

QUEENSLAND ACTION GROUP FOR LGBTIQ+ STUDENTS

19 April 2018

1. Introduction

We thank the Department of Justice and Attorney General of the Queensland Government for the opportunity to contribute to the review of the Births Deaths and Marriages Registration Act 2003.

The Queensland Action Group for LGBTIQ+ Students supports children and young people of diverse sexuality, gender or bodies. Our work focuses on schools; we also aim to resolve other issues that affect a student's well-being and therefore their ability to concentrate on their education and their future.

Our submission will focus on the needs of children and young people.

It will also emphasise throughout that all people, whatever their age, should be in charge of decisions regarding their own identity, including the gender information on their Birth Certificate.

As an introduction, we ask you to read the personal message in an article written by Jo Hirst about her transgender child (2016):

'Children like my son change the things they can control. They change their name, pronouns and personal appearance. These things become vital to transgender and gender diverse children who have so little control over everything else. They revel in being able to express themselves in a way that reflects their gender.

Imagine living your entire life with everyone thinking you are a certain gender because there is an M or F written on a piece of paper. It's like life says: "Yes, go ahead, be acknowledged for who you are by your family, friends, school and community," but bureaucracy says: "Unless you go under the knife we will not acknowledge you."

My son is young, he has many years ahead of him where one letter on one document will shadow almost everything he does. He lives as a boy, and will grow to live life as a man, and there will be many times where he has to verify his identity. I worry he may slowly retreat from those situations where he needs to present his birth certificate, the risk of showing it too great. His options to live a full life closing in on him.

A wide array of firsts that should be celebrated become a confronting challenge when your identity document betrays you - the rites of passage open to his peers - a first job, learner's permit, university enrolment. He could forever be confronted by the magnitude and power that one letter has.

Research tells us that transgender and gender diverse children have much better mental health outcomes if they are supported. While we as families and the wider community can support transgender and gender diverse children to feel comfortable and supported as their true gender, it is also the responsibility of those in government to do the same.

...To have their birth certificate reflect their true identity would empower young transgender people to fully participate in all the educational, social, sporting and job opportunities our society has to offer.”

2. Summary of Recommendations

Recommendation 1: That the ‘sex’ of a baby on the Birth Certificate can be male or female or another option for the parents of an intersex baby to select. It should be optional whether the ‘sex’ of the baby is displayed on the Birth Certificate document.

Recommendation 2: That young people under the age of 18 years can change the gender recorded against their name in the Register of Births, Deaths and Marriages.

Recommendation 3: That people can change the gender recorded against their name in the Register of Births, Deaths and Marriages without a requirement for sex reassignment surgery.

Recommendation 4: That the procedure for changing a person’s legally recognised gender should be as straightforward as possible and not place prohibitive procedural, time or cost burdens on applicants.

Recommendation 5: That everyone has the right to determine the words used to describe their gender and to determine whether that information is shown on the Birth Certificate.

Recommendation 6: That a new Birth Certificate should not record that a change has been made and should not show a previous name or gender.

Recommendation 7: That Gender Recognition Certificates will not be required.

Recommendation 8: That the parents of a baby can select the terminology describing their status on the Register of Births, Deaths and Marriages and on the Birth Certificate.

3. Collecting and registering the sex at birth

In Queensland, the biological sex of the baby is currently recorded as ‘male’ or ‘female’ (Births, Deaths and Marriages Regulation 2015).

Although the Review of the Births, Deaths and Marriages Registration Act 2003 (Qld) Discussion Paper 1 defines sex as referring to the ‘chromosomal, gonadal and anatomical characteristics associated with biological sex’ the only aspect used at birth is the external anatomical appearance of the baby.

The process of collecting and registering the sex of the baby may be particularly problematic for the parents of babies who have an intersex variation. These children, as they grow up, may also experience problems resulting from the record of sex on their Birth Certificate at birth.

Therefore, it is necessary to allow an additional sex marker to be used at birth alongside ‘male’ and ‘female’. We recommend that several options are available for the parents of intersex babies to choose from. In accordance with the Yogyakarta Principles plus 10 (2017) parents should also be able to choose not to have the sex recorded on the birth certificate.

What is important here is that the parents are allowed sufficient time to arrive at decisions and are comfortable with what appears on the birth certificate for their baby.

Recommendation 1: That the ‘sex’ of a baby on the Birth Certificate can be male or female or another option for the parents of an intersex baby to select. It should be optional whether the ‘sex’ of the baby is displayed on the Birth Certificate document.

