



QUEENSLAND BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL

Everyone deserves to be recognised for who they are. Trans and gender diverse people need access to identification documents that accurately reflect their gender, ensuring they are treated with dignity and respect whenever they seek services, education or employment opportunities that require them to prove their identity.

The Births, Deaths and Marriages Registration Bill 2022 brings Queensland into line with other state and territory laws, removing cruel and unnecessary barriers faced by trans and gender diverse Queenslanders who wish to update their legal gender.

KEY FEATURES OF THE BILL

Consistent with reforms in other states and territories, the Births, Deaths and Marriages Registration Bill 2022 (Qld) (the **Bill**) makes it easier for trans and gender diverse people to update their legal gender, including by updating gender markers on their birth certificate.

This section sets out key features of the Bill if it is passed as proposed.

UPDATING GENDER WITHOUT SURGERY

The Bill removes the requirement for trans and gender diverse people to undergo surgery on their reproductive organs before they can update their gender, making Queensland law consistent with laws in most states and territories.

Removing this cruel and unnecessary requirement is important because not all trans

people want to or are able to have surgery, whether due to cost, availability, or health reasons.

Instead, the Bill sets out a simpler administrative process for updating gender. However, the registrar must refuse to change a person's gender if they reasonably suspect the change is fraudulent or otherwise improper.¹

People aged 16 years or over

People who are at least 16 years old will be able to update the gender on their birth certificate by providing:

- a legal declaration that they identify as the gender stated in their application and live or seek to live as a person of that gender; and
- a supporting statement from someone they have known for at least 12 months who is 18 years of age or older.²

Young people aged under 16 years

Children under 16 years will be able to update the gender on their birth certificate without the need for a court order if an application is made by their parents (or the people with parental responsibility for them).³ This includes an application by just one parent where they are the only parent on the birth certificate, the other parent has died, or there is a parenting order in place granting them sole parental responsibility.⁴

The application must include:

- a declaration that the people with parental responsibility believe that updating the legal gender of the child is in the child's best interests;⁵ and
- evidence the child has been assessed by a suitable medical practitioner which affirms that the practitioner supports the update of gender and that the young

¹ Births, Deaths and Marriages Registration Bill 2022 (Qld) s 43(3) (**BDMR Bill**).

² BDMR Bill s 39. This is the same requirement as in Victoria, see *Births, Deaths and Marriages Registration Act 1996* (Vic) s 30A.

³ BDMR Bill s 40.

⁴ BDMR Bill s 40(3).

⁵ BDMR Bill s 41(4)(a).



person understands the meaning and legal implications of the change.⁶

Where one parent has not given their consent, the Bill provides avenues for the other parent to obtain an order from the Childrens Court directing the registrar to consider or accept an application to update the child's gender.⁷ This includes where a parent cannot be located or does not have capacity to consent.⁸

If neither parent consents, a child of at least 12 years may also apply for an order from the Childrens Court directing the registrar to accept an application to update their gender, subject to certain requirements.⁹

CHOICE OF GENDER MARKERS

When updating their gender, Queenslanders will be able to nominate a gender descriptor that best reflects their gender identity.¹⁰

This is consistent with laws in Tasmania and Victoria, and leaves Western Australia as the only jurisdiction that does not allow for any form of non-binary gender recognition.

However, a nominated gender marker must be refused by the registrar if it is obscene, offensive or absurd, impractical (e.g. too long, or inclusive of unpronounceable symbols), or otherwise contrary to the public interest.¹¹

Gender markers such as trans man, trans woman, genderqueer, agender or non-binary are among those that could be available.

PEOPLE BORN OUTSIDE QUEENSLAND

People born outside Queensland, including those born overseas, can apply for a recognised details

certificate if they have been living in the state for 12 consecutive months.¹²

This allows Queenslanders who do not have access to a birth certificate that recognises their gender to have identification that legally affirms their gender in Queensland.

The requirements for accessing a recognised details certificate are the same as those for updating a person's gender on their birth certificate.¹³

CHANGE OF NAME

The Bill allows people to change their first name at the same time they update their legal gender.¹⁴ This reduces the administrative burden and simplifies the process for many trans and gender diverse people who wish to update both their legal name and gender.

SAFEGUARDS AND OTHER REQUIREMENTS

The Bill has several safeguards to ensure the new process is not used for unintended purposes or misused.

These include:

- penalties for knowingly providing false or misleading information;¹⁵
- a prohibition on nominated gender markers that are obscene, offensive or absurd, impractical, or otherwise contrary to the public interest;¹⁶
- the requirement that the registrar to refuse to update a person's gender marker if they

⁶ BDMR Bill s 41(4)(b).

⁷ See BDMR Bill ss 40(3)(d), 40(3)(e), 44, Div 4.

⁸ In these and other circumstances, the Childrens Court can make an order dispensing with the need for the other parent's consent: BDMR Bill Div 4.

⁹ BDMR ss 40(6); 45.

¹⁰ BDMR Bill ss 39, 41.

¹¹ BDMR Bill s 43(3), Schedule 2.

¹² BDMR Bill ss 48, 50, 51.

¹³ BDMR Bill Div 3.

¹⁴ BDMR Bill ss 39(4), 42, 44(6), 50(4), 53.

¹⁵ BDMR Bill s 125.

¹⁶ BDMR Bill s 43(3)(a).



reasonably suspect the change is fraudulent or otherwise improper;¹⁷

- a limitation on updating a person's gender once in a 12-month period;¹⁸
- an additional requirement for people in custody and serious sex offenders to gain written permission from the Corrective Services Commissioner before updating their legal gender;¹⁹ and
- the need for a court order for to update a child's legal gender where at least one parent has not provided consent.²⁰

WHY THIS REFORM MATTERS

Trans and gender diverse people may affirm their gender socially, legally and/or medically. Legal affirmation, such as through updated gender markers on identity documents like birth certificates, can have significant benefits for trans and gender diverse people.

