4) provides that one of the child's parents may apply to note the change of the child's name if:

- the parent is the only parent of the child entered in the relevant child register;
- the other parent is dead and there is no other person with parental responsibility for the child;
- the parent has sole parental responsibility to make decisions about major long-term issues for the child or the child's name, under a parenting order made under the *Family Law Act 1975* (Cwlth);
- a Magistrates Court approves the change of name under clause 30; or
- a Queensland court or non-Queensland court has ordered the change of name.

Clause 35(5) provides a person may apply to note the change of the child's name, if certain circumstances apply to the person; and clause 35(6) provides two or more persons may apply to note the change of the child's name, if certain circumstances apply to the persons. These circumstances are set out in Schedule 1, Part 1 and Part 2, respectively.

Clause 35(7) provides an application made under clause 35 must be in the form required by the registrar and made in an approved way; and be accompanied by a document prescribed by regulation that evidences that the person's name has been changed under the law of another State or other legal process and the fee prescribed by regulation.

Clause 35(8) provides before noting the change of a person's name, the registrar may require evidence of the identity and age the person; evidence that the change of name is not sought for a fraudulent or other improper purpose; and any other information the registrar believes is relevant to the application.

Clause 35(9) provides the registrar must not approve an application to note the change of a person's name if:

- the registrar is not satisfied of the identity of the applicant (or each of the applicants) or the identity of the person whose change of name is to be noted; or
- the registrar reasonably suspects that the change of name is sought for a fraudulent or other improper purpose; or
- the name is a prohibited name.

Clause 35(10) provides if an application to note a person's change of name states only one name for the person, the name is taken to be the person's surname.

Clause 36 applies if the registrar registers the change of a person's name under clause 34 or notes the change of a person's name under clause 35.

Clause 36(2) provides if the person is an adult person, the person may apply to re-register the person's relevant event (defined by schedule 2 to mean, for a person, the most recent of birth, adoption or change of parentage for the person).

Clause 36(3) provides if the person is a child, the person or persons who applied under clause 29 to register the change of the child's name or under clause 35 to note the change of the child's name, may apply to re-register the child's relevant event.

Clause 36(4) provides an application made under clause 36 must be in the form required by the registrar and made in the approved way and be accompanied by the fee prescribed by regulation.

Clause 36(5) provides the registrar may re-register the person's relevant event by making a new entry in the register that includes all the information that was in the entry for the person's relevant event (the closed entry) in a new entry in the relevant child register (other than information that has been superseded) and a note that the new entry was made under clause 36; and noting on the closed entry that the relevant event has been re-registered under clause 36 and a reference to the new entry made.

Part 5 Acknowledgement of sex

Division 1 Interpretation

Clause 37 inserts definitions for the terms 'assessment' and 'developmentally informed practitioner', which are key terms used in part 5.

Division 2 Persons whose birth or adoption is registered in Queensland

Subdivision 1 Preliminary

Clause 38 states that this division applies to a person whose birth or adoption is registered in Queensland.

Subdivision 2 Applications to registrar

Clause 39 provides that a person aged 16 years or more may apply to the registrar to alter the record of sex of the person in the relevant child register (defined by schedule 2 to mean, for a person, whichever of the birth register, adopted children register, parentage order register or cultural recognition register has an open entry for the person). An application must be in the form required by the registrar and made in an approved way.

In particular, an application must nominate a sex descriptor and be accompanied by a declaration by the person that the person identifies as the sex stated in the application; and lives, or seeks to live, as a person identified by that sex.

The application must also be accompanied by a supporting statement. A supporting statement is a statement made by a person who is at least 18 years old and has known the person making the application for at least 12 months. The supporting statement must state that the person believes that the person making the application makes the application in good faith; and that the person providing the statement supports the application.

In addition, an application must be accompanied by:

- if the person may only make the application with written permission under the *Corrective Services Act 2006*, section 27AA—a copy of the written permission;
- if the person may only make the application with written permission under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43ABA—a copy of the written permission;
- the fee prescribed by regulation; and
- any other documents or information required by the registrar.

Clause 39(4) enables a person who has made an application under this clause to concurrently apply to register a change of the person's first name in the change of name register. The relevant provisions of Part 4 dealing with how a change of name is registered apply to an application for a change of name under this clause.

Clause 40 applies to a child under the age of 16 and sets out who may apply to alter the record of a child in the relevant child register.

Clause 40(2) provides the child's parents may apply to the registrar. Clause 40(3) provides that 1 parent may apply in the following scenarios —

- the parent is the only parent of the child entered in the relevant child register or shown on the child's birth certificate; or
- the other parent is dead and there is no other person with parental responsibility for the child; or
- the parent has sole parental responsibility to make decisions about major long-term issues for the child under a parenting order made under the *Family Law Act 1975* (Cwlth), part VII; or
- the parent has obtained an order from the Childrens Court under clause 44, or from another Queensland court or a non-Queensland court, directing the registrar to accept the application; or
- the parent has obtained a dispensation order.

Additionally, clauses 40(4) and (5) provide a person or two or more persons, other than a child's parents, may also apply in particular circumstances. These circumstances are set out in Schedule 1, Part 1 and Part 2, respectively.

Clause 40(6) enables a child to apply to alter their record of sex on the relevant child register where the child has obtained an order from the Childrens Court directing the registrar to accept the application.

Clause 41 provides that an application made under clause 40 must be in the form required by the registrar and made in an approved way; nominate a sex descriptor; and be accompanied by the fee prescribed by regulation and any other documents or information required by the registrar.

Clause 41(2) provides that where a dispensation order has been made in relation to the application, the application must include a statement that the applicant believes on reasonable grounds that alteration of the record of sex of the child is in the child's best interests. The application must also be accompanied by a copy of the dispensation order; and an assessment of the child by a developmentally informed practitioner.

Clause 41(3) provides that if a court order, other than a dispensation order, has been made in relation to the application, the application must be accompanied by a copy of that court order.

Clause 41(4) provides that if the application is not an application to which a court order, including a dispensation order, was made and the application is made by a person other than the child, the application must include:

- a statement that the applicant, or each of the applicants, believes on reasonable grounds that the alteration of the record of sex of the child is in the child's best interests; and
- an assessment of the child by a developmentally informed practitioner.

Clause 42 provides for the scenarios where an application to register a change of the child's first name can be made at the same time. The relevant provisions of Part 4 dealing with how a change of name is registered apply to an application for a change of name under this clause.

Clauses 42(1) and (2) provide that one or more persons, other than a child, may concurrently apply to register a change of the child's first name in the change of name register if an application has been made under clause 40 and either:

- that application did not require an order of the Childrens Court or another Queensland court or a non-Queensland court to direct the registrar to accept; or
- a dispensation order, that included an order about the changing the child's name, has been made in relation to the application.

Additionally, clauses 42(3) and (4) provide that one or more persons, other than a child, may concurrently apply to register a change of the child's first name in the change of name register if an application has been made under clause 40 and either:

- the application is an application the Childrens Court directed the registrar to accept under clause 44(2) and the court also made an order under clause 44(7) approving a change of name for the child; or
- another Queensland court or a non-Queensland court made an order directing the registrar to accept the application and the court also made an order approving a change of name for the child.

Clause 42(5) provides a child who applies to the registrar under clause 40 may concurrently apply to register a change of the child's first name in the change of name register, where the Childrens Court has made an order approving the change of name under clause 45(10).

An application made under clause 42(4) or (5) must be accompanied by a copy of the court order.

Clause 43 applies in relation to applications made to the registrar to alter the record of sex of a person in the relevant child register under clause 39 or 40.

The registrar may alter, or refuse to alter, the record of sex of the person in the relevant child register.

The registrar must refuse to alter the record of sex if:

- the alteration would result in the recorded sex being a prohibited sex descriptor; or
- the registrar reasonably suspects that the alteration is sought for a fraudulent or other improper purpose; or
- a record of the person's sex has been altered under this part within the 12 months immediately preceding the day when the application is made.

Additionally, clause 43(4) provides that the registrar alters the record of sex of the person by re-registering the person's relevant event. Clause 43(5) sets out how the registrar re-registers the event.

Subdivision 3 Applications to Childrens Court

Clause 44 applies if the person is a child under 16 years.

Clause 44(2) provides that on application by an eligible person for the child, the Childrens Court may make an order directing the registrar to accept an application to alter the record of sex of the child in the relevant child register.

Clause 44(3) requires that an application made under this clause be accompanied by an assessment of the child by a developmentally informed practitioner.

