



Attorney General; Minister for Electoral Affairs

Our Ref: 67-31553

The Hon Peter Foster MLC
Committee Chair
Standing Committee on Environment and Public Affairs
Legislative Council Committee Office
Parliament House
4 Harvest Terrace West Perth 6005

Send to: Committee Clerk, Standing Committee on Environment and Public Affairs
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Dear Chair

PETITION NO. 68 – LGBTIQA+ RIGHTS IN WESTERN AUSTRALIA (WA)

Thank you for your letter dated 1 December 2022 regarding Petition No. 68 – LGBTIQA+ rights in Western Australia (WA). I apologise for the delay in responding.

To inform the Standing Committee on Environment and Public Affairs' consideration of the matters outlined in the petition, I have provided some comments under the terms of the petition. As noted below, I have not provided comment on some of the terms as they are not relevant to my portfolio.

Review of the *Equal Opportunity Act 1984 (WA)*

As you are aware, the Law Reform Commission of WA (LRCWA)'s Review of the *Equal Opportunity Act 1984 (WA)* (the EO Act) Project 111 Final Report was tabled in Parliament on 16 August 2022. The Final Report makes 163 recommendations, most of which have been accepted by Government. A number of recommendations will strengthen protections against discrimination of members of the LGBTIQA+ community including:

- Recommendations 74 – 81 which will narrow existing religious exemptions in the EO Act, and limit discrimination on the grounds of LGBTIQA+ status.
- Recommendations 27 – 29 which will replace the protected attribute of 'gender history' with 'gender identity' to recognise and protect members of the broader LGBTIQA+ community.
- Recommendation 54 which will extend the definition of 'sexual orientation' to recognise the diversity of sexual orientations that exist in the community and promote equality for all.
- Recommendation 59 which will extend the definition of 'employment' to include volunteers and unpaid workers. This will ensure the protections that apply under the EO Act will also apply to people within the LGBTIQA+ community in the areas of volunteering and unpaid work.

Drafting of a new Equal Opportunity Act is currently underway.

Gender Reassignment Board

Prior to the Review of the EO Act, the LRCWA completed the Project 108 Final Report, Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics. The LRCWA made 17 recommendations, including that the *Gender Reassignment Act 2000 (WA)* and *Gender Reassignment Regulations 2001 (WA)* be repealed (Recommendation 10), which would effect the abolishment of the Gender Reassignment Board.

Informed by the Project 108 Final Report, on 21 December 2022 the McGowan Government announced significant reforms to sex and gender recognition laws in Western Australia. These reforms include:

- Repeal of the *Gender Reassignment Act 2000 (WA)*.
- Abolition of the Gender Reassignment Board.
- Amendments to the *Births, Deaths and Marriages Registration Act 1998 (WA)* to create a new, streamlined administrative process for sex and gender recognition.

Under the reforms, to update sex or gender information on a birth certificate, applicants will no longer be required to demonstrate that they have undertaken surgical or medical intervention. Rather, applicants will be able to provide a certificate from their medical practitioner or psychologist confirming they have received clinical treatment in relation to their sex or gender identity. The Registry of Births, Deaths and Marriages will administer the new process.

The reforms to sex and gender recognition laws in Western Australia will bring Western Australia in line with the processes available for amending sex or gender on birth certificates throughout most of Australia.

These changes will also complement the reforms that are currently underway to anti-discrimination protections in Western Australia. With drafting of the new EO Act underway, Recommendation 27 of the Project 111 Final Report will remove the requirement for a person to go through the Gender Reassignment Board to obtain a gender recognition certificate for the purposes of protection against discrimination and extend anti-discrimination protections in WA to all trans, gender-diverse and non-binary people.

Conversion practices

A prohibition on conversion practices was considered as part of the Project 111 Final Report, with the LRCWA recommending that the prohibition of conversion practices be the subject of a separate review (Recommendation 120) and be dealt with in standalone legislation (Recommendation 119).

As you are aware, on 1 December 2022, the Government announced it will move to criminalise conversion and suppression practices in WA. As part of the process of drafting new separate legislation to prohibit conversion practices, further consultation will occur with the LGBTIQ+ community and the medical profession. Legislation from other jurisdictions, including the *Change and Suppression (Conversion) Practices Prohibition Act 2021 (Vic)* will also be considered.

Medical interventions

In line with the Darlington Statement, the petition calls for an end to deferrable medical interventions on people born with intersex variations, without the informed consent of that person.

As intersex interventions fall within the portfolio responsibility of the Minister for Health, I suggest you contact the Hon Amber-Jade Sanderson MLA for comment on this matter.

Surrogacy access

The petition also calls for equality of surrogacy access for LGBTIQ+ people, particularly men and non-binary people.

As surrogacy legislation falls within the portfolio responsibility of the Minister for Health, I suggest you contact the Hon Amber-Jade Sanderson MLA for comment on this matter.

Whole-of-government approach

In WA, responsibility for improving outcomes for the LGBTIQ+ community spans a number of government portfolios, including health, education, communities and justice. Each portfolio is responsible for considering LGBTIQ+ people within the context of their own priorities and developing policies and strategies to address outcomes for the LGBTIQ+ community as required.

A good example of this is the *Western Australian Lesbian, Gay, Bisexual, Transgender, Intersex Health Strategy 2019-2024* which was specifically developed to ensure the WA health system is delivering safe, inclusive and equitable health services for LGBTIQ+ people. The Minister for Health may be able to provide an update on the outcomes of this strategy to date.

I note the whole-of-government LGBTIQ+ approach recently adopted in Victoria and South Australia, and also in place in Tasmania and the Australian Capital Territory. Whether a whole-of-government strategy would be a more effective approach in WA for achieving positive change for the LGBTIQ+ community is a matter for consideration by the Premier.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in blue ink that reads "John Quigley". The signature is written in a cursive style with a large, stylized initial 'J'.

Hon. John Quigley MLA
ATTORNEY GENERAL; MINISTER FOR ELECTORAL AFFAIRS

7 March 2023