4 Young people need to change the gender on their Birth Certificate

There are an increasing number of children expressing gender diversity and gender dysphoria (Telfer et al. 2015). A large population-based study undertaken in New Zealand in 2012 estimated that approximately 1.2% of adolescents identify as transgender (Clark et al., 2014). Many of these will socially transition and undergo hormone treatment before becoming adults.

Another group of people for whom it may be vitally important to be able to correct the information collected regarding their biological sex at birth are those who are born with an intersex variation.

Some young people, whether intersex or transgender, may wish to express their gender as ‘non-binary’. While the term ‘non-binary’ is not a medical term, this group of people need to be included in any process involving legal gender confirmation and correction.

4.1 Health

The First National Trans Mental Health Study (Hyde et al., 2014), funded by Beyondblue, reported that transgender people are 4 times more likely to be diagnosed with depression than the general population. One of the factors that influence their mental state was the difficulties involved in changing their identity documents.

A survey of transgender people (Tranznation – A report on the health and wellbeing of transgender people in Australia and New Zealand, 2007) found that participants had poorer health ratings than the general population in Australia and New Zealand. The reasons were multi-faceted and included the difficulties experienced in changing their identity documents to match their gender identity.

Transgender people need to be able to change the gender recorded on their Birth Certificates and the process of making this change needs to be simple and stress free.

4.2 Caring for transgender children in Queensland in the present day

The rising number of children and young people seeking specialist healthcare support was recognised by the Queensland Government during 2017 when they considerably increased funding to the Lady Cilento Children’s Hospital Gender Clinic and Statewide Service.

The *Australian Standards of Care and Treatment Guidelines: For trans and gender diverse children and adolescents* (Telfer et al., 2018) are now the official guidelines for all health professionals working with transgender children in Australia. They provide comprehensive information to maximise quality care provision to transgender and gender diverse children and adolescents.

In November 2017 the Family Court ruled that teenagers with gender dysphoria no longer have to apply to a judge to undergo Stage 2 hormone therapy in cases where the young person has the permission of their parents and their treating doctors have assessed them as being competent to make this decision.

In March 2018 the Family Court decided that their approval is no longer required for people under the age of 18 with gender dysphoria to undergo surgical procedures, again, in cases where the treating doctors have assessed them as competent to make this decision and the person has the permission of their parents.

Given that these young people are regarded as competent in being able to make decisions regarding their medical or surgical treatments, it stands to reason that they should also be regarded as competent in being able to apply to have their Birth Certificate amended. It has been shown that allowing and supporting them to live as their affirmed gender is in their best interests. It would also be in their best interests to allow them to have correct identification records.

4.3 Young people need identity documents

A growing number of children are socially transitioning (changing their appearance, clothing, pronouns and names) at a young age. Studies in the United States have shown that with acceptance of their gender identity these children have similar health outcomes to the general population (Olsen et al., 2016). These children should not have to wait until they are 18 in order to be able to correct their identification records. This unnecessary delay has very damaging and long-lasting effects on their chance of being able to live happy, healthy and fulfilling lives.

For children and young people, a birth certificate is usually the primary source of identification used and requested. They may have a passport, which they will be able to get with their correct gender, or when they are older they may have a Drivers Licence which no longer displays a gender marker. However, they will need to initially provide a Birth Certificate in order to obtain these other forms of identification. For most young people the Birth Certificate remains the most important piece of identification.

Some examples of instances where incorrect information on the Birth Certificate can cause distress and lead to ill treatment and discrimination are:

4.3.1 School enrolment

The Queensland Department of Education Procedure for Enrolment in State Secondary, Primary and Special Schools (2017) states that the school is to ensure that “the birth certificate is sighted and the birth certificate number is recorded on the enrolment form if this is the first time the child has enrolled in a state school.”

4.3.2 Sports registration

Various sporting associations require the sighting of a birth certificate upon registration so that they can ensure people are engaging in the correct age level of competition. A young person may have socially transitioned for a number of years and be known in the community by their new name and be accepted as their affirmed gender, but then if they sign up for new sport they need to provide a birth certificate. They effectively have to “out” themselves and go through the stress and anxiety of not knowing if they will be accepted. Transgender young people or their parents are avoiding situations like this because of fear.

