

**Submission
No 2**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: BlaQ Aboriginal Corporation

Date Received: 2 April 2024



To:

Clayton Barr MP

Chair for the Inquiry Committee

Equality Legislation Amendment (LGBTIQ+) Bill 2023

Sent Via Email to: communityservices@parliament.nsw.gov.au

2/04/2024

Response to:

Equality Legislation Amendment (LGBTIQ+) Bill 2023.

Dear Mr Clayton Gordon BARR, BEd MP,

The intersectional impacts of LGBTQ+SB equality for First Nations people in Australia encompass a nuanced interplay between culture, identity, and systemic inequality. Intersectionality refers to the interconnected nature of social categorizations such as race, class, and gender, which can lead to overlapping and interdependent systems of discrimination or disadvantage. For First Nations LGBTQ+SB individuals, this means navigating a complex landscape where their identities as both Indigenous and LGBTQ+SB intersect, often exacerbating the challenges they face in terms of discrimination, health disparities, and access to support services.

Australia's history is marked by colonialism, dispossession, and systematic oppression of Indigenous peoples. The impacts of colonization, including forced assimilation, removal of children, and cultural suppression, continue to reverberate within First Nations communities. Similarly, LGBTQ+SB individuals have faced discrimination, criminalization, and stigmatization throughout history. For First Nations LGBTQ+SB people, the intersection of these identities compounds the challenges they encounter.

For First Nations LGBTQ+SB individuals, their identities intersect in complex ways, shaping their experiences of marginalization and discrimination. Indigenous cultures often have



traditional understandings of gender and sexuality that differ from Western norms, adding layers of complexity to the negotiation of identity.

BlaQ is the peak organisation for Aboriginal Lesbian, Gay, Bisexual, Transgender, Queer + Sistergirl and Brotherboy (LGBTQ+SB) Peoples and Communities in NSW.

As an Aboriginal community-controlled organisation, our vision is to achieve a society that nurtures, supports, affirms, and celebrates our Aboriginal and Torres Strait Islander LGBTQ+SB community whilst promoting safety and inclusion for all.

BlaQ is a voice for community, where our members voices are amplified to enshrine cultural values and intersectionality as a First Nations Queer collective. Some individuals move off Country in search of more accepting communities or to access gender-affirming care.

First Nations LGBTQ+SB individuals may struggle to reconcile their sexual orientation or gender identity with cultural norms, leading to feelings of alienation and isolation.

These individuals face discrimination both within Indigenous communities, where traditional values may clash with LGBTQ+SB identities, and in broader Australian society, where racism and homophobia intersect.

Structural barriers, such as limited access to healthcare and support services in remote Indigenous communities, further compound the challenges faced by LGBTQ+SB First Nations people.

Equality Legislation Amendment (LGBTIQA+) Bill 2023

The changes to the equality legislation aimed at better protecting LGBTQ+SB people from discrimination in various spheres of life are crucial steps towards ensuring equality and inclusion for all individuals, regardless of their sexual orientation, gender identity, or expression. However, when considering the potential impacts on Aboriginal people in Australia, it's essential to approach the subject with nuance and an understanding of the complex interplay between different aspects of identity and systemic inequality.

While these legislative changes are inherently positive in their aim to protect LGBTQ +SB individuals, including those within Indigenous communities, there could be unintended negative impacts if not implemented with careful consideration of the unique context of



Aboriginal Australians. Below are some considerations on how these changes might inadvertently affect Aboriginal people negatively if not carefully managed.

If the legislation and its implementation do not consider the specific cultural, social, and historical contexts of Aboriginal communities, it might not effectively address the unique challenges faced by Aboriginal LGBTQ+SB individuals. While the legislation aims to ensure equality in accessing services, Aboriginal people, especially in remote areas, already face significant barriers to accessing healthcare, education, and social services. If these services do not incorporate an understanding of the specific needs and circumstances of Aboriginal communities, including the intersectionality of being both Indigenous and part of the LGBTQ+SB community, these barriers may inadvertently increase.

If the changes to the legislation were made without adequate consultation with Aboriginal communities, there's a risk that the laws will not fully reflect the needs and preferences of Indigenous LGBTQ+SB individuals. The effectiveness of such legislation depends on the involvement of those it seeks to protect in the policy-making process, ensuring their voices are heard and their unique perspectives are considered.

