

COMMUNITY LEGAL CENTRES TASMANIA

15 April 2016

Leica Wagner
Senior Policy and Project Officer
Equal Opportunity Tasmania
GPO Box 197
Hobart TAS 7001

via email: office@equalopportunity.tas.gov.au

Dear Leica,

Re: Options paper to amend *Births, Deaths and Marriages Registration Act 1999 (Tas)*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to Equal Opportunity Tasmania's Options Paper on amending the *Births, Deaths and Marriages Registration Act 1999 (Tas)* (*BDMRA*) to provide for legal recognition of sex and gender diversity in Tasmania.¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We believe that the recommendations put forward by Equal Opportunity Tasmania to amend the *BDMRA* are necessary to ensure that the Tasmanian Statute book is consistent with anti-discrimination legislation and keeps pace with legislative developments in other Australian jurisdictions, federal case law and changing community expectations.

There are a number of inconsistencies between the *BDMRA* and the *Anti-Discrimination Act 1998 (Tas)*. For example, the *BDMRA* does not allow a person to register their change in sex until they have undergone sexual reassignment surgery,² whereas the *Anti-Discrimination Act* allows for recognition and protection of gender identity without the requirement for surgical intervention.³ On this point, Equal Opportunity Tasmania has recommended removing the requirement under the *BDMRA*, in order to bring the Act in line with the *Anti-Discrimination Act 1988 (Tas)*. CLC Tas supports the proposed amendments as it will provide a recognition of gender identity that is consistent across Tasmanian legislation.

¹ CLC Tas would like to acknowledge Amelia Hickman who assisted in the drafting of our response.

² Section 28A(1) of the *Births, Deaths and Marriages Registration Act 1999 (Tas)*.

³ Section 3 of the *Anti-Discrimination Act 1998 (Tas)*.

It should also be noted that the requirement to have undergone sexual reassignment surgery in order for gender identity to be recognized in Tasmania's *BDMRA* is inconsistent with the approach adopted in other Australian jurisdictions.⁴ We are also concerned that Tasmania's *BDMRA* is falling behind similar legislative safeguards in other Australian jurisdictions, such as by requiring a person to be unmarried to register a change of sex, which is no longer required in the ACT.⁵

It should also be noted that there have been a number of Federal Court cases which have laid down important principles that our *BDMRA* is inconsistent with. In the cases of *Re: Lucy* and *Re Jamie*⁶ the Family Court held that a minor is able to consent to the second stage of treatment given to a child who identifies with a gender different to their biological sex, which generally commences when the child is 16 years old. Despite this, Tasmania's *BDMRA* does not allow a person to independently register a change of sex until they are an adult, which requires them to either be 18 years old or to be, or have been, married.⁷ We believe that the *BDMRA* should be amended in the ways proposed by Equal Opportunity Tasmania, so that the *BDMRA* is contemporaneous and consistent with the important human rights principles expounded in these cases.

Importantly, in 2013 the Australian Government *Guidelines on the Recognition of Sex and Gender*⁸ came into effect, requiring federal government departments to align their business practices with the guidelines which are reflective of the changing attitude in Australia in relation to gender identity. Equal Opportunity Tasmania has made recommendations in line with these guidelines, such as introducing an 'X' gender category to represent non-binary gender identity. CLC Tas supports these recommendations as they will lead to greater consistency in government department decision-making at a state and federal level and are reflective of changing community expectations.

For all of these reasons, CLC Tas fully supports the recommendations of Equal Opportunity Tasmania. We believe these recommendations will result in greater consistency in Tasmanian law relating to the recognition of sex and gender diversity. They will have the effect of updating the law to be consistent with developments in anti-discrimination law, other legislative changes and case law, as well allowing the law in Tasmania to adequately reflect the developing expectations and sentiments of the community.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁴ See, for example the *Gender Reassignment Act 2000* (WA).

⁵ Section 24(1) of the *Births, Deaths and Marriages Registration Act 1997* (ACT).

⁶ *Re: Lucy (Gender Dysphoria)* [2013] FamCA 518; *Re: Jamie* [2013] FamCAFC 110.

⁷ Section 28(1) of the *Births, Deaths and Marriages Registration Act 1999* (Tas).

⁸ Commonwealth of Australia, *Australian Government Guidelines on the Recognition of Sex and Gender* (July 2013).