

Level 5, 183 North Quay Brisbane Qld 4000  
PO Box 13035, George Street Brisbane Qld 4003  
T: 07 3025 3888 | F: 07 3025 3800  
Freecall: 1800 012 255  
ABN: 116 314 562

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Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Secretary,

**RE: SUBMISSION ON THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 2022 AND REGULATION**

Thank you for the opportunity to provide comments on the Births, Deaths and Marriages Registration Bill 2022 (**Bill**) and the Births, Deaths and Marriages Registration Regulation 2022 (**Regulation**) which are proposed to repeal and replace the existing *Births, Deaths and Marriages Registration Act 2003* (**BDMR Act**) and the Births, Deaths and Marriages Registration Regulation 2015 (**BDMR Regulation**). We appreciate the rationale for the changes that the Bill will effect, if enacted, with respect to strengthening the legal recognition of trans and gender diverse people and strengthening the recognition of contemporary family and parenting structures – and would broadly support same. We also welcome a number of proposed changes to the legislative framework for the registration of births which, in conjunction with targeted communication initiatives in Aboriginal and Torres Strait Islander communities, has the potential to improve the under-registration of births of babies to First Nations mothers in Queensland.

*Timeframe for submissions*

We wish to express our concerns regarding the short timeframe to provide comments on this very important Bill and Regulation, in particular, noting that responses are required by midday on 11 January 2023 and that the proposed consultation period includes within it a two-week Christmas shut-down period. The repeal and replacement of the BDMR Act and BDMR Regulation is a significant legislative

reform worthy of detailed consideration, analysis and review. While we have done our best to carefully consider the implications of the Bill and Regulation, in our view, the timeframe and time of year for consultation has made the provision of meaningful and considered comment on the Bill and Regulation challenging.

### **Preliminary consideration: Our background to comment**

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by nearly five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

### **Comments on the Bill**

#### *Queensland Law Society's submission*

We have been given the opportunity to review the submission prepared by Queensland Law Society (**QLS**) in relation to the Bill and in broad terms we would not disagree with their recommendations.

We do wish to distinguish our comments, however, with respect to section 41 of the Bill relating to the application to alter the record of sex of a child under 16 years. In our view, we consider that retaining the requirement for an assessment to be undertaken by a developmentally informed practitioner is consistent with the best interests of the child. Indeed, in our view there is scope to consider an added safeguard, namely a requirement for a full psychological assessment – especially given how prone youth can be to peer and social influences.

#### *Under-registration of births of babies that have an Aboriginal and/or Torres Strait Islander mother*

A recent investigation by the Queensland Ombudsman found that, in Queensland, the rate of birth registration of babies with an Aboriginal and/or Torres Strait Islander mother is significantly less when compared with babies born to non-Indigenous mothers<sup>1</sup>. Not having a birth certificate creates a number

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<sup>1</sup> Queensland Ombudsman, *The Indigenous birth registration report – An investigation into the under-registration*

of flow-on effects for a child and the child's family noting that a birth certificate is required for certain critical matters such as proof of identity, enrolling in school, avoiding legal invisibility, obtaining a driver licence, applying for a passport, obtaining employment, opening a bank account, accessing government benefits and applying for private and public housing.

The results of this investigation culminated in a report which was released in June 2018 entitled "The Indigenous Birth Registration Report – An investigation into the under-registration of Indigenous births in Queensland" (**Ombudsman's Report**). The Ombudsman's Report refers to an analysis of birth-related data that was undertaken by Queensland Health in 2014 which revealed that 15-18% of births of babies with an Aboriginal and/or Torres Strait Islander mother were not registered, compared to an under-registration rate of 1.8% to non-Indigenous mothers<sup>2</sup>. Furthermore, it was found that children born to Aboriginal and Torres Strait Islander mothers in "remote" or "very remote" areas were even less likely to be registered (23.4% to 27.1% respectively, compared to 1.6% for babies with a non-Indigenous mother)<sup>3</sup>. A number of recommendations were made with respect to the processes of the Registry of Birth, Deaths and Marriages (**BDM**) to address identified barriers to registration of First Nations babies.

We acknowledge the measures that BDM and the Department of Justice and Attorney-General (**DJAG**), more broadly, have implemented to address these issues since the Ombudsman's Report was released including development of *The Closing the Registration Gap Strategy Plan 2021-24* (**Strategy**) which contains the following goals:

- *By 2024, 80 per cent of Aboriginal and Torres Strait Islander children's births will be registered within 60 days of birth.*
- *By 2024, 90 per cent of Aboriginal and Torres Strait Islander children's births will be registered within 1 year of birth.*

The Strategy includes commitments to:

- *Create culturally safe services, remove operational barriers to birth registrations and the systemic issues that create those barriers*
- *Build awareness and understanding of the differences between birth registration and accessing birth certificates*
- *Improve the quality of data when collecting Aboriginal and Torres Strait Islander birth registrations.*

Notably, the Ombudsman's Report revealed a number of barriers to the registration of births by Aboriginal and/or Torres Strait Islander mothers including the fee for obtaining a birth certificate (currently \$52.60):

*Community organisations consistently advised investigators that the fee for a birth certificate*

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*of Indigenous births in Queensland, Ombudsman's Report (2018) page 2.*

<sup>2</sup> Note 1, page 2.

<sup>3</sup> Note 1, page 11.

