



# EVERYONE DESERVES TO BE RECOGNISED FOR WHO THEY ARE

SUBMISSION TO THE LEGAL AFFAIRS AND SAFETY COMMITTEE INQUIRY INTO  
THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 2022 (QLD)

January 2023

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## ABOUT EQUALITY AUSTRALIA

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people.

Born out of the successful campaign for marriage equality and established with support from the Human Rights Law Centre, Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

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We acknowledge that our offices are on the land of the Kulin Nation and the land of the Eora Nation and we pay our respects to their traditional owners.

# EXECUTIVE SUMMARY

Thank you for the opportunity to make a submission to the Legal Affairs and Safety Committee Inquiry into the Births, Deaths and Marriages Registration Bill 2022 (Qld) (**Bill**).

We congratulate the Queensland Government on introducing this landmark reform, which will improve the lives of trans and gender diverse Queenslanders, as well as delivering a simpler and fairer process for registering births, deaths and marriages for other Queenslanders, including LGBTIQ+ parents.

**Everyone deserves to be recognised for who they are. Identity documents that reflect a person’s gender help ensure trans and gender diverse people are treated with dignity and respect when seeking services, education or employment opportunities, and improve mental health outcomes. This Bill removes cruel and unnecessary obstacles that prevent trans and gender diverse people from updating their legal gender, and in doing so, follows reforms that have been implemented in almost every other jurisdiction in Australia.**

**Equality Australia warmly welcomes this Bill and recommends its passage into law.**

In particular, we welcome provisions that:

- remove the cruel and unnecessary requirement for a person to undergo surgery on their reproductive organs before updating their legal gender;
- allow a person to nominate a gender descriptor that best reflects their identity;
- provide Queenslanders who were born elsewhere with identification that legally affirms their gender in Queensland;
- provide pathways for young people of sufficient maturity to update their gender with the support of their parents or legal guardians, or where that is not possible, with the approval of a court focussed on their best interests;
- streamline the process for a person to update their gender and change their name at the same time;
- allow parents in Queensland to choose to identify as ‘mother’, ‘father’, or ‘parent’ on their children’s birth certificate, thereby recognising rainbow families properly on birth certificates.

Each of these reform components have precedents in the reforms already undertaken by almost all Australian jurisdictions, with Queensland bringing together the learnings from each state and territory into one Bill that draws upon some of the best aspects of other state and territory laws. The Bill also has some important safeguards to ensure that the laws are only used for the beneficial purpose that it is intended: to make life easier for trans and gender diverse Queenslanders, who deserve to be recognised for who they are.

## LIST OF RECOMMENDATIONS

1. **Pass the Bill.** We warmly welcome this Bill and recommend its swift passage into law.
2. **Ensure application fees do not present a financial barrier to updating gender and changing name.** We welcome the ability for trans and gender diverse people to be able to update their gender marker and change their name in one application. However, it appears that they may be charged two fees for this one application. Whether by changes to the regulation or by implementing a policy to guide the Registrar’s discretion on fee waivers, we recommend that trans and gender diverse people be charged no more than the operational cost of updating their gender marker and changing their name, if they are to be charged for this service at all. In any case, policies must ensure that fees are waived when appropriate to ensure there are no financial barriers to a person obtaining an updated birth certificate that reflects their gender.
3. **Provide information about support services for young people and their families.** We welcome the ability of young people to be able to update their gender with the support of their parents or legal guardians, or court approval. We recommend that information is provided on the relevant pages of the Births, Deaths and Marriages website about how support services (including legal support) can be accessed and applied

for by young people and their families, particularly where young people do not have the support of each of their parents or legal guardians.