"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 aged 55-64 years

ACCESS TO SERVICES, EDUCATION AND EMPLOYMENT WITH DIGNITY

Trans and gender diverse people face high levels of social exclusion, unemployment and discrimination.²¹

Having a birth certificate that aligns with a person's gender allows trans people to apply for jobs, enrol in school or university or access services that require proof of ID without being outed and put at risk of harassment and violence.

This is particularly important for trans and gender diverse young people for whom a birth certificate may be the only piece of identification they have access to.

"I believe that being outed as trans by my birth certificate was a causal or impacting factor for a period of unemployment I experienced ... It has also resulted in people misgendering me whilst engaging in seemingly simple administrative tasks."
- Trans man aged 25-34 years

HEALTH BENEFITS

The health and wellbeing of trans and gender diverse people improves where they are recognised, supported and affirmed for who they are.²² This includes having access to gender affirming identification.²³

Conversely having identifying documents that do not align with a person's affirmed gender contributes to poor mental health outcomes.²⁴

"[Updating my legal gender] was the most amazing, wonderful and affirming experience."
- Trans man aged 25-34 years

CURRENT LAWS DON'T WORK

A 2021 survey of 54 trans and gender diverse people born in Queensland by Equality Australia

¹⁷ BDMR Bill s 43(3)(b).

¹⁸ BDMR Bill s 43(3)(c).

¹⁹ BDMR ss 166, 171, proposed s 27AA of the *Corrective Services Act 2006* (Qld), proposed s 43ABA of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld).

²⁰ See BDMR Bill ss 40(3)(d), 40(3)(e), 40(6), 44, 45, 51(3)(d), 51(3)(e), 51(6), 55, 56, Div 4.

²¹ A Hill et al, La Trobe University, *Private Lives 3: The health and wellbeing of LGBTIQ People in Australia* (2020).

²² See e.g. E Smith et al, ARCSH, *From Blues to Rainbows: Mental health and wellbeing of gender diverse and transgender young*

people in Australia (2014); A Hill et al (2020); P Strauss et al, Telethon Kids Institute, *Trans Pathways: The mental health experiences and wellbeing of gender diverse and transgender young people in Australia* (2017).

²³ A Schiem et al, 'Gender-concordant identity documents and mental health among transgender adults in the USA: A cross-sectional study' *The Lancet Public Health* (2020); W King, 'A scoping review examining social and legal gender affirmation and health among transgender populations', *Transgender Health* (2021).

²⁴ Z Hyde, Curtin University School of Public Health, *The Australian National Trans Mental Health Study* (2014).



found that only 5% had been able to update their gender under existing laws. More than 80% of trans and gender diverse Queenslanders who had not changed their gender marker indicated that they would do so if reforms like those in this Bill were passed.

"I was born in Queensland which means I need to have undertaken gender confirmation surgery to be eligible [to update my gender] which isn't possible for me right now as I simply don't have the money. Other trans folks don't even want surgery what about them? I have my name changed on my birth certificate but can't change my gender marker to reflect my identity." – Trans man aged 18-24 years

OTHER BENEFITS

The Bill also allows parents to identify themselves on their child's birth certificate as mother, father or parent.²⁵ This allows for better recognition of same-sex, trans and gender diverse parents on their child's birth certificate.

The Bill gives additional time for parents of children born with variations in sex characteristics to register their child's birth.²⁶

The Bill also adopts a definition of 'gender identity' and 'sex characteristics' into Queensland anti-discrimination law which is consistent with recent developments in other states and territories.²⁷

WHAT THE BILL DOES NOT DO

The Bill does not affect who may give consent to gender affirming healthcare for trans and gender diverse young people.

The Bill also does not alter exemptions in anti-discrimination law for competitive sport, or exemptions based on sex, such as those that allow for single-sex education or accommodation.

HOW THIS BILL COMPARES

	Surgical requirements removed?	Recognition of non-binary genders?	Accessible pathways for young people to update gender? ⁽⁴⁾
Qld Bill	✓	✓	✓
ACT	✓	✓	✓
NSW	✗	✓ ⁽³⁾	✗
NT	✓	✓	✗
SA	✓	✓	✓
Tas	✓	✓ ⁽⁵⁾	✓
Vic	✓	✓ ⁽⁵⁾	✓
WA ⁽¹⁾	✓ ⁽²⁾	✗	✓
Cth	✓	✓	?

¹ Proposed reforms have been announced in Western Australia.

² Western Australia does not require surgery but does require some medical treatment: *AB v WA* [2011] HCA 42.

³ New South Wales offers a 'non-specific' gender marker for people who meet the surgery requirement: *Norrie* [2014] HCA 11.

⁴ We have determined a pathway as 'accessible' if a young person can update their gender with the consent of only one parent or authorisation by a court.

⁵ Victoria and Tasmania also allow people to specify their gender descriptor, meaning there is a broader range of gender descriptors available. Tasmania also allows parents to choose whether to record a gender on their child's birth certificate.

FOR MORE INFORMATION

For more information, contact us at info@equalityaustralia.org.au.

²⁵ BDMR Bill s 12.

²⁶ BDMR Bill s 9(2).

²⁷ BDMR Bill ss 152, 157, proposed s 152(1)(na) and Sch 1 of the *Anti-Discrimination Act 1991* (Qld).