New State Guidelines for Transgender Students and Sport (2016) reported that some sports organisations were confused about their legal obligations, which could lead to discrimination, bullying and exclusion. Victorian Equal Opportunity and Human Rights Commissioner Kate Jenkins said: "It is concerning to think that young people do not participate in sport because they fear

experiencing exclusion, violence or harassment on the basis of their sexual orientation or gender identity, which has implications for their health and wellbeing,"

The Australian Human Rights Commission *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights National Consultation Report* (2015) also found that participation in both competitive and community level sports raised concerns. "Sports play an enormously important role throughout life, particularly for youth, in building confidence and promoting mutual respect. While some LGBTI people reported positive experiences in team sports and club sports, others reported feeling unwelcome in settings such as community clubs and competitions. Some participants reported experiences of exclusion, violence and harassment in sports on the basis of SOGII status. "

The 'Play by the Rules' website was developed by the South Australian Department for Sport and Recreation in 2001 as an interactive education and information website on discrimination, harassment and child protection in sport. On their website, Peter Hyndal from Trans-formative Solutions says that: "We know that almost all transgender people want to play sport and that less than 20% of them do. Very few of those 20% participate in organised formal sport. Even fewer of them participate in team-based sports and very few of them are out about their status as transgender."

Clearly it is not good for the physical and mental health and wellbeing of transgender people if they avoid or are not being allowed to participate in sport.

4.3.3 Opening a bank account

Some banks require a child's Birth Certificate to open new bank accounts. For example, the ANZ *guidelines on Kid's Banking* states that a Birth Certificate is needed.

4.3.4 Employment

This is an area that can have a **major** effect on the prospects for a young person's future.

Young people do not have a chance to prove themselves at work if they are rejected prior to being offered employment because their birth certificate raises uncomfortable and distressing questions about their identity. This will influence the rest of their life in terms of employment, income, housing and mental health.

Studies show higher rates of unemployment for transgender people. For example, Tranznation (2007) found that: "In terms of employment, 41.1% were in full time employment, 17.8% were students, 16.2% were on benefits, 6.7% were retired and unemployment was at 9.1%". This level of unemployment was similar to that for transgender respondents in Private Lives (Pitts et al., 2006) which reported 8.8% for transgender men and 12.3% for transgender women, considerably higher than the figure for the total Private Lives sample of 3.4%. The general unemployment level in 2007, the year of the report, was 4.38%, therefore the level of unemployment for those involved in the survey was more than twice the national figure overall and worse for transgender women.

The above report also mentions that: "As was reported in relation to changing documentation, even if participants were able to pass well, and had managed to change crucial information about themselves, their sex assigned at birth could be revealed in the job application process through security checks, or through statements on new documents that stated that they had been previously registered otherwise. Participants noted that equal opportunity and anti-discrimination legislation

was difficult to apply, in practice, and that in many instances, they could never know for certain if they had been discriminated against based on gender identity.”

The Victorian Equal Opportunity and Human Rights Commission in their “Guideline: Transgender people at work” (2014) say that: “Transgender people experience significant levels of discrimination, not just in employment but in all areas of life... In employment, discrimination can include not being recognised as their preferred gender, being forced to disclose private information and missing out on employment opportunities.”

Generally, the minimum age for employment in Queensland is 13. Many young people enjoy the benefits of part time work while they are at school. The Australian Bureau of Statistics (2010) mentions that: “Levels of participation in education and the labour market are frequently cited indicators of the wellbeing of young people. Research suggests that young people who are not fully engaged in education or work (or a combination of both) are at greater risk of unemployment, cycles of low pay and employment insecurity in the longer term. Participation in education and training and engaging in work are also considered important aspects of developing individual capability and building a socially inclusive society.”

Further, according to the Federal Government House of Representatives Committee on Education and Training (2009): “There is a general consensus that young people’s participation in some form of work while at school holds an inherent value. This was acknowledged widely by students, parents and teachers, as well as peak bodies and academics.

Combining school and work can:

- enhance a student’s confidence and self-esteem;
- contribute to their financial well-being;
- facilitate the development of social networks;
- allow students to gain useful knowledge and independence and exercise greater responsibility and self-reliance;
- instil a work ethic and attitude; and
- enable students to develop work and organisational skills, including time management skills.”

Being able to get a first job and gain experience is vitally important and being able to provide a prospective employer with identification that is consistent with a young person’s identity is very important in this being able to happen, whether it is while they are still at school, or after they have left school. Additionally, it isn’t just the first job where identification will be required, but potentially all future jobs as well, thus continuing the never-ending cycle of having to explain themselves and risk rejection or worse.

Recommendation 2: That young people under the age of 18 years can change the gender recorded against their name in the Register of Births, Deaths and Marriages.