4. **Ensure equal recognition and treatment under Queensland law.** To ensure trans and gender diverse people are recognised and treated equally under Queensland law, we recommend an audit of Queensland laws that use gender-specific language or language that refers to people's sex-related characteristics or bodily functions to ensure all legal rights, entitlements, privileges and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex characteristics.
5. **Ensuring prisoners are not unfairly prevented from affirming their gender.** We support safeguards to protect the community from potential reoffending or the concealment of past offences, but the requirement that the Chief Executive, Queensland Corrective Services must consent to a person's change of legal gender (as opposed to their change of name) goes too far. This is because a change of legal gender does not limit the powers of the Chief Executive to make appropriate arrangements for the custody of the person, and maintaining a consent requirement for a change of name preserves the ability for oversight from Corrections and would be consistent with laws in most states and territories. For this reason we recommend that the requirement for permission from Corrections to update legal gender be removed, maintaining only a requirement for permission in respect of changes of name. We also recommend that prisoners who have been denied permission by the Chief Executive, Queensland Corrective Services to have their name changed are afforded legal support to have their applications legally reviewed.
6. **Implement the Queensland Human Rights Commission's recommendations for updating Queensland's anti-discrimination law.** We welcome the repeal of the stigmatising 'working with children' exemption in the *Anti-Discrimination Act 1991* (Qld). To ensure the new definitions of 'gender identity' and 'sex characteristics' work as intended, we recommend future reforms implement the remaining recommendations from the Queensland Human Rights Commission's *Building Belonging* report, particularly the recommendations on updating the definitions of direct and indirect discrimination and removing the comparator test.
7. **Commit to protecting intersex people from unnecessary medical treatment without their consent.** We welcome the provision of additional time for parents of children born with variations in sex characteristics to register their child's birth. However, to protect intersex children from so-called 'normalising' procedures on their sex characteristics, we recommend the Queensland Government commits to further legislative reform that protects intersex people from unnecessary medical treatment without personal consent.

# EVERYONE DESERVES TO BE RECOGNISED FOR WHO THEY ARE

Everyone deserves to be recognised for who they are. Trans and gender diverse people need access to identification documents that accurately reflect their gender to ensure they are treated with dignity and respect whenever they are required to prove their identity. Reflecting reforms in almost every other Australian jurisdiction, the proposed reforms to the *Births, Deaths and Marriages Registration Act 2003 (Qld)* remove significant barriers faced by trans and gender diverse people in updating their legal gender in Queensland.

*"[Updating my legal gender] was the most amazing, wonderful and affirming experience."*

(Trans man, 25-34 years, Brisbane)

## 1. PROMOTING DIGNITY AND RESPECT

Trans and gender diverse people may choose to affirm their gender socially, legally and/or medically. Legal affirmation, such as updating a person's gender marker on their identity documents, helps ensure trans and gender diverse people are treated with dignity and respect when accessing services, education or employment opportunities.

*"After having my sex reassignment surgery, being able to update my gender marker was one of the best feelings I've had [in] my whole life to reflect the person, the woman I truly am."*

(Trans woman, 55-64 years, Cairns)

Discrimination is a major barrier for trans and gender diverse people and leads to high levels of unemployment, harassment, and social exclusion.<sup>1</sup> In the largest study of its kind in Australia, *Private Lives 3* documented the experiences of 6,835 LGBTIQ+ people living in Australia, including 1,506 trans and gender diverse people. Among its findings were that:

- 3 in 4 trans and gender diverse participants reported being treated unfairly to some degree because of their gender identity in the past 12 months.<sup>2</sup>
- Around 1 in 2 trans and gender diverse people experienced verbal abuse in the past 12 months because of their sexual orientation or gender identity. A slightly higher proportion experienced being socially excluded.<sup>3</sup>
- Less than 50% of trans and gender diverse respondents felt accepted 'a lot' or 'always' at work, meaning that over 50% felt more limited acceptance or no acceptance at all. The proportion who felt accepted 'a lot' or 'always' in health or support services was significantly lower at 46.5% for trans women, 30.1% for trans men and 21.5% for non-binary people.<sup>4</sup>

Having a birth certificate that aligns with a person's gender allows trans and gender diverse people greater freedom over when and how they may choose to disclose their gender experience. It means that trans and gender diverse people are not forced to reveal intimate and private details about their bodies and lives, and gives power

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<sup>1</sup> Hill et al (2020) [Private Lives 3: The health and wellbeing of LGBTIQ people in Australia](#), Australian Research Centre in Sex, Health and Society, La Trobe University, ('Private Lives 3').