Clause 44(4) provides that the Childrens Court must make the order if the court is satisfied it is in the child's best interests to make the order.

Clause 44(5) provides that in deciding whether making the order is in the child's best interests, the matters to which the Childrens Court may have regard include the following:

- the assessment of the child;
- the views of the child, however expressed;
- whether the child is sufficiently mature to understand the meaning and legal implications of the alteration of the record of sex of the child.

Clause 44(6) provides that an eligible person for the child who makes an application under this clause may also concurrently apply to the court for approval of a proposed change of first name for the child.

Clause 44(7) makes clear that the Childrens Court may make an order approving the proposed change of first name for the child if the name is not a prohibited name; and the court is satisfied the change is in the child's best interests.

Clause 45 applies if the person is a child of at least 12 years but less than 16 years; and each parent of, or person with parental responsibility for, the child does not support an alteration of the record of sex of the child.

Clause 45(2) provides that on application by the child, the Childrens Court may make an order directing the registrar to accept an application to alter the record of sex of the child in the relevant child register.

Clause 45(3) requires that an application made under this clause include the following statements by the child:

- that the child is aware that, unless the Childrens Court decides otherwise under clause 46(2), a copy of the application must be served on the respondents;
- that the child is aware the child may make submissions to the Childrens Court under clause 46(5).

Clause 45(4) provides that the application must be accompanied by an assessment of the child by a developmentally informed practitioner.

Clause 45(5) provides that each parent of the child or person with parental responsibility for the child is a respondent to the application.

Clause 45(6) requires the child to serve a copy of the application on each of the respondents.

Clause 45(7) provides that the Childrens Court must make the order if the court is satisfied it is in the child's best interests to make the order.

Clause 45(8) provides that in deciding whether making the order is in the child's best interests, the matters to which the Childrens Court may have regard include the following:

- the assessment of the child by a developmentally informed practitioner;
- the views of the child, however expressed; and
- whether the child is sufficiently mature to understand the meaning and legal implications of the alteration of the record of sex of the child.

Clause 45(9) provides that a child who makes an application under this clause may also concurrently apply to the court for approval of a proposed change of first name for the child.

Clause 45(10) provides that the Childrens Court may make an order approving the proposed change of first name for the child if the name is not a prohibited name; and the court is satisfied the change is in the child's best interests.

Clause 46 applies only when a child has made an application under clause 45. Clause 46(2) provides that the child may also apply to the Childrens Court for an order dispensing with the requirement to serve a copy of the application on one or more of the respondents.

Under clause 46(3), the Childrens Court must not make an order dispensing with the requirement to serve one or more of the respondents unless the court is satisfied that the requirement could reasonably be expected to adversely affect the child.

Clause 46(4) clarifies that a child is not adversely affected only because one or more of the respondents does not support the alteration of the record of sex of the child; and that lack of support causes discomfort to the child.

Clause 46(5) provides that the child may make submissions to the Childrens Court on whether the court should dispense with the requirement to serve a copy of the application on one or more of the respondents. If the child makes submissions, the Childrens Court must, after considering the submissions, decide whether the

requirement to serve one or more of the respondents could reasonably be expected to adversely affect the child.

Clause 46(7) provides that if the Childrens Court decides that the child could not reasonably be expected to be adversely affected by the requirement, the court must give the child a written notice stating:

- the reasons for the court's decision;
- that the child may, in writing, withdraw the application before the end of a stated period of at least 28 days after the day the notice is given; and
- that the child may appeal against the court's decision (under clause 78(2)) within 28 days after the decision is made.

Subdivision 4 Effect of alteration of record of sex

Clause 47 provides that if the record of a person's sex in the relevant child register is altered under this division, the person is a person of the sex as altered for the purposes of, but subject to, a law of the State.

Clause 47(2) and (3) make clear that a person who has an entitlement under a will; or under a trust; or otherwise by operation of law, does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because the record of the person's sex has been altered in the relevant child register.

Division 3 Queensland residents born elsewhere

Subdivision 1 Preliminary

Clause 48 provides that division 3 applies in relation to a person who was born outside of Queensland; and has been ordinarily resident in Queensland for at least 12 consecutive months immediately before the person makes an application, or an application is made on behalf of the person, under this division.

Clause 49 defines 'recognised details certificate' as a document that acknowledges the person's name and sex.

Subdivision 2 Applications to registrar

Clause 50 provides that a person aged 16 years or more may apply to the registrar for a recognised details certificate for the person. An application must be in the form required by the registrar and made in an approved way.

Consistent with the alteration of sex application process, an application for a recognised details certificate must nominate a sex descriptor; and be accompanied by a declaration by the person that the person identifies as the sex stated in the application and lives, or seeks to live, as a person identified by that sex.

The application must also be accompanied by a supporting statement. A supporting statement is a statement made by a person who is at least 18 years old and has known the person making the application for at least 12 months. The supporting statement must

state that the person believes that the person making the application makes the application in good faith; and that the person providing the statement supports the application.

In addition, an application must be accompanied by:
- evidence of the person's name and residency
- if the person may only make the application with written permission under the *Corrective Services Act 2006*, section 27AA—a copy of the written permission;
- if the person may only make the application with written permission under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43ABA—a copy of the written permission;
- the fee prescribed by regulation; and
- any other documents or information required by the registrar.

Clause 50(4) provides that a person who makes an application under this clause other than a person who was born in another State, may apply at the same time to register a change of the person's first name in the change of name register. The relevant provisions of Part 4 dealing with how a change of name is registered apply to an application for a change of name under this clause.

Clause 51 sets out who may apply for a recognised details certificate for a child under 16.

Clause 51(2) provides that the child's parents may apply. Clause 51(3) provides that one parent may apply if:
- the parent is the only parent of the child named in a register kept under a corresponding law or the law of any place outside Australia; or
- the other parent is dead and there is no other person with parental responsibility for the child; or
- the parent has sole parental responsibility to make decisions about major long-term issues for the child under a parenting order made under the *Family Law Act 1975* (Cwlth), part VII; or
- the parent has obtained an order from the Childrens Court under clause 55, or from another Queensland court or a non-Queensland court, directing the registrar to accept the application; or
- the parent has obtained a dispensation order.

Additionally, clauses 51(4) and 51(5) provide a person or two or more persons, other than a child's parents, may also apply in particular circumstances. These circumstances are set out in Schedule 1, Part 1 and Part 2, respectively.

Clause 51(6) enables a child to apply for a recognised details certificate for the child where the child has obtained an order from the Childrens Court directing the registrar to accept the application.

Clause 52 provides that an application made under clause 51 must be in the form required by the registrar and made in an approved way. The application must also nominate a sex descriptor; and be accompanied by the fee prescribed by regulation and any other documents or information required by the registrar.

Clause 52(2) provides that where a dispensation order has been made in relation to the application, the application must include a statement that the applicant believes on reasonable grounds that the issue of a recognised details certificate is in the child's best interests. The application must also be accompanied by a copy of the dispensation order and an assessment of the child by a developmentally informed practitioner.

Clause 52(3) provides that if a court order, other than a dispensation order, has been made in relation to the application, the application must be accompanied by a copy of that court order.

Clause 52(4) provides that if the application is not an application to which a court order, including a dispensation order, was made and the application is made by a person other than the child, the application must include:

- a statement that the applicant, or each of the applicants, believes on reasonable grounds that the issue of a recognised details certificate is in the child's best interests; and
- an assessment of the child by a developmentally informed practitioner.

Clause 53 provides for the scenarios where an application to register a change of the child's first name can be made at the same time. The relevant provisions of Part 4 dealing with how a change of name is registered apply to an application for a change of name under this clause.

Clauses 53(1) and (2) provide that one or more persons, other than the child, may concurrently apply to register a change of the child's first name in the change of name register if an application has been made under clause 51 and the child was not born in another State and either:

- that application did not require an order of the Childrens Court or another Queensland court or a non-Queensland court to direct the registrar to accept; or
- a dispensation order, that included an order about changing the child's name, has been made in relation to the application.

Additionally, clauses 53(3) and (4) provide that one or more persons, other than a child, may concurrently apply to register a change of the child's first name in the change of name register if an application has been made under clause 51 and the child was not born in another State and either:

- the application is an application the Childrens Court directed the registrar to accept under clause 55(2) and the court also made an order under clause 55(8) approving a change of name for the child; or
- another Queensland court or a non-Queensland court made an order directing the registrar to accept the application and the court also made an order approving a change of first name for the child.

