

18 April 2018

Our ref: (NDC)

BDMR Act Review Team
Registry of Births, Deaths and Marriages
PO Box 15188
City East
Brisbane QLD 4002

By post and by email: bdmlegislativereview@justice.qld.gov.au

Dear Review Team

Review of Births, Deaths and Marriages Registration Act 2003 (Qld)

Thank you for the opportunity to provide comments on the review of the *Births, Deaths and Marriages Registration Act 2003 (Qld)*. The Queensland Law Society appreciates being consulted on this important legislation.

This response has been compiled with the assistance of the Family Law Committee and Health and Disability Law Committee, who have substantial expertise in this area.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The Queensland Law Society assists legal practitioners to continually improve their services, while monitoring their practices to ensure they meet the high standards set for the profession in Queensland. QLS assists the public by advising government on improvements to laws affecting Queenslanders, and working to improve their access to the law.

Collecting and registering a person's sex

We welcome further consultation on the legal aspects of this issue in the drafting stages of any proposed legislation.

Recording same-sex families on the register

QLS supports amending the *Births, Deaths and Marriages Registration Act 2003 (Qld)* to allow same-sex parents to choose how they are recorded on a birth or adoption register.

A child's birth certificate creates and supports a child's sense of identity. The way in which a child's parents are recorded on the birth certificate has legal, emotional, psychological, social and in some cases cultural and religious consequences for that child's status and identity.

In our view, individuals listed on the application to register a child's birth ought to have the option to elect whether to be recorded as 'mother', 'father' or 'parent'. The descriptors 'mother', 'father' and 'parent' should be available, in any combination, to each parent. This would mean the following combinations would be available to parents:

- Mother/Mother
- Father/Father
- Parent/Parent
- Mother/Parent
- Father/Parent
- Mother/Father

The current limitation on descriptors mean that family structures may not be accurately reflected on a birth certificate. If a child has two mothers, two fathers or otherwise, the birth certificate should represent this reality. In addition, current limitations potentially cause unnecessary offence to families who wish to have both parents recorded as 'mother', 'father' or 'parent'. Importantly, this amendment would have no substantive effect on parentage or standing of legal parents under federal legislation.

If the descriptors or categories are more extensive than those outlined above, there is potential for inconsistency or confusion to arise in the application of various state and federal legislation, including the *Status of Children Act 1978 (Qld)*, *Adoption Act 2009 (Qld)*, *Family Law Act 1975 (Cth)*, *Child Support (Assessment) Act 1989 (Cth)*. The Society would be particularly concerned about the adoption of other descriptors, such as 'co-parent' or 'second parent'.

There are significant implications to broadening the scope of individuals recorded on a child's birth certificate. In our view, the place for donor information is not on the child's birth certificate. However, there is benefit to a child's genetic parentage being recorded on a register similar to the Central Register maintained by the NSW Department of Health, which requires assisted reproductive technology (ART) providers to provide the following information to the NSW Ministry of Health:

- The full name, sex and date of birth of every child born as a result of ART treatment by the ART provider
- The name of the women who gave birth to the child, and
- The full name, date of birth and place of birth of the gamete donor.

A child conceived as a result of ART treatment using donated gamete or embryo should be able to access this information at 18 years of age or earlier in some circumstances, such as in the event of a medical emergency.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Natalie De Campo by phone on (07) 3842 5889 or by email to N.DeCampo@qls.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ken Taylor', with a long horizontal flourish extending to the right.

Ken Taylor

President