

# Queensland Family and Child Commission Submission

To: Registry of Births, Deaths and Marriages

Date: 4 April 2018

Topic: Registering life events: Recognising sex and gender diversity and same-sex families

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## Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Registry of Births, Deaths and Marriages (RBDM) regarding recognising sex and gender diversity and same-sex families.

This submission will not address every question asked in the discussion paper, but will focus on the QFCC's core responsibilities to protect the rights of children and young people, and maintain the register of information relating to child deaths in Queensland.

The QFCC supports proposals to amend the *Births, Deaths and Marriages Registration Act 2003* to remove limitations for the legal recognition of sex and gender diverse people living in Queensland. Changes to the registration of births, deaths and marriages should be guided by Queensland's human rights obligations.

The QFCC has responsibility for functions relating to child deaths in Queensland including:

- maintaining the Queensland Child Death Register based on notifications from RBDM and details of all child deaths reported to the Office of the State Coroner, and
- researching the risk factors associated with child deaths and making recommendations to prevent such deaths occurring.

Any changes to data collection at RBDM could make an impact on the Queensland Child Death Register. In particular, consideration should be given to collecting data and sharing information on sex and gender changes, to support research on child death prevention.

## Queensland Family and Child Commission

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## Human rights considerations

### Recommendation

The QFCC recommends human rights considerations are applied to the recognition of sex and gender diversity, particularly concerning the rights of children and young people.

The QFCC supports proposals to amend the *Births, Deaths and Marriages Registration Act 2003* (the Act) to remove limitations for the legal recognition of sex and gender diverse people living in Queensland. Amendments should be guided by Queensland's human rights obligations.

In 2009, the Australian Human Rights Commission released guidance on sex and gender diversity in a human rights framework. This includes listing articles of the United Nations *Convention on the Rights of the Child* that are relevant to people under the age of 18 who are sex or gender diverse:

- the right to non-discrimination (article 2)
- the best interests of children should be a primary consideration in all actions concerning them (article 3)
- the right to survival and development (article 6(2))
- the preservation of identity (article 8)
- the right of children to express views and have those views respected (article 12)
- the right to freedom of expression (article 13)
- the right to freedom of thought (article 14)
- the right to privacy (article 16)
- the right to protection from physical or mental violence, injury, abuse or exploitation (article 19)
- the right to health (article 24)
- the right to an adequate standard of living (article 27).<sup>1</sup>

Furthermore, the Australian Human Rights Commission refers to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity. These principles assert states such as Australia should take

all necessary legislative, administrative and other measures to ensure that procedures exist whereby all government-issued identity papers which indicate a person's gender/sex – including birth certificates, passports, electoral records and other documents – reflect the person's profound self-defined gender identity.<sup>2</sup>

In 2017, the Yogyakarta Principles were updated and 10 additional principles were included. This new guidance states consideration should be given to removing sex and gender from documents

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<sup>1</sup> Australian Human Rights Commission, *Sex files: the legal recognition of sex in documents and government records*, March 2009, [https://www.humanrights.gov.au/sites/default/files/document/publication/SFR\\_2009\\_Web.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/SFR_2009_Web.pdf), accessed 21 March 2018, p. 11.

<sup>2</sup> Yogyakarta Principles, *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006, [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf), accessed 20 March 2018, p. 12.

such as birth certificates, however ‘everyone has the right to change gendered information in such documents while gendered information is included in them’.<sup>3</sup>

Any change to the Act’s provisions regarding an application to note a reassignment of sex for children and young people should be guided by these human rights considerations, to make sure the best interests of children and young people are reflected in any amendments.

## Child death register

### Recommendation

The QFCC would welcome opportunities to work with RBDM to identify opportunities to capture and share data on sex and gender to support efforts to prevent child deaths in Queensland.

The QFCC maintains the Queensland Child Death Register, based on notifications from the RBDM and details of all child deaths reported to the Office of the State Coroner. The Queensland Child Death Register is used to conduct research and make recommendations about laws, policies, practices and services.<sup>4</sup>

If changes to the *Births, Deaths and Marriages Registration Act 2003* lead to different requirements or methods of collecting data, these may impact on data collection and analysis for the Queensland Child Death Register. The QFCC recommends that it continue to work in close consultation with RBDM during the reform process to identify the technical needs and information sharing provisions required to transfer appropriate RBDM data to the Queensland Child Death Register.

In particular, consideration should be given to collecting data on sex and gender changes in ways that support research on risk factors and prevention of child deaths. Sex and gender may be linked with higher risk of some causes of mortality. Changing sex and gender in birth and death data, without indicating that a change has been made, could limit the integrity of the data held in the Queensland Child Death Register and consequently, undermine the ability of researchers to recommend prevention initiatives, particularly for this group.

RBDM could consider opportunities to capture and share information about sex and gender reassignment for approved purposes. For example, where a person requests a reassignment of sex, RBDM could note this request while making the change. Information about the request could then be transferred to the child death register to provide a more complete indication of sex and gender for research into child death prevention. If the Act were changed to allow for the issuing of a gender recognition certificate, this could be captured and shared with the child death register.

The QFCC would welcome opportunities to work with RBDM to identify opportunities to capture and share data on sex and gender to support efforts to prevent child deaths in Queensland.

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<sup>3</sup> Yogyakarta Principles, *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 to complement the Yogyakarta Principles*, 2017, [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf), accessed 20 March 2018, p. 9.

<sup>4</sup> *Family and Child Commission Act 2014* (Qld), s.26.