Clause 53(5) provides a child who applies to the registrar under clause 51 may concurrently apply to register a change of the child's first name in the change of name register, where the Childrens Court has made an order approving the change of name under clause 56(10).

An application made under clause 53(4) or (5) must be accompanied by a copy of the court order.

Clause 54 applies to applications for a recognised details certificate made under clause 50 or 51.

Clause 54(2) provides that the registrar may issue, or refuse to issue, the recognised details certificate for the person.

Clause 54(3) provides the registrar must refuse to issue the recognised details certificate if:

- the sex is a prohibited sex descriptor; or
- the registrar reasonably suspects that the recognised details certificate is sought for a fraudulent or other improper purpose; or
- within the 12 months immediately preceding the day when the application is made, a recognised details certificate was issued for the applicant under this division.

Additionally, clause 54(4) provides that the recognised details certificate:

- must state the name and sex of the person as stated in the application for the certificate; and
- may only state any previous name or sex of the person if the person has requested the previous name or sex to be stated on the certificate; and
- must state the person's date and place of birth; and
- may, if the registrar considers it appropriate, include any other information about the person's birth requested in the application to be included; and
- must include a statement to the effect that details about the person included in the certificate, except the person's sex, are not certified by the registrar

Subdivision 3 Applications to Childrens Court

Clause 55 applies if the person subject of the application is a child under 16 years.

Clause 55(2) provides that on application by an eligible person for the child, the Childrens Court may make an order directing the registrar to accept an application for a recognised details certificate for the child. Clause 55(3) requires that an application made under this clause be accompanied by an assessment of the child by a developmentally informed practitioner.

Clause 55(4) provides that the Childrens Court must make the order if the court is satisfied it is in the child's best interests to make the order.

Clause 55(5) provides that in deciding whether making the order is in the child's best interests, the matters to which the Childrens Court may have regard include the following:

- the assessment of the child;
- the views of the child, however expressed; and
- whether the child is sufficiently mature to understand the meaning and legal implications of the issue of the recognised details certificate for the child.

Clause 55(6) provides that an eligible person for the child who makes an application may also concurrently apply to the court for approval of a proposed change of first name for the child.

Clause 55(7) makes clear that an eligible person cannot apply for a proposed change of name under clause 55(6) if the child was born in another State.

Clause 55(8) provides that the Childrens Court may make an order approving the proposed change of first name for the child if:
- the name is not a prohibited name; and
- the court is satisfied the change is in the child's best interests.

Clause 56 applies if the person is a child of at least 12 years but less than 16 years; and each person, who is entitled to make an application in relation to the child under clause 51, does not support the issue of a recognised details certificate for the child.

Clause 56(2) provides that on application by the child, the Childrens Court may make an order directing the registrar to accept an application for a recognised details certificate for the child.

Clause 56(3) requires that an application made under this clause include the following statements by the child:
- that the child is aware that, unless the Childrens Court decides otherwise under clause 57(2), a copy of the application must be served on the respondents; and
- that the child is aware the child may make submissions to the Childrens Court under clause 57(5).

Clause 56(4) provides that the application must be accompanied by an assessment of the child by a developmentally informed practitioner.

Clause 56(5) provides that each parent of the child or person with parental responsibility for the child is a respondent to the application.

Clause 56(6) provides that the Childrens Court must make the order if the court is satisfied it is in the child's best interests to make the order.

Clause 56(7) provides that in deciding whether making the order is in the child's best interests, the matters to which the Childrens Court may have regard include the following:
- the assessment of the child by a developmentally informed practitioner;
- the views of the child, however expressed; and
- whether the child is sufficiently mature to understand the meaning and legal implications of the issue of a recognised details certificate for the child.

Clause 56(8) provides that a child who makes an application under this clause, may concurrently apply to the court for approval of a proposed change of first name for the child.

Clause 56(9) provides that subclause (8) does not apply if the child was born in another State.

Clause 56(10) provides that the Childrens Court may make an order approving the proposed change of first name for the child if the name is not a prohibited name; and the court is satisfied that the change is in the child's best interests.

Clause 57 applies only when a child has made an application under clause 56.

Clause 57(2) provides that the child may also apply to the Childrens Court for an order dispensing with the requirement to serve a copy of the application on one or more of the respondents.

Under clause 57(3), the Childrens Court must not make an order under dispensing with the requirement to serve one or more of the respondents unless the court is satisfied that the requirement could reasonably be expected to adversely affect the child.

Clause 57(4) provides that a child is not adversely affected only because one or more of the respondents does not support the issue of a recognised details certificate for the child; and that lack of support causes discomfort to the child.

Clause 57(5) provides that the child may make submissions to the Childrens Court on whether the court should dispense with the requirement to serve a copy of the application on one or more of the respondents. If the child makes submissions, the Childrens Court must, after considering the submissions, decide whether the requirement could reasonably be expected to adversely affect the child.

If the Childrens Court decides that the child could not reasonably be expected to be adversely affected by the requirement, clause 57(7) requires the Childrens Court to give the child a written notice stating:

- the reasons for the court's decision;
- that the child may, in writing, withdraw the application before the end of a stated period of at least 28 days after the day the notice is given; and
- that the child may appeal against the court's decision (under clause 78(2)) within 28 days after the decision is made.

Subdivision 4 Effect of certificate

Clause 58 provides that if a recognised details certificate is issued for any person, the person is a person of the sex stated in the certificate for the purposes of, but subject to, a law of the State.

Clause 58(2) provides that if more than one recognised details certificate has been issued for a person, the person is a person of the sex stated in the most recently issued certificate.

Clause 58(3) and (4) make clear that a person who has an entitlement under a will; or under a trust; or otherwise by operation of law, does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because a recognised details certificate has been issued for the person.

Subdivision 5 Cancellation of certificate

Clause 59 provides that the registrar must cancel a recognised details certificate if the registrar receives an application from the chief executive (corrective services) under the *Corrective Services Act 2006*, section 27AA(6) or the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43ABA(6) about the certificate.

Division 4 Dispensation orders

Clause 60 provides that this division applies in either of the following situations:

- a parent of a child under 16 years is not able to make an acknowledgement of sex application or a combined application for the child because the other parent of the child does not consent to, or have capacity to consent to, the application being made; or
- a person with parental responsibility who is one of a group of two or more persons mentioned in column 2 of the table in schedule 1, part 2 for a child under 16 years is not able to make an acknowledgement of sex application or a combined application for the child because one or more of the other persons in the group does not consent to, or have capacity to consent to, the application being made.

Clause 61 provides the relevant definitions for this division.

An 'acknowledgement of sex application' for a child captures an application to alter the record of sex under clause 40; or an application for a recognised details certificate under clause 51.

A 'combined application' captures:

- an application under clause 40 to alter a record of sex of the child and an application under clause 42 to register a change of the child's first name; or
- an application under clause 51 for a recognised details certificate for the child and an application under clause 53 to register a change of the child's first name.

A dispensation order is defined by reference to clause 62(1).

A 'relevant person' and 'stated party' are defined by reference to clause 60(a) and (b).

Clause 62 provides that a relevant person may apply to the Childrens Court for an order to dispense with the need for an acknowledgement of sex application or combined application to be made with the consent of a stated party (referred to as a 'dispensation order'). The application must state the grounds on which it is made.

Clause 63 provides for the process following the filing of an application for a dispensation order.

Clause 63(1) states that the relevant person must, as soon as practicable after filing an application, serve a copy of the application on the stated party.

Clause 63(2) states that the served copy must state where and when the application is to be heard and that the application may be heard and decided even though the stated party does not appear in court.

Clause 63(3) provides that the Childrens Court may dispense with the requirement for service on the stated party if the court is satisfied of any of the following:

- the relevant person can not locate the party after making all reasonable enquiries;
- the conception of the child was a result of an offence committed by the party;
- it is in the child's best interests to dispense with service.

Clause 64 provides that if a stated party is served with a copy of an application, the stated party is a respondent in the proceeding.

Clause 65 provides in subclause (1) that the Childrens Court may hear and decide an application for a dispensation order in the absence of the stated party only if:
- the stated party has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing; or
- the Childrens Court dispenses with the requirement to serve a copy of the dispensation application on the stated party under clause 63(3).

However, clause 65(2) clarifies that subclause (1) does not limit the Childrens Court's jurisdiction to exclude a person from a proceeding.

Clause 66 provides the Childrens Court with the power to make a dispensation order.