<sup>2</sup> Hill et al (2020) [Private Lives 3](#), at 40.

<sup>3</sup> Hill et al (2020) [Private Lives 3](#), at 41.

<sup>4</sup> Hill et al (2020) [Private Lives 3](#), at 37.

back to people who might suffer discrimination from forced disclosures. It also sends a strong message about the need to treat trans and gender diverse people with dignity and respect, affirming people for who they are.

*“Having to [disclose my gender experience] to an unknown number of office workers each time I need an official document issued feels the same as if I had to stand naked in front of them. It's very unpleasant.*

(Trans man, 45-54 years, Brisbane)

It is not surprising then that access to gender affirming identification has been found to improve the mental health and wellbeing of trans and gender diverse people.<sup>5</sup>

The High Court has recognised that the purpose of legislative schemes that allow people to update their legal gender is to remove impediments in the way in which a person lives within society and to facilitate the social acceptance of a person in their affirmed gender.<sup>6</sup>

The Bill significantly achieves these objectives. It removes the requirement for a person to undergo surgery or medical treatment before updating their legal gender and allows people to nominate a gender descriptor that best reflects their gender. The Bill also allows Queenslanders who were born elsewhere with identification that legally affirms their gender in Queensland as well as streamlining the process for people to update their name alongside their gender.

## 2. REMOVING EXISTING BARRIERS

The current requirements for a person to update their legal gender in Queensland are outdated and do not meet the needs of the trans and gender diverse community.

A 2021 survey of 54 trans and gender diverse people born in Queensland by Equality Australia found that only 5% had been able to update their gender under existing laws and more than 80% of those who had not changed their gender marker would do so if reforms like those in this Bill were passed.

*Because of my birth certificate, I can't obtain any photo ID at all, because I have no other primary identification. This means I also can't even legally prove my age, and that I cannot apply for higher education or a job. All have a severe impact on my quality of life.*

(Trans man, 25-34 years, Gold Coast)

### Removing the requirement for surgery

Choosing not to undergo medical affirmation should not be a barrier to recognising a person for who they are.

Under existing laws, trans and gender diverse Queenslanders are required to undergo surgery on their reproductive organs and have that surgery verified by two doctors before they can apply to update their legal gender.<sup>7</sup> This is a cruel and unnecessary requirement. Not all trans people want, or are able, to have surgery, whether due to cost, availability, or health reasons.

### Non-binary recognition

People who do not identify as either male or female, such as those who identify as non-binary, should be able to access identification documents that reflect their identity.

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<sup>5</sup> Schiem et al (2020) 'Gender-concordant identity documents and mental health among transgender adults in the USA: A cross-sectional study' *The Lancet Public Health*; W King (2021) 'A scoping review examining social and legal gender affirmation and health among transgender populations', *Transgender Health*.

<sup>6</sup> *AB & AH v Western Australia* [2011] HCA 42 [34], [36].

<sup>7</sup> *Births, Deaths and Marriages Registration Act 2003* (Qld) ss 22, 23(4).

Currently, Queensland provides no form of non-binary gender recognition. People seeking to update their gender must select either male or female and cannot nominate a gender descriptor of their choice. This means that many gender diverse people cannot access identification that recognises them for who they are.

*“I define myself as gender fluid and this is not a gender option available for my birth certificate.”*

(Non-binary person, 25-34 years, Queensland)

### 3. BRINGING QUEENSLAND INTO LINE WITH OTHER JURISDICTIONS

**The changes proposed in the Bill would make Queensland law consistent with laws in most other states and territories and bring Queensland into line with federal laws and practices.**

Every state and territory except for New South Wales has removed the requirement for surgery on a person’s reproductive organs. Western Australia requires some form of medical treatment but does not require surgery.<sup>8</sup> Federal laws also allow trans and gender diverse people to update their gender on their passport, and with services like Medicare and Centrelink, without the need for surgery.<sup>9</sup>

By allowing people to nominate a gender descriptor that reflects their identity, Queensland law will be consistent with laws in Tasmania and Victoria,<sup>10</sup> and moves in the same direction as the Commonwealth and every other state and territory apart from Western Australia which now provide for some form of non-binary gender recognition. For example, the Commonwealth allows people to nominate an ‘X’ gender marker on their passport.