Have ID that reflects who we are...

This won't reflect for a number of Indigenous Transgender people. The lack of identification (ID) due to citizenship denial or not having access to birth certificates has profound implications for Aboriginal transgender people in Australia, intertwining issues of identity, recognition, and access to essential services and rights. For transgender individuals, having ID that reflects their true gender is critical for their social recognition and personal dignity.

When compounded by the denial of citizenship, which is a foundational aspect of one's legal identity and rights within a nation, the effects can be particularly detrimental.

Without such ID, Aboriginal transgender individuals may face constant misgendering and discrimination, leading to heightened levels of distress, anxiety, and a sense of invisibility in society. This situation is exacerbated when these individuals are also denied citizenship, as it places them in a precarious position of not only having their gender identity unrecognized but also their very belonging and rights as citizens.



Fairer access to healthcare.

The proposed change aiming to standardize the laws on medical consent, particularly regarding young people's ability to consent to their own medical care, including gender-affirming care, introduces significant advancements towards autonomy and accessibility of healthcare services for minors. However, while the intentions behind such legislation are generally positive, focusing on reducing barriers to accessing gender-affirming care, there can be unintended negative impacts, especially on Indigenous LGBTIQ+ youth.

Indigenous communities often have unique cultural, social, and familial structures, with a strong emphasis on community and collective decision-making. The requirement for only one carer's approval (for individuals under 16) may conflict with these dynamics, potentially leading to tensions within families and communities if the decision-making process is perceived as bypassing or disrespecting cultural norms around collective consent and support.

Indigenous Australians, particularly those in remote or rural areas, already face significant barriers to accessing healthcare services. The bill, while facilitating consent, does not address these fundamental accessibility issues, such as the availability of gender-affirming care providers who are culturally competent and sensitive to the needs of Indigenous LGBTIQ+SB youth.

There is a risk that the bill does not fully consider the need for targeted awareness and support mechanisms for Indigenous LGBTIQ+ youth and their families. Without adequate information and support, navigating the consent process and understanding the available medical care options can be challenging, potentially leading to underutilization of gender-affirming services by Indigenous youth.

Indigenous LGBTIQ+SB individuals often face intersectional discrimination, rooted in both racism and LGBTIQ+SB phobia. The focus on legal consent for medical care, including gender-affirming care, does not directly address the broader social and systemic discrimination these individuals face, which can be a significant barrier to accessing care.

The bill's provisions may not sufficiently protect Indigenous LGBTIQ+SB youth from coercion or pressure in the consent process, particularly in contexts where they may be more vulnerable to influence due to their intersecting marginalized identities.



Better recognise rainbow families.

The proposed bill aims to better recognize rainbow families by allowing courts to grant parental recognition to parents of children born through surrogacy, enhancing protections for surrogates, and decriminalizing parents who go overseas for legal surrogacy. While the intent behind this bill is to create a more inclusive and supportive legal framework for diverse family structures, it's important to consider the unique context and challenges faced by Indigenous LGBTQ+SB people in Australia. There could be aspects of this bill that might inadvertently have negative impacts on Indigenous LGBTQ+SB communities.

The process of surrogacy, especially when involving courts and legal frameworks, may not fully incorporate or respect Indigenous cultural practices and family structures. Indigenous concepts of family, kinship, and child-rearing can differ significantly from Western models. The bill's focus on legal recognition through courts might not align with Indigenous ways of establishing and recognizing family relationships, potentially alienating Indigenous LGBTQ+SB individuals.

Engaging in surrogacy, including overseas surrogacy, can be financially prohibitive.

Indigenous communities in Australia face systemic economic disadvantages. The costs associated with surrogacy and the legal processes for parental recognition might be beyond the reach of many Indigenous LGBTQ+SB individuals, effectively excluding them from these pathways to parenthood.

Indigenous women, including those who might consider becoming surrogates, often face disparities in healthcare access and outcomes. While the bill proposes more concrete protections for surrogates to manage their pregnancies and births, ensuring that these protections are equally accessible and effective for Indigenous surrogates is crucial. Without specific measures to address these disparities, Indigenous surrogates might not fully benefit from the proposed protections.

The process of informed consent for surrogacy must consider cultural competence and the provision of information in culturally appropriate ways. Ensuring that Indigenous surrogates fully understand their rights and the implications of surrogacy agreements is essential for their autonomy and protection. The bill must include provisions that guarantee these considerations are met.