The Childrens Court may make a dispensation order if:
- the court is satisfied of a matter stated in clause 63(3)(a) or (b); or
- QCAT has made a declaration that the party does not have capacity to give consent for an acknowledgement of sex application or a combined application for the child; or
- a tribunal of another jurisdiction, a Queensland court or a non-Queensland court has made an order or other direction, however called, that the party does not have capacity to give consent for an acknowledgement of sex application or a combined application for the child; or
- the court is satisfied it is in the child's best interests to make the order.

Clause 67 provides that if the registrar is given a copy of the dispensation order with an acknowledgement of sex application or a combined application, the registrar must consider and decide the application without the need for the application to be made with the consent of the stated party.

Division 5 Court proceedings

Subdivision 1 Proceedings of Childrens Court

Clause 68 states that this division applies to a proceeding in the Childrens Court commenced by an application made under:
- division 2, subdivision 3 (applications for an order directing the registrar to accept an application to alter a record of sex); or
- division 3, subdivision 3 (applications for an order directing the registrar to accept an application for a recognised details certificate); or
- division 4 (applications relating to dispensation orders).

Clause 69 states that a court must be constituted by a Childrens Court magistrate, or if a Childrens Court magistrate is not available, a magistrate. The definition of 'available' is consistent with section 5(5) of the *Childrens Court Act 1992*.

Clause 70 provides that in exercising its jurisdiction or powers in the proceeding, the Childrens Court must regard the wellbeing and best interests of the child as paramount.

Clause 71 sets out who the parties to a proceeding include.

Clause 72 states that in the proceeding, a party may appear without representation or may be represented by a lawyer.

Clause 73 states that the Childrens Court must, as far as practicable, ensure the parties to the proceeding understand the nature, purpose and legal implications of the proceeding and any order or ruling made by the court.

Clause 74 sets out matters relating to the rules of evidence in a proceeding in the Childrens Court.

Clause 74(1) provides that in a proceeding, the Childrens Court is not bound by the rules of evidence and may inform itself in any way it thinks appropriate. Clause 74(2) provides that the Childrens Court need only be satisfied of a matter on the balance of probabilities.

Clause 75 sets out matters relating to the giving of evidence by a child.

Clause 75(1) provides that in a proceeding, a child may only be called to give evidence with the leave of the court. Clause 75(2) provides that the Childrens Court may grant leave only if the child is at least 12 years of age and the child agrees to give evidence. Clause 75(3) provides that if the child gives evidence, the child may be cross-examined only with leave of the Childrens Court.

Clause 76 sets out the manner in which the Childrens Court may hear from a child who is the subject of the proceeding, other than when the child gives evidence.

Clause 76(2) provides that the Childrens Court may hear from the child in the way the court considers appropriate, including, for example by:
- hearing from the child orally in court or another place or with the use of technology, including an audio visual link or audio link; or
- hearing from the child without the other participants being present; or
- receiving a document from the child; or
- receiving submissions by, or on behalf of, the child.

Subdivision 2 Appeals

Clause 77 defines 'appellate court' for the subdivision as the Childrens Court constituted by a Childrens Court judge.

Clause 78 states that a party for an application for any of the following orders may appeal to the appellate court against a decision on the application:
- an order made under clauses 44, 45, 55 or 56; or
- a dispensation order.

Clause 78(2) provides that a child who is given a notice by the Childrens Court under clause 46(7) or 57(7) may appeal to the appellate court against the decision stated in the notice.

Clause 79 sets out how to start an appeal.

Clause 79(1) provides that the appeal is started by filing a notice of appeal with the registrar of the appellate court. Clause 79(2) provides that, in the case of an appeal under clause 78(1), the appellant must serve a copy of the notice of appeal on the other party or parties to the proceeding.

Clause 79(3) provides that the notice of appeal must be filed within 28 days after the decision is made. Clause 79(4) provides that the appellate court may at any time extend the period for filing the notice of appeal. Clause 79(5) provides that the notice of appeal must fully state the grounds of the appeal and the facts relied on.

Clause 80 provides that a decision the subject of an appeal under this division is stayed until the appellate court decides the appeal.

Clause 81 states that an appeal must be decided on the evidence and proceedings before the Childrens Court. However, the appellate court may order that the appeal be heard afresh, in whole or part.

Clause 82 sets out the powers of the appellate court. In deciding an appeal, the appellate court may do any of the following:
- confirm the decision appealed against;
- vary the decision appealed against;
- set aside the decision appealed against and substitute another decision; or
- set aside the decision appealed against and remit the matter to the court that made the decision.

Subdivision 3 General

Clause 83 applies to a hearing in the Childrens Court under subdivision 1 or the appellate court under subdivision 2.

Clause 83(2) states the hearing is not open to public. Clause 83(3) provides a court must exclude from the room in which the court is sitting a person who is not:
- a child to whom the proceeding relates;
- a parent of, or person with parental responsibility for, a child to whom the proceeding relates;
- a lawyer of a party to the proceeding; or
- a witness giving evidence.

However, the court may still permit a person not mentioned in clause 83(3) to be present during the hearing if it satisfied it is in the interests of justice to do so.

Part 6 Marriages

Clause 84 states that a marriage solemnised in Queensland must be registered under this Act. This captures a marriage that takes place on a vessel that sets out from a Queensland port and returns to a Queensland port without stopping at a port outside Queensland.

To register the marriage, a person may give the registrar the marriage certificate or, if the marriage predates the commencement of the *Marriage Act 1961* (Cwlth), other evidence the registrar requires.

Clause 85 sets out how marriages are registered by the registrar. The registrar registers a marriage by entering in the marriage register the prescribed particulars or by including the marriage certificate or other evidence mentioned in clause 84(2)(b). The registrar may also enter in the register other information the registrar considers appropriate.

Part 7 Civil partnerships

Clause 86 details how the registrar is to register civil partnerships as required by the *Civil Partnerships Act 2011*. The registrar must enter in the register the prescribed particulars and may include other information the registrar considers appropriate.

Clause 87 provides that if the declaration of a civil partnership under the *Civil Partnerships Act 2011* is made before a notary other than the registrar, the notary must give the registrar notice no later than 14 days after the day the declaration is made (maximum penalty – 5 penalty units).

While the Bill does not deal specifically with registering the termination of a civil partnership (in accordance with section 18 of the *Civil Partnerships Act 2011*) , clause 104(5) applies in these circumstances to specify the particulars that must be assigned to this registrable event.

Part 8 Deaths

Clause 88 defines 'coroner' to mean, for the purposes of part 8, a coroner under the *Coroners Act 2003* or the repealed *Coroners Act 1958*.

Clause 89 provides a death must be registered in Queensland if the person dies in Queensland or if the person is found by a coroner or Queensland court (other than the Coroners Court) to have died in Queensland and, in the case of a Queensland court other than the Coroners Court, the court orders that the death be registered.

Clause 90 provides that a death may be registered in Queensland if the death happened:
- on an aircraft or vessel, or in waters, outside Queensland, and the person's body was not first taken to a place outside Queensland; or
- outside Australia and the person ordinarily resided in Queensland or leaves real property in Queensland.

A death may also be registered in Queensland if:
- a Queensland court or coroner finds, or has found, that the death happened but the location of the death is not known; or
- a non-Queensland court or non-Queensland coroner finds that the death happened in Queensland.

Registration must not take place where the death has been registered in another State or country.

Clause 90(5) allows for the death of a stillborn child born in Queensland before 1 May 1989 to be registered if the registrar is able to register the birth of that child at the same time.

Clause 91 details who is responsible for applying to register a death that must be registered in Queensland. Unless they have a reasonable excuse, a spouse or relative of the person is responsible for applying (maximum penalty – 20 penalty units). If the registrar does not receive an application from a spouse or relative, the registrar may require an application from another person, as set out in clause 91(2), and this person must comply (maximum penalty – 20 penalty units).

Clause 92 sets out the requirements for registering the death of a person. An application must be in the form required by the registrar and made in an approved way. The application must be given within 14 days after the death happens or the death is discovered. The registrar may accept an application outside these timeframes if satisfied the death happened.

Under clause 92(4), the parent of a stillborn child born before 1 May 1989 may apply to register the death at any time.

Clause 92(5) and (6) also sets out requirements for information required to accompany the death registration application in particular circumstances.

Clause 93 sets out how a death is registered by the inclusion of information in the register of deaths.

If the registration is directed by a court, the registrar registers the death of a person by entering in the register of deaths the particulars of the death stated in the court's order and any other information the registrar considers appropriate to enter.

For another registration, the registrar registers the death by entering in the register the particulars prescribed by regulation and any other information the registrar considers appropriate to enter.