Like other states and territories, the Bill also adopts a number of safeguards to protect the integrity of the system and ensure it is used for the purpose it was intended. Among those safeguards are:

- The requirement that a supporting statement be made by a person who is at least 18 years and who has known the person making the application for at least 12 months.<sup>11</sup>
- The requirement for the registrar to refuse to update a person’s gender if they reasonably suspect that the update is sought for a fraudulent or other improper purpose.<sup>12</sup>
- The requirement for the registrar to refuse to update a person’s gender if the nominated sex descriptor is obscene, offensive, absurd, impractical (whether due to being too long, consisting of unpronounceable symbols, or for another reason), or contrary to the public interest.<sup>13</sup>
- The requirement for the registrar to refuse to update a person’s gender if the person’s gender has been updated within the 12 months prior to the day the application is made.<sup>14</sup>
- The introduction of a specific offence for knowingly providing false or misleading information.<sup>15</sup>
- The requirement for parental consent before a young person can update their gender, except where authorised by a court.<sup>16</sup>

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<sup>8</sup> See *AB & AH v Western Australia* [2011] HCA 42 [34], [36].

<sup>9</sup> Australian Government (2013) [Australian Government Guidelines on the Recognition of Sex and Gender](#).

<sup>10</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) ss 4, 30A(2), 30C(5); *Births, Deaths and Marriages Registration Act 1999* (Tas) Part 4A.

<sup>11</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 39(3), 50(3)(a).

<sup>12</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 43(3)(b), 54(3)(b).

<sup>13</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 43(3)(a), 54(3)(a).

<sup>14</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 43(3)(c), 54(3)(c).

<sup>15</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) s 125.

<sup>16</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 40, 44, 45, 51, 55, 56.

Some of these safeguards go further than other states and territories have sought to go, such as the requirement for consent to a change of gender for prisoners. We address this particular requirement further below. However, on the whole, the Bill will make it much easier for trans and gender diverse Queenslanders to be recognised for who they are.

### **RECOMMENDATION 1**

**Pass the Bill.** We warmly welcome the Bill and recommend its passage into law.



# FURTHER AREAS FOR CONSIDERATION

## 4. APPLICATION FEES

**Application fees must not present a financial barrier to a person legally affirming their gender.**

We welcome the ability for trans and gender diverse people to be able to update their gender marker and change their name in one application. This is an important measure designed to reduce the amount of paperwork required to ensure trans and gender diverse people are treated with dignity and respect. We also welcome the discretion afforded to the Registrar to waive fees in certain circumstances.<sup>17</sup>

Although the Bill streamlines the process for people who seek to update their gender and their name simultaneously,<sup>18</sup> it appears that applicants are ordinarily required to pay the full fee for both registering a change of name and altering a record of sex unless the Registrar exercises their discretion to waive fees.<sup>19</sup> Together, these application fees may amount to as much as 303.20 fee units.

Whether by changes to the regulation or by implementing a policy to guide the Registrar's discretion on fee waivers, we recommend that trans and gender diverse people be charged no more than the operational cost of updating their gender marker and changing their name, if they are to be charged at all for this service. In any case, policies must ensure that fees are waived when appropriate to ensure there are no financial barriers to a person obtaining an updated birth certificate that reflects their gender.

### RECOMMENDATION 2

Amend the regulation or implement a policy to guide the Registrar's discretion on fee waivers, to ensure application fees do not present a financial barrier to a person legally affirming their gender by updating their gender and/or changing their name.

