

Legal Affairs and Safety Committee

Queensland Parliament

Brisbane, Queensland

9 January 2023

Dear Committee members

**Births, Deaths and Marriages Registration Bill 2022**

Thank you for the opportunity to make a submission in relation to the Births, Deaths and Marriages Registration Bill 2022.

Intersex Human Rights (IHRA) is a national organisation by and for people with innate variations of sex characteristics that promotes human rights, health and bodily autonomy. Formerly known as Organisation Intersex International (OII) Australia, IHRA is a not-for-profit company, with Public Benevolent Institution (charitable) status.

We are generally supportive of the Bill, and in particular provisions relating to reform of the Anti-Discrimination Act 1991, with the following observations and recommendations.

**Reforms to birth registration processes**

Provisions simplifying changes to birth certificates will be welcomed by people with innate variations of sex characteristics who transition gender or who otherwise need to update their records in line with their lived realities. We support these reforms on this basis.

We understand the intent behind an increase in the time available for registering an infant with an observable innate variation of sex characteristics to 180 days (6 months). We note that the explanatory memorandum refers euphemistically on page 14 to ‘complex issues arising from birth registration decisions that must be made within short timeframes’ as a justification for this increase in time.[[1]](#footnote-1)

Our discussions with colleagues across jurisdictions internationally lead us to understand that any deadline for birth registration will lead to a spike in the prevalence of forced or coercive medical interventions aimed at making infants’ bodies conform to social expectations for female or male bodies.

Such interventions are acknowledged to be human rights abuses, opposed by community and human rights institutions. In this sense, the provision in the bill does not address the prevalence of such practices in Queensland, and it does not address the demands set out in:

* the community consensus Darlington Statement, 2017,[[2]](#footnote-2)
* Principle 32 of the Yogyakarta Principles plus 10, 2017,[[3]](#footnote-3)
* the recommendations of a 2021 report on ensuring the health and human rights of people born with variations of sex characteristics by Australian Human Rights Commission,[[4]](#footnote-4) and
* it is out of step with current developments in the ACT[[5]](#footnote-5) and Victoria.[[6]](#footnote-6)

These factors mean that, alone, this reform cannot be said to address the needs of people with intersex variations in relation to birth registrations and their ‘complex issues’ and other sequelae.

We hope that the government might give attention to describing these ‘complex issues’, and outline proposals for reform to address them. In particular, we recommend that the Queensland Parliament also enact reforms to protect children’s right to bodily integrity, in line with these statements, reports and developments.

**Reform to the Anti-Discrimination Act 1991**

The enactment of protections on grounds of sex characteristics will benefit people with innate variations of sex characteristics, and we warmly welcome the provisions. The proposals are limited but take account of our input into discussions with the government[[7]](#footnote-7) and our 2022 submission to the Queensland Human Rights Commission.[[8]](#footnote-8)

We also welcome the amendment in relation to working with children. Provisions in the Anti-Discrimination Act in relation to gender identity have been erroneously purported to provide protections for people with intersex variations, despite community opposition to such expectations as recorded in Hansard.[[9]](#footnote-9) The deletion of section 28 will remove an abhorrent provision that, in effect, holds that discrimination against people with certain innate biological characteristics when working with children is acceptable. In our submission to the Queensland Human Rights Commission we call for a formal apology for this, and we would welcome such an apology by Parliament.

However, further reforms are needed to ensure that marginalised populations are in fact protected. Specifically, the definition of discrimination should be updated in line with the recommendations of the Queensland Human Rights Commission, to ‘remove challenges associated with creating a hypothetical comparator’.[[10]](#footnote-10)

A copy of our submission to the Queensland Human Rights Commission is appended to this submission.

We would be delighted to discuss these matters with the Committee if you find this helpful.

Kind regards

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Morgan Carpenter

Executive director

1. Queensland Parliament, *Births, Deaths and Marriages Registration Bill 2022 Explanatory Notes* (December 2022). [↑](#footnote-ref-1)
2. AIS Support Group Australia et al, *Darlington Statement* (March 2017) <https://darlington.org.au/statement>. [↑](#footnote-ref-2)
3. Yogyakarta Principles, *The 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, to Complement the Yogyakarta Principles* (2017) <http://www.yogyakartaprinciples.org/principles-en/yp10/>. [↑](#footnote-ref-3)
4. Australian Human Rights Commission, *Ensuring Health and Bodily Integrity: Towards a Human Rights Approach for People Born with Variations in Sex Characteristics* (Australian Human Rights Commission, 2021) <https://humanrights.gov.au/intersex-report-2021>. [↑](#footnote-ref-4)
5. Chief Minister, Treasury and Economic Development Directorate, *Draft Legislation To Protect The Rights Of People With Variations In Sex Characteristics In Medical Settings Listening Report on Submissions Received* (August 2022) <https://www.cmtedd.act.gov.au/policystrategic/the-office-of-lgbtiq-affairs/variations-in-sex-characteristics-bill/listening-report>. [↑](#footnote-ref-5)
6. Department of Health, *(I) Am Equal: Future Directions for Victoria’s Intersex Community* (July 2021) <https://www2.health.vic.gov.au/about/publications/factsheets/i-am-equal>. [↑](#footnote-ref-6)
7. Intersex Human Rights Australia, *Submission to the Queensland Government on Reform to Births, Deaths and Marriages Legislation* (4 April 2018) <https://ihra.org.au/32033/submission-bdm-queensland/>. [↑](#footnote-ref-7)
8. Morgan Carpenter, *Submission on Reform of the Anti-Discrimination Act 1991* (Intersex Human Rights Australia, February 2022) <https://ihra.org.au/39662/submission-qhrc-ada-2022/>. [↑](#footnote-ref-8)
9. We refer to this in our submission to the Queensland Human Rights Commission, in ibid; ‘Legislative Assembly: Thursday, 28 November 2002’ 5017 and 5076 <https://documents.parliament.qld.gov.au/events/han/2002/021128HA.PDF>. [↑](#footnote-ref-9)
10. Queensland Human Rights Commission, *Building Belonging Review of Queensland’s Anti-Discrimination Act 1991* (July 2022) 14 <https://www.qhrc.qld.gov.au/law-reform>. [↑](#footnote-ref-10)