Subclause (2) makes clear that the registrar may still register the death even though some or all of the particulars are not available. Registration may also occur even in the death is being investigated under the *Coroners Act 2003* or repealed *Coroners Act 1958*.

Clause 94 deals with the issue by a doctor of a cause of death certificate. The doctor may issue a certificate if the doctor is able to form an opinion about probable cause of death:

- for a stillborn child—having been present at the stillbirth or having examined the child's body; or
- for another deceased person—having attended the person when the person was alive, having examined the body, or having considered information about the person's medical history and circumstances of their death.

Under clause 94(2), the doctor must—

- complete a cause of death certificate, in the form required by the registrar for the deceased person; and

- give the original certificate, in an approved way, to the person who is arranging for the disposal of the deceased person's body or to the registrar; and
- give a copy of the certificate, in an approved way, to the person who is arranging for the disposal of the deceased person's body.

However, these requirements are subject to the *Coroners Act 2003*, section 26(5), which provides that a doctor must not issue a cause of death certificate in certain circumstances.

A doctor must complete the certificate and comply with the requirements under clause 94(2) within 2 working days of the death or when the body is found, whichever is later. A doctor must not charge for the issue of a cause of death certificate.

Clause 94(7) provides that if the doctor reasonably suspects that the doctor, or doctor's spouse, may receive a benefit because of the person's death, the doctor must not issue a cause of death certificate for the person. This carries a maximum penalty of 120 penalty units.

If the doctor gives the person arranging for the disposal of the person's body the original cause of death certificate, the person must give the certificate to the registrar within 14 days after receiving it.

Clause 95 provides for the District Court, on application by an interested person or on its own initiative, to order the registration of the death of a person or include or correct information about a person's death in the register of deaths. However, a person must not apply to the District Court if the person has applied to QCAT for a review of a registrar's decision on the same matter.

Clause 96 applies where a body is received by a school of anatomy under the *Transplantation and Anatomy Act 1979*, part 5. The person in charge of the school must give written notice to the registrar of receipt of the body for anatomical purposes.

Clause 97 provides for the giving of notice to the registrar about the disposal of a deceased person's body. The clause also requires notice to be given to the registrar before moving a deceased person's body outside Queensland.

The clause does not apply to a school of anatomy in disposing of a human body, or a part of the body given to it, or the disposal of parts of a human body taken during a medical procedure or autopsy.

Clause 98 provides for when a stillborn child is taken to have died.

Part 9 Administration

Division 1 The registrar

Clause 99 provides that there is to be a registrar-general (the registrar) who is to be employed under the *Public Sector Act 2022*.
Clause 99(3) provides the registrar's functions are:

- to establish the registers for this Act;

- to administer this Act in an efficient, effective and economical way; and in a way best calculated to achieve its objects;
- to maintain the integrity of the registers and seek to prevent fraud associated with the registers; and
- the functions given under this or another Act.

Clause 99(4) provides the registrar has the powers necessary to perform the registrar's functions.

Clause 100 provides the registrar's staff is to consist of the staff that are necessary for the proper administration of this Act.

Clause 101 provides the registrar may delegate any of their powers under this or another Act, other than the power of delegation, to an appropriately qualified person.

Clause 102 provides the registrar is to have one or more seals (clause 102(1)) and a certificate or other document issued by or for the registrar may be issued under one of the registrar's seals or with the signature, or a facsimile of a signature, of the registrar or the registrar's delegate (clause 102(2)).

Clause 102(3) provides if a document produced in evidence before a court is apparently signed and sealed by or for the registrar, the court must presume, in the absence of evidence to the contrary, that the document was properly issued under the registrar's authority.

Clause 103 provides the Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing for the exercise by the registrar of powers and functions of the registering authority under the corresponding law; and the exercise by the registering authority under the corresponding law of powers and functions of the registrar under this Act (clause 103(1)).

Clause 103(2) provides that when an arrangement is in force under this clause, to the extent authorised by the arrangement, but subject to the conditions of the arrangement: the registrar may exercise the powers and functions of the registering authority under the corresponding law; and the registering authority under the corresponding law may exercise the powers and functions of the registrar under this Act.

Clause 103(3) clarifies an arrangement under this clause may establish a database in which information is recorded for the benefit of all the participants in the arrangement, provide for access to information contained in the database, and provide for payments by or to participants in the arrangement for services provided under the arrangement.

Division 2 The registers

Clause 104 provides the registrar must maintain a register for each type of registrable event.

Clause 104(2) provides a register must contain particulars of each registrable event or alteration of a registrable event required under this Act, or another law, to be included

in the register; and may contain other information the registrar considers appropriate for inclusion in the register.

The registrar must register a registrable event if the registrar believes the particulars of the event to be included in the registrar are correct (clause 104(3)). However, when registering a registrable event, the registrar must not enter into the register the word 'illegitimate' (or words to that effect), the word 'suicide' (or words to that effect) or information prescribed by regulation (clause 104(4)).

The registrar must assign to each registrable event in a register the registrar's first initial and surname, the registration number, and the day and place of registration (clause 104(5)); and may include details of any marginal notes or other notes or notations (clause 104(6)).

Clause 104(7) provides a register may be wholly or partly in the form of a computer database, in documentary form, or in another form the registrar considers appropriate. Clause 104(8) provides the registrar must maintain the information in a register in a way that makes the information readily accessible.

Clause 104(9) defines the terms 'marginal note' and 'registration number' for the purposes of the clause.

Clause 105 provides the registrar may collect and maintain records of information, other than registrable information, relating to registrable events (clause 105(1)); and may include information in records maintained under this clause at the request of a person interested in the registrable event or on the registrar's own initiative (clause 105(2)).

Clause 105(3) clarifies that clause 116 (Protection of privacy) applies to any records maintained under this clause as if they were part of a register.

Clause 106 provides the registrar may re-register a person's relevant event if the registrar decides that, because of the number of notes on the entry for the event, it would be desirable to re-register the event.

Clause 106(2) sets out how the registrar re-registers the relevant event.

Clause 107 provides the registrar must correct a register:

- on the order of a Queensland court or QCAT;
- on the application of the chief executive (corrective services) under the *Corrective Services Act 2006*, section 27(4) or 27AA(4), or the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43AB(4) or 43ABA(4);
- on the application of the police commissioner under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 74A(5);
- subject to clause 104(4), to reflect a coroner's findings if the findings differ from the information entered on a register.

Clause 107(2) provides the registrar may correct a register:

- on application by a person to reflect the order of a non-Queensland court or to ensure the particulars in an entry about a registrable event conform with the most reliable information about the registrable event that is available to the registrar;
- to reflect a finding made on inquiry under clause 108; or
- on the registrar's own initiative.

Clause 107(3) provides an application by a person under clause 107(2) must be in the form required by the registrar and made in an approved way and be accompanied by the fee prescribed by regulation.

Clause 107(4) clarifies that the most reliable information about a registrable event may differ from the information that was previously entered on the register in relation to that event, although the information previously entered was correct at the time of its entry. An illustrative example is included which demonstrates the scope of 'most reliable information'.

Clause 107(5) provides, subject to subclause 107(7) and (8), the registrar may correct a register by adding or cancelling an entry in the register; by adding, amending or deleting particulars in an entry in the register; or by re-registering a person's relevant event.

Clause 107(6) sets out the process for re-registering a person's relevant event.

Clause 107(7) provides an entry in the register must not be cancelled under clause 107(5) if the entry was correct at the time the entry was made.

Clause 107(8) provides particulars in an entry in a register must not be deleted under clause 107(5) if the particulars were correct at the time they were entered.

Clause 107(9) provides the registrar need not correct a register in relation to historical information.

Clause 107(10) provides a certificate from an entry that contains corrected information must show the most recent information; however, clause 107(11) provides the certificate may also show information that has been corrected if the registrar considers it necessary.

Clause 107(12) provides the registrar may publish, on a relevant website, a policy about how the registrar exercises the registrar's discretion to correct an entry under this clause.

Clause 107(13) defines the terms 'police commissioner' and 'relevant website' for the purposes of the clause.

Clause 108 provides the registrar may conduct an inquiry to find out:
- whether a registrable event has happened;
- particulars of a registrable event;
- whether particulars of a particular registrable event have been correctly recorded in a register; or
- whether a person is seeking to use, or has used, the registration system for a fraudulent or other improper purpose (clause 108(1)).

The registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this clause, require the person to answer specified questions or to provide other information within a time and in a way specified in the notice (clause 108(2)).