## 5. ENSURE ACCESS TO SUPPORT FOR YOUNG PEOPLE AND THEIR FAMILIES

**Young people and their families must be adequately supported through the process of updating a young person's gender on their birth certificate.**

We welcome the ability of young people to be able to update their gender with the support of their parents or legal guardians, or court approval. To ensure that young people and their families can take advantage of the mechanisms under the Bill, support services (such as legal support) must be available, particularly where young people do not have the support of each of their parents or legal guardians.

Information about obtaining this support must be readily available and accessible to young people and their families, including on the relevant pages of the Births, Deaths and Marriages website.

It is important to note that this Bill does not alter or affect the law on who can consent to medical treatment for a young person seeking gender affirming healthcare, with the prevailing authority being that both parents must consent to any gender affirming healthcare where a young person is under 18.<sup>20</sup> While this Bill does not alter the current law on accessing gender affirming healthcare for trans young people, it is significant in removing the requirement for surgery from young people seeking to update their legal gender. In decoupling legal affirmation

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<sup>17</sup> Draft Births, Deaths and Marriages Registration Regulation 2022 (Qld) s 18(3)-(4).

<sup>18</sup> See, e.g. *Births, Deaths and Marriages Registration Bill 2022* (Qld) ss 39(4), 42, 50(4), 53.

<sup>19</sup> Draft Births, Deaths and Marriages Registration Regulation 2022 (Qld) s 18, Sch 2.

<sup>20</sup> See *Re Imogen (No 6)* [2020] FamCA 761; *Re Kelvin* [2017] FamCAFC 258; *Re Jamie* [2013] FamCAFC 110. However, this has been recently questioned by the Queensland Supreme Court in *Re A* [2022] QSC 159 [24], [27].

from medical affirmation, it preserves for the young person and their family full autonomy over medical decision-making. It ensures young people who wish to pursue medical affirmation, whether now or in the future, can make those decisions without feeling any pressure that the decision will have an impact on their legal recognition.

### RECOMMENDATION 3

Provide information on the relevant pages of the Births, Deaths and Marriages website about how support services (including legal support) can be accessed and applied for by young people and their families seeking to update a young person's gender on their birth certificate.

## 6. EQUAL RECOGNITION AND TREATMENT IN OTHER QUEENSLAND LAWS

**Everyone should be recognised and treated equally under the law. For the most part, this Bill will ensure that trans and gender diverse people are afforded the same rights and responsibilities under law, regardless of their gender and/or sex characteristics. However, some Queensland laws use terms that may exclude or disadvantage transgender and gender diverse people. These laws should be reviewed to ensure they are amended to treat everyone equally under the law, no matter their gender or sex characteristics.**

We welcome sections 47, 58 and 128 of the Bill that clarify that, unless a contrary intention applies, trans and gender diverse people should be recognised under Queensland law in their recognised gender. This section also sits alongside section 32B of the *Acts Interpretation Act 1954* (Qld) which helps to ensure that gendered references in law are interpreted to apply to people of all genders.

While these provisions are significant in ensuring trans and gender diverse people are recognised and treated equally under Queensland law, they do not always provide certainty – particularly when the terms used in those laws may be intentionally gendered or refer to sex characteristics or functions in gendered ways. They may also not assist trans and gender diverse people who have not yet updated their legal gender by the time they are confronted by circumstances covered in these other Queensland laws.

For example, Queensland laws that use gender specific language or language that makes gendered assumptions about a person based on sex characteristics and functions include:

- Acts including the *Status of Children Act 1978* (Qld) and *Criminal Code Act 1899* (Qld) use terms that make assumptions about a person's bodily characteristics or sex-related bodily functions (such as the ability to bear children) based on their gender, and therefore may discriminate or disadvantage trans and gender diverse people (e.g. references to 'paternity', women who give birth with a male or female partner etc., references to 'breasts' that exclude trans men and non-binary people who may have similar sex characteristics).
- Acts such as the *Electoral Act 1992* (Qld) and *Succession Act 1981* (Qld) which use phrases that assumes a gender binary, such as '*himself or herself*' and '*brothers and sisters*'.
- Acts including the *Police Powers and Responsibilities Act 2000* (Qld) use the terms 'sex' or 'gender' in way where it is unclear whether the term means a person's sex registered at birth, their gender, or has some other legal meaning. This leaves transgender and gender diverse people vulnerable to discrimination because their right to be treated in accordance with their gender may be questioned.

