

Births, Deaths and Marriages Registration Act 2023

Explanatory notes for SL 2023 No. 192

Made under the

Births, Deaths and Marriages Registration Act 2023

General Outline

Short Title

Proclamation to commence Part 12, Division 3 of the Births, Deaths and Marriages Registration Act 2023.

Authorising law

Section 2 of the *Births, Deaths and Marriages Registration Act 2023*

Policy objectives and the reasons for them

The *Births, Deaths and Marriages Registration Act 2023* (BDMR Act) received assent on 23 June 2023.

The objective of the Proclamation is to fix 29 April 2024 as the commencement of Part 12, Division 3 of the BDMR Act.

Part 12, Division 3 of the BDMR Act includes amendments to the *Anti-Discrimination Act 1991* (AD Act) to:

1. modernise the definition of *gender identity* so that it is more inclusive and aligns with international best practice;
2. introduce a new protected attribute of *sex characteristics* which provides protections for members of the intersex community; and
3. repeal an exemption which allows unlawful discrimination in the area of working with children.

The new definition of *gender identity* implements recommendation 22.1 of the Queensland Human Rights Commission's *Building Belonging Report – Review of Queensland's Anti-Discrimination Act 1991* (QHRC Report) and aligns with international best practice understanding of *gender identity*. It is also consistent with the definition adopted in section

213G (Meaning of gender identity) of the *Public Health Act 2005* as part of the 2020 reforms to prohibit the practice of conversion therapy by health service providers.

Amendments to the AD Act create a new protected attribute of *sex characteristics*. This implements recommendation 28.1 of the QHRC Report and aligns with actions taken by Victoria, Tasmania and the Australian Capital Territory. This definition aligns with international best practice understanding of *sex characteristics*.

The amendments to the AD Act include amendments to sections 124A (Vilification on grounds of race, religion, sexuality or gender identity unlawful), 131A (Offence of serious racial, religious, sexuality or gender identity vilification) and 134 (Who may complain) of the AD Act to ensure the vilification protections in the AD Act are extended to the attribute of sex characteristics.

Part 12, Division 3 of the Act also omits section 28 of the AD Act so that it will no longer be lawful to discriminate on the basis of gender identity or lawful sexual activity in the context of work involving the care or instruction of minors.

Achievement of policy objectives

The policy objective is achieved by fixing a commencement date of 29 April 2024 for the commencement of Part 12, Division 3 of the BDMR Act.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

As outlined in the explanatory notes for the Births, Deaths and Marriages Registration Bill 2022, the benefits and costs of implementing the BDMR Act and all, or any, operational changes required by the registry to support the implementation of the reforms will be met from within existing resources.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with relevant stakeholders during the development of the Births, Deaths and Marriages Registration Bill 2022 (the Bill) and was largely informed by two roundtables with key stakeholders held in October 2021 and May 2022.

A consultation draft of the Bill was provided to key legal, health, advocacy and professional organisations who were invited to provide feedback. Stakeholder feedback was taken into account in finalising the Bill.