The person must comply with the notice unless the person has a reasonable excuse (maximum penalty – 20 penalty units) (clause 108(3)).

Clause 108(4) defines the term 'registrable event' for the purposes of clause 108.

Division 3 Obtaining information and certificates from registrar

Clause 109 provides in deciding whether an applicant has an adequate reason for obtaining requested information or a certificate, the registrar must have regard to:

- the relationship, if any, between the applicant and the person to whom the information or certificate relates;
- the reason that the applicant wants the information or certificate;
- the use to be made of the information or certificate;
- the age of the entry from which the information is to be obtained or the certificate is to be issued;
- the contents of the entry or source document from which the information is to be obtained or the certificate is to be issued;
- the sensitivity of the information or certificate;
- the provision of an Act, if any, that permits the applicant to obtain the information or certificate; and
- any other relevant factors.

Clause 110 provides an entity may apply to the registrar for requested information (clause 110(1)); and an application under this clause must be in the form required by the registrar and made in an approved way and be accompanied by the fee prescribed by regulation (clause 110(2)).

Clause 110(3) provides an applicant for requested information, other than historical information, must satisfy the registrar of the person's identity.

Clause 110(4) provides unless the application relates to historical information, the registrar may refuse the application if the applicant does not have an adequate reason for obtaining the requested information.

Clause 110(5) provides the registrar may give requested information in the form the registrar considers appropriate.

Clause 110(6) provides if an applicant for a source document is not the person who created the source document, the registrar may give the applicant a copy of the source document with information redacted.

Clause 111 sets out restrictions on access to requested information about particular life events.

Clause 111(1) provides the registrar may not give requested information relating to an adopted person's birth entry except to the extent allowed under the *Adoption Act 2009*, section 290.

Clause 111(2) provides the registrar may only give requested information recorded in an entry about a person closed under clause 43 to the following persons:
- the person;
- a child of the person;
- if the person is aged 16 or 17 and gives consent to the release, a parent of or person with parental responsibility for the person;
- if the person is a child under 16 years, a parent of or person with parental responsibility for the child; or
- a person prescribed by regulation.

Clause 111(3) provides the registrar may only give requested information relating to an entry closed under clause 19 or 21 that relates to a parentage order to:
- a birth parent for the parentage order;
- an intended parent for the parentage order;
- if the child for the parentage order is at least 18 years old, the child;
- a guardian appointed under the *Guardianship and Administration Act 2000* for any of the persons mentioned in the preceding dot points;
- if an administrator has been appointed under the *Guardianship and Administration Act 2000*, section 14 for the child, the administrator;
- if a personal representative has been appointed for the child, the personal representative;
- an officer of, or person acting for, a law enforcement body; or
- the Attorney-General.

Clause 111(4) provides when applying for information from a closed entry, a guardian, administrator or personal representative (as described in clause 111(3)) must produce to the registrar the person's instrument of appointment, and show that the information is required to discharge a function under the person's appointment.

Clause 111(5) provides despite clause 111(3), the registrar may give requested information relating to an entry closed under clause 19 or 21 that relates to a parentage order to a child who is under 18 years old if the birth parents and the intended parent, or intended parents, for the parentage order consent to the child's application for the information.

Clause 111(6) provides for clause 111(5), a person's consent is not required if the person has died or the child can not locate the person after making all reasonable enquiries.

Clause 111(7) provides the registrar may only give requested information relating to an entry closed under clause 19 or 21 that relates to a cultural recognition order to:
- a person who has been authorised under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 64; or
- an officer of, or person acting for, a law enforcement body.

Clause 111(8) provides when applying for information from a closed entry under clause 111(3) or (7), an officer of, or person acting for, a law enforcement body must show that the information is required to discharge a function of the law enforcement body or the person's duty as an officer of the law enforcement body.

Clause 111(9) defines the terms 'birth parent' and 'intended parent' for the purposes of clause 111.

Clause 112 deals with obtaining certificates from the registrar. Clause 112(1) and (2) provide an entity may apply to the registrar for a certificate about an event that is, or may be, in a registrar kept by the registrar; and an application under this clause must be in the form required by the registrar and made in an approved way and accompanied by the fee prescribed by regulation.

Clause 112(3) provides unless the application relates to historical information, the registrar may refuse the application if the applicant does not have an adequate reason for obtaining the certificate.

Clause 112(4) provides the registrar may issue a certificate by certifying some or all of the particulars that are in the most recent entry in the register for a stated registrable event, or that no entry was located in the register about the stated registrable event.

Clause 112(5) provides a certificate must not state a person's residential address if the person has satisfied the registrar that, because of exceptional circumstances, the person's residential address should not be disclosed on the certificate.

Clause 112(6) provides a certificate, other than a certificate containing historical information, must not contain the word 'illegitimate' (or words to that effect), the word 'suicide' (or words to that effect), or information prescribed by a regulation.

Clause 112(7) provides the registrar may issue a certificate electronically; and clause 112(8) provides a certificate is admissible in proceedings as evidence of its contents.

Clause 113 applies if an entry for an event in a relevant child register states the sex of a person (the subject person) and the subject person or another person applies to the registrar for requested information about the event (under clause 110) or a certificate about the event (under clause 112) (clause 113(1)).

Clause 113(2) provides the registrar may only give the requested information or a certificate that includes a reference to the sex of the subject person if the applicant requests that the registrar include that information.

Clause 113(3) provides the registrar may only give the requested information or certificate containing a notation of any previous sex stated in the relevant child register for the subject person if the applicant requests that the registrar include that information and the applicant is:

- the subject person;
- a child of the subject person;
- if the person is aged 16 or 17 and gives consent to the release of the information or certificate, a parent of or person with parental responsibility for the person;

- if the subject person is a child under 16 years, a parent of or person with parental responsibility for the child; or
- a person prescribed by regulation.

Clause 114 provides subject to clause 116, the registrar may provide services relating to information in a register or maintained by the registrar under clause 105 that are additional to the services otherwise provided by the registrar under this Act.

Clause 114(2) provides that these additional services include the issue of a commemorative certificate containing some or all of the particulars contained in an entry from the relevant register (clause 114(2)).

Clause 114(3) provides a commemorative certificate has no legal effect.

Clause 114(4) provides if the registrar provides a service under clause 114(1), the registrar may charge a fee for the service.

Clause 114(5) defines the term 'commemorative certificate' for the purposes of clause 114.

Clause 115 provides the registrar may allow an entity to obtain information contained in a register other than under clause 110 or 112 (clause 115(1)).

The registrar must maintain a written statement of the policies relating to who may obtain information under clause 115(1), or information under clause 110 or a certificate under clause 112 (clause 115(2)); and must give a copy of the statement to any person who asks for it (clause 115(3)).

However, clause 115(4) provides clause 115(3) does not apply to a statement if the registrar believes withholding the statement is necessary to protect the persons for whom the registrar keeps information from unjustified intrusion on their privacy, or to prevent information mentioned in clause 115(1) from being obtained fraudulently or improperly.

Clause 116 applies if the registrar gives an entity, or allows an entity to obtain, information contained in a register (clause 116(1)).

The registrar must, as far as practicable, protect the persons to whom the information relates from unjustified intrusion on their privacy (clause 116(2)); and for this purpose, the registrar may impose conditions when giving an entity information, or access to information, contained in a register (clause 116(3)).

Division 4 Other provisions

Clause 117 provides despite the *Public Records Act 2002*, the registrar is to retain control over access to any information or records maintained under this Act.

Clause 118 applies in relation to information (relevant information) in a register (including information in bulk or historical or genealogical information) or maintained by the registrar under clause 105 (clause 118(1)).

Clause 118(2) provides subject to clause 116, the registrar may enter into an arrangement with an entity for the provision of relevant information to the entity if the registrar is satisfied that the provision of that information is in the public interest.

Clause 118(3) provides, without limiting clause 118(2), an arrangement that may be entered into by the registrar under this clause includes an arrangement between the registrar and:

- a law enforcement body about providing relevant information to the body for the purpose of supporting the performance of the body's activities related to the enforcement of laws;
- a government agency about providing relevant information to the agency for the purpose of informing the agency's policy making or program delivery, supporting the efficient delivery of the agency's services, assisting in the implementation and assessment of the agency's services, or supporting research and development by the agency that the agency demonstrates to the registrar has clear and direct public benefits;
- a foreign corresponding authority about providing change of name records and death records about persons whose births are registered by the authority, to the authority for the purpose of supporting up-to-date demographic and identity records in the authority's jurisdiction; and
- a non-government organisation, private sector agency or government agency about providing relevant information to the organisation or agency for the purpose of removing names of deceased persons from a database of the organisation or agency.