These areas of law and their practical application to trans and gender diverse people can be both uncertain and complex. Where there is ambiguity, a court may be required to interpret each word or expression in a statute in a way which best gives it the meaning that parliament intended it to have.

In some circumstances, these provisions may be read inclusively because of section 32B of the *Acts Interpretation Act 1954* (Qld) and sections 47, 58 and 128 of the Bill. However, this will not remove the lack of certainty, nor resolve the situation for trans and gender diverse people who have not yet updated their legal gender.

Resolving these issues is complex and requires an audit of Queensland laws to first identify the laws in question and then to determine whether (and how best) to amend them so that all Queenslanders are treated equally under the law, regardless of their gender or sex characteristics.

An example of this is the Equality Australia LGBTIQ+ Legal Audit commissioned by the ACT Government.<sup>21</sup>

#### **RECOMMENDATION 4**

Audit Queensland laws that use gender-specific language or language that refers to people's sex characteristics or sex-related bodily functions to ensure all legal rights, entitlements, privileges and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex characteristics.

## **7. PEOPLE IN CUSTODY**

**People in custody should be recognised for who they are and should not face unreasonable barriers to updating their gender.**

The Bill requires people in custody in Queensland or people who have served a term of imprisonment for serious sexual offences to have written permission from the Chief Executive, Queensland Corrective Services to update their gender or change their name. This is in line with the approach in Victoria,<sup>22</sup> but goes further than the requirements in other states and territories.

In South Australia, the Australian Capital Territory, Western Australia and New South Wales permission from a supervisory authority is only required for prisoners who are applying to change their name – with no requirement for those applying to update their gender.<sup>23</sup> In Tasmania and the Northern Territory, there is no requirement for permission for prisoners seeking to update their gender or change their name.

The Bill already provides that even where the Chief Executive gives permission for a prisoner to update their gender, this does not alter the Chief Executive's power to make arrangements for the custody of the person.<sup>24</sup> Given the Bill already makes clear that a person's legal gender will not necessarily affect the arrangements made for them in custody, we cannot see a policy basis upon which the Chief Executive should be able to deny a person recognition of their legal gender. This is particularly so as legal recognition may be the only form of gender affirmation available to a person serving a custodial sentence.

We can however see policy reasons for oversight from the Chief Executive where a prisoner is seeking to change their name, given the potential impact on historical conviction records and safeguards that are currently in place to protect the community against the risk of future offending or the concealment of past offending. For this reason, we suggest removing the requirement for permission from the Chief Executive before a prisoner can update their legal gender, while maintaining the requirement for consent to a change of name subject to the review mechanisms proposed by the Bill.

We recognise that this may only remove the consent requirement for a small number of prisoners as it is likely that most people will seek to change their name and update their gender simultaneously. It is therefore important that all prisoners are given legal support in the process of updating their gender or changing their name to affirm their gender, and those who are denied permission are supported to have their applications legally reviewed.

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<sup>21</sup> See Appendix A of the ACT LGBTIQ+ Legal Audit report available here: <https://equalityaustralia.org.au/wp-content/uploads/2020/11/EQAU-ACT-legal-report-2019.pdf>.

<sup>22</sup> See *Births, Deaths and Marriages Registration Act 1996* (Vic) s 30FB.

<sup>23</sup> *Births, Deaths and Marriages registration Act 1996* (SA) Div 2; *Births, Deaths and Marriages registration Act 1997* (ACT) Div 3.2; *Births, Deaths and Marriages registration Act 1998* (WA) Div 3; *Births, Deaths and Marriages registration Act 1995* (NSW) Div 3.

<sup>24</sup> *Births, Deaths and Marriages Registration Bill 2022* (Qld) s 166.

