

10 May 2024

Legislative Assembly Committee on Community Services

Via email: communityservices@parliament.nsw.gov.au

Dear Committee Secretariat

Response to Question on Notice

During the Committee's hearing into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 on Tuesday 30 April 2024, we took the following question on notice:

Ms Donna Davis: My question is to Ms Golledge, Mr Lawrie and Dr Kennedy. I note that several submissions, including from the Australian Association of Christian Schools, Faith NSW and Better Balanced Futures, refer to the bill being in violation of article 23.1 of the International Covenant on Civil and Political Rights. This may be a question you want to take on notice, but I wanted to know from your perspectives what this particular covenant is and whether it does actually have any standing in our legal jurisdiction?

Our answer to this question is as follows:

The International Covenant on Civil and Political Rights (ICCPR) is an international human rights treaty to which Australia is a party. It does not directly create legal rights under NSW law, but may be incorporated by NSW Parliament into legislation, and may also be used by courts in their interpretation of laws.

Article 23.1 of the ICCPR provides that: 'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.'

PIAC submits that the Equality Legislation Amendment (LGBTIQA+) Bill 2023 implements the rights articulated in this Article in at least two key ways.

First, as outlined in our submission to the Inquiry, the current requirement for trans and gender diverse people to undertake sterilising genital surgery in order to update their birth certificates under the *Births, Deaths and Marriages Registration Act 1995* (NSW) infringes upon reproductive freedom and the right to found a family.

Removing this requirement, and replacing it with a straight-forward process similar to the existing approach in Victoria and Queensland, will better support and protect the rights of families where one or more individuals is trans or gender diverse.

Second, as noted by Equality Australia in their legal explainer,¹ the Equality Bill's amendments will also support and protect the rights of families where a child is born through overseas commercial surrogacy.

As Equality Australia notes:

The Bill maintains the requirement for a surrogacy arrangement to be altruistic but makes a minimal change to the *Surrogacy Act 2010* by enlarging the Supreme Court's residual discretion to depart from this requirement and still make a parentage order if it would be in the best interests of the child... These minimal changes prevent a child being punished for the circumstances in which they were conceived where a Court is convinced that it would be in their interests to recognise the reality of their family.

We agree with this analysis, and reiterate our view that the Bill therefore helps to realise the rights contained in Article 23.1 of the ICCPR in NSW law.

Finally, as noted during our answer to this question on the day, the Equality Bill also helps to realise other important international human rights, including other those found in other articles of the ICCPR, such as Article 26, which provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The provisions of the Equality Legislation Amendment (LGBTIQA+) Bill 2023 will enhance this right to non-discrimination and equal protection of the law for lesbian, gay, bisexual, transgender, intersex, queer and asexual people in NSW.

Yours sincerely

Alastair Lawrie

Director of Policy and Advocacy



¹ Equality Australia, *NSW LGBTIQA+ Equality Bill Legal Explainer*, 18 September 2023, page 17, available at: <https://equalityaustralia.org.au/resources/nsw-lgbtiga-equality-bill-explainer/>