Clause 118(4) provides if the registrar enters into an arrangement with an entity under this clause, the registrar may provide relevant information to the entity under the arrangement and charge the entity a fee for providing relevant information to the entity under the arrangement.

Clause 118(5) defines the term 'foreign corresponding authority' for the purposes of clause 118.

Clause 119 applies if the registrar registers the death of a child, other than a stillborn child (clause 119(1)); and provides the registrar must give notice of the registration to the family and child commissioner and the chief executive (child safety) (clause 119(2)).

Clause 119(3) provides the notice must include the following information, to the extent it is known to the registrar:

- for the notice to the family and child commissioner – the registration number for the registration, the child's name, the child's date and place of birth, the child's usual place of residence, the child's sex, the child's occupation (if any), the duration of the last illness (if any) had by the child, the date and place of death, and the cause of death; and
- for the notice to the chief executive (child safety) – the child's name, the child's date and place of birth, the child's usual place of residence, the date and place of death, and the cause of death.

Clause 119(4) provides to the extent that it is practicable to do so, the registrar must give the notice within 30 days after registering the death.

Clause 119(5) defines the term 'chief executive (child safety)' for the purposes of clause 119.

Clause 120 provides the registrar may enter into an arrangement with the family and child commissioner about providing to the commissioner information from a register or source document, or providing to the commissioner a copy of a source document, about the births or deaths of children (whether particular children, children of a class or children generally) (clause 120(1)).

Clause 120(2) provides the registrar may provide information or a copy of a source document to the family and child commissioner under the arrangement.

Clause 120(3) provides the registrar and family and child commissioner must, as far as practicable having regard to the commissioner's child death research functions, protect the persons to whom the information or source document relates from unjustified intrusion on the person's privacy.

Clause 120(4) provides if the registrar enters into an arrangement with the family and child commissioner, the registrar may charge a fee for the service that is not more than the actual cost of providing the service.

Clause 120(5) clarifies this clause applies despite clauses 23, 110-112, 114-116 and 118.

Clause 120(6) defines the term 'child death research functions', for the family and child commissioner, for the purposes of clause 120.

Clause 121 provides the registrar may enter into an arrangement with the health ombudsman about providing to the health ombudsman information from a register or source document, or providing to the health ombudsman a copy of a source document, about the death of a person to which an investigation under the *Health Ombudsman Act 2013* may be relevant (clause 121(1)).

Clause 121(2) provides the registrar may provide information or a copy of a source document to the health ombudsman under the arrangement.

Clause 121(3) provides the registrar and health ombudsman must, as far as practicable, protect the persons to whom the information or source document relates from unjustified intrusion on the persons' privacy.

Clause 121(4) provides if the registrar enters into an arrangement with the health ombudsman, the registrar may charge a fee for the service that is not more than the actual cost of providing the service.

Clause 121(5) clarifies this clause applies despite clauses 23, 110-112, 114-116 and 118.

Clause 121(6) defines the term 'health ombudsman' for the purposes of clause 121.

Clause 122 provides the chief executive (adoptions) may give information to the registrar about the identity of a person if the person has given a contact statement to the chief executive (adoptions), or the public trustee has given a notice about the person to the chief executive (adoptions) under the *Adoption Act 2009*, section 217(3) (clause 122(1)).

Clause 122(2) provides the registrar may give information to the chief executive (adoptions) about whether the person has died and, if the person has died, the date of the death.

Clause 122(3) provides the registrar and the chief executive (adoptions) may enter into an arrangement for giving information under this clause.

Clause 122(4) defines the terms 'chief executive (adoptions)' and 'contact statement' for the purposes of clause 122.

Clause 123 applies if either (clause 123(1)):

- the registrar receives an application under clause 26; the registrar is aware that the application may only be made with written permission under the *Corrective Services Act 2006*, section 27 or the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43AB; and written permission was not given to the registrar with the application; or
- the registrar receives an application under clause 39 or 50; the registrar is aware that the application may only be made with written permission under the *Corrective Services Act 2006*, section 27AA or the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 43ABA; and written permission was not given to the registrar with the application.

Clause 123(2) provides the registrar must inform the chief executive (corrective services) of the application.

Part 10 General

Clause 124 enables a person dissatisfied with a decision of the registrar to apply to QCAT, as provided under the QCAT Act, for a review of the decision. Despite section 157 of that Act, the registrar is required to give a written notice to a person only if the decision is made on the application of the person and the decision is not the decision sought by that person.

Clause 125 provides that a person must not give information under this Act the person knows is false or misleading in a material particular. Subclause (1) does not apply to information given in a document, if the person when giving the document—

- informs the person being given the document, to the best of the person's ability, how the information is false or misleading; and
- has, or can reasonably obtain, the correct information and gives it.

Clause 126 states that a person must not, without lawful authority, access or interfere with a register, including making, altering or deleting an entry. The maximum penalty prescribed is 100 penalty units. A reference to a register in this clause includes a reference to a record collected and maintained by the registrar under clause 105.

Clause 127 provides for part 4, a reference to a parenting order made under the *Family Law Act 1975* (Cwlth), part VII, stating who may make decisions about major long-term issues for a child or a child's name includes a reference to a registered overseas child order. Similarly, for part 5, a reference to a parenting order made under the *Family Law Act 1975* (Cwlth), part VII, stating who may make decisions about major long-term issues for a child includes a reference to a registered overseas child order.

Clause 127(3) provides an application made under part 4 or 5 that is based on a registered overseas child order must be accompanied by the relevant documents for the registered overseas child order.

Clause 127(4) defines the terms 'overseas child order', 'registered overseas child order' and 'relevant documents' for the purposes of clause 127.

Clause 128 provides for the recognition of a person as being the sex identified in a recognition certificate issued under the law of another State or, if the recognition certificate states a gender for the person, the stated gender is taken to be the sex of the person and the person is a person of that sex. This applies for the purposes of, but subject to, a law of Queensland.

If more than one recognition certificate has been issued for the person, this clause applies to the most recently issued certificate (clause 128(3)).

A person who has an entitlement under a will, a trust or otherwise by operation of law does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because an interstate recognition certificate has been issued for the person (clause 128(4) and (5)).
Clause 128(6) defines the term 'interstate recognition certificate' for the purpose of clause 128.

Clause 129 states a proceeding for an offence against this Act is a summary proceeding under the *Justices Act 1886*. A proceeding must start within 1 year after the offence was committed or within 6 months after the offence came to the complainant's knowledge, but within 2 years after the offence was committed.

Clause 130 allows the registrar to confiscate a certificate or document the registrar reasonably believes bears a forged facsimile of the registrar's signature or seal or has been forged, or a certificate about a registrable event for which the register entry has been amended or cancelled since issue of the certificate.

Clause 131 provides a regulation-making power, including the power to impose a penalty of not more than 20 penalty units for a contravention of the regulation.

Part 11 Repeal and transitional provisions

Division 1 Repeal

Clause 132 repeals the *Births, Deaths and Marriages Registration Act 2003*, No. 31.

Division 2 Transitional provisions

Clause 133 defines the terms '2003 Act' and 'former', for a provision, for the purposes of part 11, division 2.

Clause 134 provides a certificate or other document issued under the 2003 Act is taken to have been issued under this Act.

Clause 135 provides the registers kept under the 2003 Act form part of the registers under this Act.

Clause 136 provides the person holding office as registrar immediately before the commencement continues as the registrar under this Act.

Clause 137 continues the application of the 2003 Act, as in force immediately before the commencement, to an application made but not decided before the commencement, a document lodged but not dealt with before the commencement, and a notation or registration started but not completed before the commencement. Clause 137 applies subject to clauses 138 and 139.

Clause 138 provides that clause 9(2)(a) applies to the registration of the birth of a child if the child was born before the commencement, the child's birth was not registered before the commencement, and variations of sex characteristics have been identified.

Clause 139 provides for an application made under former section 17 but not decided before the commencement, the application is to be decided under this Act.

Clause 140 provides that entries in a register closed by the registrar under a former provision, are taken to be entries closed under a provision of this Act. The relevant provisions of the 2003 Act and of this Act are listed.

Clause 141 provides for the purpose of counting the previous registrations of changes of an adult person's name under clause 27(1), a change of name by the person before the commencement is not to be counted.

Clause 142 applies if, before the commencement, a person's sex was noted in the person's entry in the register of births or adopted children register under former section 22 (clause 142(1)) and provides the person is a person of the sex as reassigned (clause 142(2)).

