Re: Review of Births Deaths and Marriages Registration Act

The Australian Christian Lobby (ACL) is grateful for the opportunity to comment on the current review of the Births Deaths and Marriages Registration Act with particular reference to Discussion Paper 1: Registering Life Events: Recognising sex and gender diversity and same-sex families.

ACL’s vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 100,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

Please feel free to contact me if I can be of further assistance in the consideration of this matter. I would be pleased to meet to discuss my submission or any other aspect in respect to this review.

Regards,

Queensland Director
Australian Christian Lobby
Introduction

A register of ‘births’ ‘deaths’ and ‘marriages’ is a register of historical legal fact. It is not a register of present personal identity, gender orientation or sexual preferences.

The changes offered by the BMDR Review blurs the lines between sex, ‘gender’ and ‘identity’. The Review discussion paper discusses some purposes for civil registrations, such as providing records of births, deaths, marriages, changes of name, proof of age and, more recently, for recording civil partnerships and sex reassignment. This information is also used for tracking crimes and providing identity for passports which ensure security for international travel. It needs to be accurate and factual.

Biological sex differences between men and women affect many different aspects of an individual’s life – and therefore also affect the formation of effective government policy. Statistics obtained through the BDMR inform the planning and implementation of government programs, particularly with regard to health and welfare. Facilities that cater for women’s specific health and welfare needs are an essential service in our community. These facilities must continue to respect biology. Since many of these are intended to provide for the vulnerability of natal females – particularly vulnerability that arises from women’s distinct reproductive functions, the erasure of biology results in a framework which makes it impossible to meet these needs. This matters for women because they do not wish to find themselves in unsafe situations at times of vulnerability.

In contrast to the objective fact of biological sex, ‘gender identity’ refers to a subjective perception or feeling of being male or female, both or neither. While some people may decide to adopt an ‘identity’ that differs from their sex, this has no bearing on the biological sex characteristics of a child at birth.1

Shortcomings of the Discussion paper

• It falsifies an official, historical legal record.
• The paper does not specify what criteria are necessary for a person’s transition to be recognised as sufficiently permanent as to trigger a change to their identity documents.

Through elaborate so-called ‘sex change surgery’ and continual cross-sex hormone therapy, it is possible to mimic the secondary sex characteristics of the opposite sex but this does not, in fact, change the natal sex of a person. Their chromosomes remain XX or XY. Nor should it change the historical record of their birth.

The paper does not discuss at what stage a ‘sex’ change had taken place. Is this determined by ‘identity’; the taking of hormones or surgical reassignment? It is also unclear from the discussion document which definition of ‘gender identity’ the BDMR Review is considering, or what attributes of an individual are to receive special protection in the current proposal.

The concept of ‘gender identity’ as something individual and existing independently of biological sex is a recent confection of post-structuralist philosophy. What may, or may not, constitute a ‘gender identity’ continues to evade consistent definition: Is ‘gender identity’ a fixed property?; Can it be fluid for some people?; Is it fluid for everyone? Already the understanding of ‘gender identity’ used by the

transgender rights movement to argue that a subjective understanding of being the opposite sex (whereby a natal man may identify as a woman or transgender woman, for example) is outdated. Indeed, Tumblr, in researching all the genders currently in popular use has compiled these in a document revealingly entitled “Complete List of Tumblr Genders (SO FAR)”\(^2\), in reference to the fact that understandings of ‘gender’ as a subjective identity are still expanding. The legal implications of protecting a subjective gender identity which is at variance with biological sex are potentially problematic, though the problems differ in type and degree depending on which working definition of ‘gender identity’ is being contemplated.

Responses to Questions from the Discussion paper (responses given only to those questions relevant to our concerns)

1. How should a person’s sex be recorded on the birth, adoption and death registers?

**Recommendation:**
- A person’s sex should be recorded as ‘male’ or ‘female’ in accordance with their biological identity which is scientifically determined by their chromosomal, hormonal, gonadal and anatomical characteristics.
- In the very rare cases where testing is required to determine a baby’s sex, some provision might be made for recording of this information for a later time. There may be a very small number of people born with ambiguous biological identity and this can be recorded as ‘indeterminate’. The number of children born with indeterminate sex is very small.\(^3\) The *British Medical Journal* estimate this incidence as being 1:2000. In all cases, this is a very very small minority.

2. Do you have any other comments on this issue?

**Recommendation:**
Only the biological chromosomal data is scientifically verifiable. Sex is a vital characteristic. Gender and identity are not. The distortion or falsification of record data can seriously compromise the very objectives for which data collection was proposed. To be of any value, data needs to be accurate.

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3. Should any changes be considered to the BDMR Act and BDMR Regulation to improve the legal recognition of sex and gender diverse people in Queensland? If so, what should the changes be?