5 Sexual reassignment surgery must not be a requirement

Part 4 of the Births, Deaths and Marriages Registration Act 2003 requires sexual reassignment surgery before a person can apply to change their gender.

This requirement for surgery should be removed from the Act for the following reasons:

- As noted in section 4.2 young people under the age of 18 years may transition socially without undergoing surgery of any type.
- The Australian Government Guidelines on the Recognition of Sex and Gender (2015) state that sex reassignment surgery and or hormone therapy are not pre-requisites for the recognition of a change of gender in Australian Government records.
- In the case of intersex people, it may encourage surgical or hormonal interventions of children, practices that are a violation of human rights and vigorously opposed by Intersex Human Rights Australia.
- Transgender people may opt not to have surgery; it is invasive, expensive, they may have health conditions that preclude them from having surgery or they may just not want it.

Recommendation 3: That people can change the gender recorded against their name in the Register of Births, Deaths and Marriages without a requirement for sex reassignment surgery.

6 The procedure for changing the gender on the Birth Certificate

Part 4 of the Births, Deaths and Marriages Registration Act 2003 refers to 'Reassignment of Sex'. The terminology should refer to gender affirmation rather than sex reassignment. People, including those under 18 years of age, are not reassigning themselves, they are seeking to have Government records confirm the gender identity they have been born with. The term "sex reassignment" also has connotations of surgery, however for the many reasons given in section 5 of this submission, people of diverse gender and bodies may not undergo surgery at all.

Principle 31 of the Yogyakarta Principles plus 10 (2017) states: "Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them."

The Australian Human Rights Commission has been quoted as saying that individuals should be handed the power to decide their gender identity for themselves, without prior approval from doctors and psychologists (ABC News, 2016).

"The human rights of transgender and gender diverse people to equality and non-discrimination cannot be fully realised without the removal of the legislative barriers to the legal recognition of their gender identity," Professor Triggs, former president of the Australian Human Rights Commission (ABC News, 2016).

The process for changing a person's legally recorded gender should be straightforward and similar to the process of changing a person's name.

In the case of people under the age of 18 years we recommend that:

- The consent of the child is required.
- A letter or written statement from their treating medical specialist is required.
- Young people aged 16 years to 18 years, can apply in their own right.

- For children younger than 16 years of age, the parent or carer should apply on behalf of the child.

The gender information on the Birth Certificate should be the choice of the applicant, with a range of options provided.

Principle 31 of the Yogyakarta Principles plus 10 (2017) states: “Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics.

However, having the option to display the gender on the Birth Certificate is a better solution than removing the gender identity for everyone. Although some people, for various reasons, may prefer not to have any gender displayed, in general transgender people would prefer to be able to easily obtain identification that is correct. For example, Tranznation (2007) reports that “Participants who had been able to successfully change their documentation experienced this as affirming of their gender”. Participants described it as the “best feeling ever” and felt that having their documents legally changed meant that “no one (could) question their status as their preferred gender.”

Following the removal of the gender from the Queensland Driver’s Licence, social media comments from some transgender people showed that they saw this as a negative change as they would no longer be able to use this identification to “prove” their gender when challenged or questioned.

To avoid embarrassment and further discrimination, a new Birth Certificate should not record that a change has been made. The previous name or gender should not appear.

Recommendation 4: That the procedure for changing a person’s legally recognised gender should be as straightforward as possible and not place prohibitive procedural, time or cost burdens on applicants.

Recommendation 5: That everyone has the right to determine the words used to describe their gender and to determine whether that information is shown on the Birth Certificate.

Recommendation 6: That a new Birth Certificate should not record that a change has been made and should not show a previous name or gender.

7 Gender recognition certificates.

In South Australia and Western Australia people have had to obtain a Gender Recognition Certificate before they can apply to change their Birth Certificate.

If, as we recommend, a new straightforward procedure is introduced in Queensland, allowing people to easily change the details on their Birth Certificate, a Gender Recognition Certificate will not be required.

Recommendation 7: That Gender Recognition Certificates will not be required.

8 Recording same-sex families on the Register

The Marriage Act 1961 has been amended to redefine marriage as “the union of two people”. Adult couples of any sex can enter into a Civil Partnership in Queensland. Children can be born to parents who are not in a formal or legally recognised relationship. All these families can include transgender, intersex or non-binary partners. Therefore the terminology used to describe the parents of a baby on the Register of Births, Deaths and Marriages and on the Birth Certificate needs to reflect the changing social structure of our society.

This organisation would prefer not to comment on specific terminology to be introduced. However, we do recommend that options are available that reflect and are appropriate for all families.