*was a significant barrier for many of their clients. Some community organisations reported that they were using their already limited funding to pay for clients' birth certificates to ensure that clients can fully participate in society.*<sup>4</sup>

We understand that as part of the Ombudsman's investigation into this issue, BDM advised that they have a practice of waiving birth certificates fees in certain circumstances, for example, if the certificates have been issued as part of their community visiting program (where BDM visits remote communities), after natural disasters, or where a request has been received for waiver from a Member of Parliament or a social worker<sup>5</sup>.

As acknowledged in the Explanatory Notes to the Bill, there is currently no clear legislative basis upon which fees can be waived or refunded under the BDMR Act and BDMR Regulation<sup>6</sup>. The Bill and Regulation appear to create a discrete power for the waiver of fees. This move is welcomed. We also acknowledge that, since delivery of the Ombudsman's Report, the *Registry of Births Deaths and Marriages Fee Waiver Policy* has been created which supports the process of fee waiver in circumstances of financial hardship, an immediate need and for people within a clearly identified and identifiable group under circumstances where there is a recognised need to waive application fees. We also welcome changes that are reflected in the Regulation which remove the late birth registration fee which was also identified by the Ombudsman as a fee that served to be a barrier to birth registration<sup>7</sup>.

Culturally appropriate and effective communication of these proposed changes to Aboriginal and Torres Strait Islander communities will be crucial to fully realising the objective of improving under-registration of births, should the Bill and Regulation be enacted.

#### *More time is needed for the registration of a birth*

We would like to see the time limits for birth registration<sup>8</sup> increased by at least 30 additional days to provide more time for mothers from remote and regional areas to register the birth of their babies. There are very real technological and logistical challenges for First Nations women living in remote and rural areas. For example, First Nations women living in remote communities may travel alone via public transport to larger hospitals such as Cairns to give birth. Accordingly, they may not be able to lodge the paperwork for registration of their child until they return to their community and when they return to their community, they are unable to easily lodge the paperwork.

As identified in the Ombudsman's Report, online registration of births is not a practical option for remote communities due to the limited access to computers and the internet. Further, it was recognised that hard copy registration as an alternative was also not a "silver bullet" as such involves printing a hard copy birth registration form which requires computer literacy, a computer, internet access and a printer. And while the option of attending a local courthouse to obtain a hardcopy birth registration application form is also available, community organisations that were consulted as part of the Ombudsman's investigation

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<sup>4</sup> Note 1, page 22.

<sup>5</sup> Note 1, page 23.

<sup>6</sup> See page 4 of the Explanatory Notes to the Bill.

<sup>7</sup> Note 1, page 19.

<sup>8</sup> Section 9(2)(a) and (b) of the Bill.

advised that this was difficult to undertake within the 60 day period for those who lived remotely and who were reliant on public transport to travel or may be hampered to travel on the basis that they are caring for other children in addition to a newborn<sup>9</sup>.

Referring back to the example provided earlier, where a mother from a remote community has travelled alone via public transport to a larger hospital, for example, in Cairns to deliver her baby, it is not clear under the provisions of the Bill as to whether the Registrar would accept an application for birth registration by the mother alone. Whilst section 8(2)(b) of the Bill provides that the Registrar may accept an application to have a birth registered by only one parent if the Registrar is satisfied that the other parent is “unable, unwilling or unlikely to sign the application”, the examples provided under that provision are:

1. *The other parent is dead.*
2. *The other parent cannot be located.*

In our view, increasing the timeframe within which a birth must be registered would give mothers from remote communities more time to overcome the technological and logistical challenges that they face when attempting to comply with their legislative requirement to register the birth of a child.

### *Penalty*

One of the recommendations of the Ombudsman’s Report was that DJAG review the ongoing need for a penalty for failing to register a birth within 60 days, as is required under section 8 of the BDMR Act, on the basis that it was identified to be a potential barrier to birth registration<sup>10</sup>. It appears that whilst the Director-General at the time advised that the matter of the applicability of penalties would be considered as part of the review of the BDMR Act which culminated in the Bill<sup>11</sup>, the existing penalty of 20 penalty units (which currently amounts to \$2,875) for failure to register a birth within the required timeframe appears to have been retained in the Bill<sup>12</sup>. Noting the Director-General’s advice that, in practice, this offence not prosecuted<sup>13</sup>, we question the utility of having the penalty at all and respectfully submit that the Committee consider whether it could be dispensed with.

## **CONCLUSION**

We broadly support this significant legislative reform which, if enacted, will strengthen the legal recognition of trans and gender diverse people and strengthen the recognition of contemporary family and parenting structures. We also support a number of long-awaited changes to the legislative framework for registration of births which are contained in the Bill and Regulation, such as, the enactment of a discrete power to waive fees and the removal of late registration fees, as we feel that this will help remove barriers to birth registration of babies that have a First Nations mother. Culturally appropriate and effective communication of these proposed changes to Aboriginal and Torres Strait

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<sup>9</sup> Note 1, page 34.

<sup>10</sup> Note 1, page 20.

<sup>11</sup> Note 1, page 20.

<sup>12</sup> Section 8.

<sup>13</sup> Note 1, page 19.

Islander communities will be crucial to fully realising the objective of improving under-registration of births, should the Bill and Regulation be enacted.

We thank you for the opportunity to provide feedback on the Bill and Regulation.

Yours faithfully,

Gregory M. Shadbolt

Principal Legal Officer

Acting Chief Executive Officer