This submission will comment on this question in relation to the reasons outlined in the discussion paper for collection of data.\(^4\)

<table>
<thead>
<tr>
<th>Create a person’s official identity, through the registration of their birth</th>
<th>No comment</th>
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<tbody>
<tr>
<td>Provide evidence of the events registered (such as births, deaths, marriages, civil partnerships, changes of name, and reassignments of sex) and proof of age</td>
<td><strong>Comment:</strong> The reassignment of sex is not a reassignment of biological data but a surgical reconstruction of a person’s outward appearance. Surgical procedures which alter a person’s appearance are not currently registered in BDM but might be relevant for driver’s licenses or passports. In the event of accidents such as a fire, or decomposed bodies, the analysis of remains would identify the biological identity of the person not their perceived gender identity. Records should maintain a traceable record of changes.</td>
</tr>
<tr>
<td>Identity and parentage</td>
<td><strong>Comment:</strong> changes to the sex or gender identity of parents may cause difficulties in tracing genetic disorders which are passed along the patrilineal or matrilineal line</td>
</tr>
<tr>
<td>Preserve life-event records for future generations</td>
<td><strong>Comment:</strong> these need to be accurate if they are to have any meaning to future generations</td>
</tr>
<tr>
<td>Collect information used for statistical, research and planning purposes relating to population, fertility, health, mortality and other matters</td>
<td><strong>Comment:</strong> Again, collected data needs to be empirically accurate if it is to provide meaningful information for statistical, research and planning purposes.</td>
</tr>
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**Recommendation:**

A birth, death or marriage certificate does not create an individual’s identity, it records the historical event that facilitates state planning. If it were to create an identity, then it would need to record much more personal and diverse information which, by and large, does not benefit the state and becomes intrusive on privacy.

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\(^4\) Registry of Births, Deaths and Marriages, Legislative Review. P.5
There should be no changes to the BDMR Act and BDMR Regulation. Gender diverse people should be protected by the same laws that protect everyone from violence and discrimination.

4. Should any changes be made to the BDMR Act’s provisions regarding an application to note a reassignment of sex for children/young people under the age of 18? If so, what should the changes be?

This question should perhaps say ‘gender’ as ‘sex’ cannot be reassigned.

Children under the age of 18 should not be the subject to so called ‘sex-reassignment’ surgical or hormonal intervention. This is a highly controversial and experimental procedure. The American College of Pediatricians cautions against treatment and finds that for children presenting with gender dysphoria ‘(it) resolves in the vast majority of patients by late adolescence.’

Recommendation:
Children under the age of 18 should not be the subject to attempts to ‘reassign sex’ at all. After the age of 18 they may make autonomous, informed decisions and until that time should remain under the protection of parents.

5. Should the BDMR Act contain provisions to allow for the reassignment of a person’s sex for individuals who reside in Queensland but whose birth was registered elsewhere?

For the BDMR Act to allow the recording of reassignment of a person’s sex for individuals residing in Queensland would alter a fundamental aspect of data collection for the State. Rather than collecting data on births, deaths and marriages it would become a residency data base. Would the individuals be then required to advise of their move to another state?

Recommendation:
No. The BDMR Act should not allow the recording of reassignment of a person’s sex for individuals residing in Queensland but whose births are registered elsewhere.

6. Should the BDMR Act allow for the issuing for a gender recognition/identity acknowledgement certificate which can be used as a proof of their sex or gender?

7. Do you have any other comments on this issue?

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In the instance of the birth registration of a child, the historical and medical facts (such as, the time and date of birth, biological sex and parentage), should be the only details recorded. The subjective gender identity of an individual is not information in which the BDMR rightly has any interest.

8. Should the BDMR Act be amended to permit same sex-parents to choose how they are recorded on a birth or adoption registration?

Children have a right to know their biological identity – that is the identity of the persons who contributed the biological gametes from which they have their being.

To reiterate, the birth certificate is a record of objective historical and biological facts about a child i.e. time, biological sex and parentage, it is not a record of the social arrangements of those adults who intend to care for them.

If the government desires to record the parenting intentions of same-sex parents, this should not be at the cost of obscuring relevant information about the child’s biological parentage. Information regarding biological parents can be of vital importance. This was made obvious in the State of Victoria with the passage of ‘Narelle’s Law’, the Assisted Reproductive Treatment Amendment Act, 2016. This legislation was enacted in response to a plea from Narelle Grech to learn who her biological father was when she was diagnosed with a genetic bowel cancer. This Act establishes a “Victorian Assisted Reproductive Treatment Register” to collect such data and work in relationship with the Registrar of Births Deaths and Marriages.  

**Recommendations:**

Children have a right to know their biological identity. A register should be established to record biological donors so that vital information such as genetic identity and access to hereditary medical information.

9. If so, what descriptors should be available and in what combinations? Mother/mother or father/father

Every child has one mother and one father. This is a biological fact and hence must be recorded at an individual’s birth. If for any reason the father cannot be identified, the record should show that the father is ‘unidentified’. It is important for children to know their biological inheritance and therefore the biological mother and father should be recorded. If the government needs to record the social arrangements this can be provided under additional parent fields.

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