Recommendation 8: That the parents of a baby can select the terminology describing their status on the Register of Births, Deaths and Marriages and on the Birth Certificate.

References

ABC News: Gender identity: Legal recognition should be transferred to individuals, Human Rights Commission says. (2016). Available at: <http://www.abc.net.au/news/2016-04-07/power-to-decide-gender-identity-should-be-with-individuals/7304120> [Accessed 17.04.18]

ANZ Kid’s Banking. Available at: <https://www.anz.com.au/personal/bank-accounts/kids-banking/> [Accessed 12.04.18]

Australian Bureau of Statistics (2010). Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features40Mar+2010> [Accessed 12.04.18]

Australian Standards of Care and Treatment Guidelines: For trans and gender diverse children and adolescents (2018).

Births, Deaths and Marriages Registration Act 2003. Available at: <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-031>

Births, Deaths and Marriages Registration Regulation 2015. Available at: <https://www.legislation.qld.gov.au/view/html/inforce/2018-03-16/sl-2015-0081>

Clark T, Lucassen M, Bullen P, et al. The health and well-being of transgender high school students: Results from the New Zealand adolescent health survey (Youth’12). *J Adolesc Health*. 2014;55:93-99.

House of Representatives, Standing Committee on Education and Training (2009). Inquiry into combining school and work: supporting successful youth transitions. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=edt/schoolandwork/report.htm [Accessed 12.04.18]

Hyde Z, Doherty M, Tilley PJM, McCaul KA, Rooney R, Jancey J (2014) The First Australian National Trans Mental Health Study: Summary of Results. School of Public Health, Curtin University, Perth, Australia.

Intersex Human Rights Australia. Available at: <https://ihra.org.au/19853/welcome/> [Accessed 12.04.18]

Jo Hirst. *Surgical sterilisation shouldn't be the cost of correcting a transgender person's birth certificate* (2016). Available at: <https://www.smh.com.au/lifestyle/surgical-sterilisation-shouldnt-be-the-cost-of-correcting-a-transgender-persons-birth-certificate-20160914-grgijhm.html> [Accessed 12.04.18]

New State Guidelines for Transgender Students and Sport (2016)
<https://www.theage.com.au/national/victoria/new-state-guidelines-for-transgender-students-and-school-sport-20160121-gmb30g.html> [Accessed 17.04.18]

Olson, K.R., Durwood, L., DeMeules, M., & McLaughlin, K. A. (2016). Mental health of transgender children who are supported in their identities. *Pediatrics*, 137 (3), 1-8.

Play by the Rules
(<https://www.playbytherules.net.au/resources/videos/peter-hyndal>)

Private Lives - A report on the health and wellbeing of GLBTI Australians (2006). Australian Research Centre in Sex, Health & Society (ARCSHS) La Trobe University. Available at:
https://www.livingwell.org.au/wp-content/uploads/2012/11/private_lives_report_1_0.pdf

The Queensland Department of Education Procedure for Enrolment in State Secondary, Primary and Special Schools (2017). Available at:
<http://ppr.det.qld.gov.au/education/management/Procedure%20Attachments/Enrolment%20in%20State%20Primary,%20Secondary%20and%20Special%20Schools/enrolment-in-state-primary-secondary-special-schools.pdf> [Accessed 17.04.18]

Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights National Consultation Report 2015. Available at: <https://www.humanrights.gov.au/our-work/sexual-orientation-gender-identity-intersex-status/publications/resilient-individuals> [Accessed 12.04.18]

Telfer M, Tollit M, Feldman D. Transformation of health-care and legal systems for the transgender population: The need for change in Australia. *J Paediatr Child Health*. 2015;51:1051-1053.

Telfer, M.M., Tollit, M.A., Pace, C.C., & Pang, K.C. *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents Version 1.1*. Melbourne: The Royal Children's Hospital; 2018. Available at:
<https://growinguptransgender.wordpress.com/2017/10/01/australian-gold-standard-of-care-for-trans-children/> [Accessed 17.04.18]

The Australian Government Guidelines on the Recognition of Sex and Gender (2015). Available at:
<https://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx> [Accessed 12.04.18]

Tranznation – A report on the health and wellbeing of transgender people in Australia and New Zealand (2007) Australian Research Centre in Sex, Health & Society (ARCSHS) La Trobe University. Available at: <https://www.glhv.org.au/node/398> [Accessed 17.04.18]

Yogyakarta Principles plus 10 (2017). Available at: <http://yogyakartaprinciples.org/> [Accessed 17.04.18]

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