Applications for permission from the Chief Executive which are refused must also be reviewed periodically to ensure that this requirement is not unreasonably preventing people from affirming their gender.

### RECOMMENDATION 5

Consistent with most other jurisdictions, remove the requirement for permission from the Chief Executive, Queensland Corrective Services where a prisoner is only applying to update their gender and not change their name.

Ensure prisoners who have been denied permission by the Chief Executive, Queensland Corrective Services to have their name changed are afforded legal support to have their applications legally reviewed.

## 8. AMENDMENTS TO THE ANTI-DISCRIMINATION ACT

**Apart from allowing trans and gender diverse people to update their legal gender, this Bill also ensures they – and intersex people – are better protected from discrimination.**

The Bill introduces an updated definition of ‘gender identity’ and ‘sex characteristics’ into the *Anti-Discrimination Act 1991* (Qld), aimed at better protecting protect trans, gender diverse and intersex people from discrimination.

The Bill also repeals the stigmatising and unnecessary section 28(1) exemption in the *Anti-Discrimination Act*. This provision perpetuates the harmful and offensive stereotype that children are inherently at risk around transgender people. This provision also treats people who are sex workers in the same manner.

Subsection 28(1) is not necessary because any employer who refuses work to someone because they would pose a risk to children in their care or instruction, would never be found to have discriminated against them. Rather than protect children, this provision diverts attention away from where the risks to children truly lie.

The repeal of the stigmatising ‘working with children’ exemption in the *Anti-Discrimination Act* is an important step along the way to further reforms which are necessary to ensure LGBTIQ+ Queenslanders have appropriate protections from discrimination.

To ensure that the new definitions of ‘gender identity’ and ‘sex characteristics’ work as they are intended, it is important that the recommendations made by the Queensland Human Rights Commission in its landmark *Building Belonging* report are also incorporated into subsequent reforms. As recognised by the Commission’s report, many more reforms are needed to bring the *Anti-Discrimination Act* into line with 21<sup>st</sup> century community expectations and ensure that it works both legally and practically to deliver for the people it is designed to protect from discrimination. Among those recommendations are the need to simplify the legal definitions of direct and indirect discrimination, including by removing the comparator test.<sup>25</sup>

### RECOMMENDATION 6

Implement the remaining recommendations from the Queensland Human Rights Commission’s *Building belonging* report by amending or replacing the *Anti-Discrimination Act 1991* (Qld).

## 9. THE NEED FOR FURTHER INTERSEX REFORM

Finally, this Bill will not affect – nor will it fix – an outstanding area of concern for intersex people. Intersex people are those people born with physical sex characteristics (such as genitals or sex chromosomes) that vary from social or medical norms for female or male bodies.

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<sup>25</sup> Queensland Human Rights Commission (2022) [Building belonging: Review of Queensland’s Anti-Discrimination Act 1991](#), 110, rec 3.

The Bill gives additional time for parents of children born with variations in sex characteristics to register their child's birth. This provides parents with more time to make decisions about the registration of their child's gender.

However, this does not protect intersex children from surgeries and other treatments performed on their bodies without personal consent and which are designed to 'normalise' their bodies to fit with gendered norms. These procedures can have lifelong mental and physical health consequences.<sup>26</sup>

The Australian Capital Territory and Victoria have committed to reforms to end unnecessary medical treatments modifying the sex characteristics of intersex people without their consent.<sup>27</sup> In addition to the proposed reforms in the Bill, the Queensland Government should follow the Australian Capital Territory and Victoria and commit to a legislative reform program.

### **RECOMMENDATION 7**

The Queensland Government should commit to legislation that protects intersex people from unnecessary medical treatment without personal consent.

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<sup>26</sup> See e.g. Australian Human Rights Commission (2021) [Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics report](#), 32, 41, 43, 120, 131.

<sup>27</sup> *Variations in Sex Characteristics (Restricted Medical Treatment) Bill 2022* (ACT); State of Victoria, Department of Health and Human Services (2021) [\(i\) Am Equal: Future Directions for Victoria's Intersex Community](#).