A person who has an entitlement under a will, a trust or otherwise by operation of law does not, except as otherwise provided under the will, the trust or by the law conferring the entitlement, lose the entitlement only because the reassignment of the person's sex has been noted (clause 142(3) and (4)).

Part 12 Amendment of legislation

Division 1 Amendment of this Act

Clause 143 provides that the division amends this Act.

Clause 144 amends the long title.

Division 2 Amendment of Adoption Act 2009

Clause 145 provides this division amends the *Adoption Act 2009*.

Clause 146 updates a reference in section 250(a).

Clause 147 updates a reference in section 274(4).

Clause 148 amends the definitions of 'adopted children register' and 'closed entry' in section 288 of the *Adoption Act 2009*.

Clause 149 amends section 290 to ensure the entitlements to information or a source document relating to particular entries following registration of an adoption works effectively alongside the *Births, Deaths and Marriages Registration Act 2022*.

Clause 150 amends the definition of registrar in Schedule 3.

Division 3 Amendment of Anti-Discrimination Act 1991

Clause 151 provides this division amends the *Anti-Discrimination Act 1991*.

Clause 152 inserts a new protected attribute of 'sex characteristics'.

Clause 153 omits section 28 to remove the exception which provided it was not unlawful to discriminate on the basis of gender identity or lawful sexual activity in the area of working with children.

Clause 154 extends the vilification protections in section 124A so that it covers the new attribute of 'sex characteristics'.

Clause 155 extends the offence of serious vilification so that it covers the new attribute of 'sex characteristics'.

Clause 156 amends the definition of 'relevant entity' so that it picks up a body corporate or an unincorporated body, a primary purpose of which is the promotion of the interests or welfare of persons of a particular sex characteristics.

Clause 157 provides definitions for 'gender identity' and 'sex characteristics'.

Division 4 Amendment of Coroners Act 2003

Clause 158 provides this division amends the *Coroners Act 2003*.

Clause 159 amends section 24A to provide that an autopsy notice or autopsy certificate must be completed in the form required by the registrar and provided in an approved way.

Clause 160 amends section 95(2)(a)(i) to refer to the new *Births, Deaths and Marriages Registration Act 2022*.

Clause 161 amends section 97 to provide that a notification to the registrar when a body is released and an investigation ends is to be provided in the form required by the registrar and in an approved way.

Clause 162 amends certain definitions in Schedule 2 (Dictionary).

Division 5 Amendment of Corrective Services Act 2006

Clause 163 provides this division amends the *Corrective Services Act 2006*.

Clause 164 amends section 25 to refer to the new *Births, Deaths and Marriages Registration Act 2022*.

Clause 165 amends section 27 so that the criteria for the chief executive to consider when determining whether to provide written permission for a change of name aligns with the new framework for alteration of record of sex and recognised details certificate.

Clause 166 inserts new section 27AA (Alteration of record of sex and recognised details certificate) and section 27AB (Written permission does not limit chief executive's powers).

New section 27AA(1) provides that a person in the chief executive's custody, other than a prisoner released on parole, must obtain the chief executive's written permission before applying:

- to alter a record of sex of the person in the relevant child register (or applying to do so under an equivalent law of another State);
- for a recognised details certificate for the person (or applying for a certificate under an equivalent law of another State).

The maximum penalty for failing to do so is 20 penalty units or 6 months imprisonment.

New section 27AA(2) sets out the criteria the chief executive must consider in deciding whether to give the permission. This includes:

- whether the proposed alteration of sex or recognised details certificate poses a risk to the good order or security of a corrective services facility;
- the safety and welfare of the person and other persons;
- whether the chief executive reasonably believes the proposed alteration of sex or recognised details certificate could be used to further an unlawful activity or purpose; and
- whether the proposed alteration of sex or recognised details certificate could be considered offensive to or cause physical, mental or emotional harm to a victim of crime.

New section 27AA(3) and (4) provide that if the chief executive becomes aware that a prisoner has failed to obtain written permission to alter the person's record of sex in the relevant child register, the chief executive may apply to the registrar for the cancellation of the alteration.

New section 27AA(5) and (6) provide that if the chief executive becomes aware that a prisoner has failed to obtain written permission to apply for a recognised details certificate, the chief executive may apply to the registrar for the cancellation of the certificate.

New section 27AB (Written permission does not limit chief executive's powers) provides that the fact the chief executive gave permission under section 27AA does not limit the powers of the chief executive under the *Corrective Services Act 2006* or another Act.

Clause 167 inserts a new section 341A to clarify that the chief executive may provide particular information to the registrar to prevent prisoners and released prisoners from circumventing the approval process.

Division 6 Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003

Clause 168 provides this division amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Clause 169 amends section 16C by omitting subsection (2).

Clause 170 amends section 43AB so that the criteria for the chief executive (corrective services) to consider when determining whether to provide written permission for a change of name aligns with the new framework for alteration of record of sex and recognised details certificate established by clause 171.

Clause 171 inserts new section 43ABA (Applying for alteration of record of sex and recognised details certificate without permission).

New section 43ABA(1) provides that a person who is a released prisoner must obtain the chief executive's written permission before applying:
- to alter the record of sex of the person in the relevant child register (or applying to do so under an equivalent law of another State);
- for a recognised details certificate for the person (or applying for a certificate under an equivalent law of another State).

The maximum penalty for failing to do so is 20 penalty units or 6 months imprisonment.

New section 43ABA(2) sets out the criteria the chief executive must consider in deciding whether to give the permission. This includes:
- the safety and welfare of the person and other persons;
- the person's rehabilitation or care or treatment;
- whether the chief executive reasonably believes the proposed alteration of sex or recognised details certificate could be used to further an unlawful activity; and
- whether the proposed alteration of sex or recognised details certificate could be considered offensive to or cause physical, mental or emotional harm to a victim of crime.

New section 43ABA(3) and (4) provide that if the chief executive becomes aware that a released prisoner has failed to obtain written permission to alter the person's record

of sex in the relevant child register, the chief executive may apply to the registrar for the cancellation of the alteration.

New section 43ABA(5) and (6) provide that if the chief executive becomes aware that a released prisoner has failed to obtain written permission to apply for a recognised details certificate, the chief executive may apply to the registrar for the cancellation of the certificate.

Clause 172 inserts definitions of 'reasonably believes' and 'registration Act' in Schedule 1 (Dictionary).

Division 7 Amendment of Guardianship and Administration Act 2000

Clause 173 provides this division amends the *Guardianship and Administration Act 2000*.

Clause 174 amends section 26 to refer to the new *Births, Deaths and Marriages Registration Act 2022*.

Clause 175 amends Schedule 2, section 3 so that applying to alter a record of sex in the relevant child register or applying for a recognised details certificate is listed as a special personal matter.

Division 8 Amendment of Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020

Clause 176 provides this division amends the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.

Clause 177 amends section 64 to ensure the entitlements to a certificate, information or a source document relating to particular entries following registration of a cultural recognition order works effectively alongside the *Births, Deaths and Marriages Registration Act 2022*.

Clause 178 amends section 68 to update references to the new Act.

Clause 179 amends the definition of 'registrar' in Schedule 1.

Division 9 Amendment of Powers of Attorney Act 1998

Clause 180 provides this division amends the *Powers of Attorney Act 1998*.

Clause 181 amends Schedule 2, section 3 so that applying to alter a record of sex in the relevant child register or applying for a recognised details certificate is listed as a special personal matter.

Division 10 Minor and consequential amendments

Clause 182 provides that in each provision of an Act or regulation mentioned in Schedule 3, part 1, the reference to the '*Births, Deaths and Marriages Registration Act 2003*' is replaced with '*Births, Deaths and Marriages Registration Act 2022*'.

Clause 182(2) provides that Schedule 3, part 2 amends the legislation it mentions.

Schedule 1 Applications in relation to children

Part 1 Person who may apply

Schedule 1, Part 1 sets out the circumstances where one person can apply on behalf of a child under clauses 15, 29, 35, 40 or 51 of the Bill.

Part 2 Two or more persons who may apply

Schedule 1, Part 2 sets out the circumstances where two or more persons may apply on behalf of a child under clauses 15, 29, 35, 40 or 51 of the Bill.

Schedule 2 Dictionary

Schedule 2 defines particular words used in the Act.

Schedule 3 Minor and consequential amendments

Schedule 3 amends other Acts and regulations to update existing references to the *Births, Deaths and Marriages Registration Act 2003*.