For Indigenous LGBTQ+SB individuals who consider overseas surrogacy, returning to Australia and seeking legal parental recognition involves navigating complex social and cultural



dynamics. The acceptance and integration of children born through surrogacy into Indigenous communities may require careful consideration of cultural protocols and sensitivities. The bill should consider mechanisms to support families through these processes.

The decriminalization of parents who undertake surrogacy overseas is a positive step. However, Indigenous LGBTQ+SB individuals pursuing this route may require additional legal and practical support to navigate the process of obtaining parental recognition. This includes understanding international surrogacy agreements, dealing with foreign legal systems, and ensuring that their rights and the rights of the child are protected upon return to Australia.

Equal protection under the law.

The bill described aims to address discrimination against LGBTQ+SB individuals, including trans and intersex people, by offering protections under hate crimes sentencing laws and providing more autonomy in situations like body searches. Additionally, it seeks to remove the legal stigma against people living with HIV and sex workers. These changes represent significant progress in promoting equality and reducing discrimination. However, when analysing potential impacts on Indigenous LGBTQ+SB people, it's important to consider the specific context and systemic challenges they face. While the bill appears to have overwhelmingly positive intentions, potential areas of concern could arise in its implementation and broader social implications.

Ensuring that the provisions for hate crime protections and procedures for body searches are implemented in a culturally sensitive manner is crucial. Law enforcement and legal systems may require additional training to understand and respect Indigenous cultures, gender diversity, and sexual orientations. Without this sensitivity, there's a risk that these measures could be applied in ways that do not fully respect Indigenous LGBTQ+SB people's identities and cultural backgrounds.

Indigenous communities often face barriers to accessing legal protections due to geographical isolation, socio-economic factors, intergenerational trauma from years of victimization from those in positions of power and mistrust of the legal system. Ensuring that the new protections are equally accessible and effectively communicated to Indigenous



LGBTQ+SB individuals is essential. Without targeted outreach and support, these individuals may not fully benefit from the protections intended by the bill.

Indigenous LGBTQ+SB individuals often navigate intersectional forms of discrimination that combine racism, homophobia, transphobia, and stigma against sex workers and people living with HIV. While the bill addresses specific legal stigmas, a comprehensive approach is needed to tackle the multi-layered discrimination these communities face. This includes addressing systemic racism and inequalities that affect Indigenous peoples more broadly.

Legal reforms do not automatically translate to changes in social attitudes. Indigenous LGBTQ+SB individuals may still face discrimination and stigma within their own communities and broader Australian society. Efforts to change legal frameworks must be accompanied by community education and engagement to foster a more inclusive and supportive environment for all Indigenous LGBTQ+SB people.

Better government data collection.

The bill describes focusing on inclusivity for LGBTQ+SB families and individuals specifically forms for government run schools and hospital intake forms. This aims to enhance recognition and support for diverse identities and family structures. It seeks to ensure that students with two mums or two dads, for example, can see their families accurately represented in school forms, and that trans people can accurately describe their gender on hospital intake forms. While the intent and direction of the bill are progressive and inclusive, examining potential negative impacts, particularly for Indigenous LGBTIQ people, requires a nuanced understanding of the broader context of Indigenous experiences within public systems in Australia.

The implementation of such policies in schools and hospitals, especially in regions with significant Indigenous populations, needs to be handled with cultural competence and sensitivity. It's important to consider risks associated with the following:

- A. Indigenous perspectives on gender and family structures can be distinct and varied, rooted in cultural traditions and understandings that may not align directly with mainstream representations of LGBTQ+SB identities. Without careful consideration and integration of these perspectives, the bill's implementation



could inadvertently marginalize Indigenous voices and experiences, failing to fully recognize the diversity within Indigenous LGBTQ+SB families.

B. While increasing visibility for LGBTQ+SB individuals and families is generally positive, it can also heighten vulnerability to discrimination, especially in smaller communities or areas where there might be less acceptance. Indigenous LGBTQ+SB individuals, already navigating complex layers of discrimination, might find themselves at increased risk if their identities are made more visible without adequate support and understanding from the community and institutions.

Indigenous communities often face barriers to accessing government services, including education and healthcare, due to systemic inequities, geographical isolation, and historical distrust towards institutions. Ensuring that the positive changes introduced by the bill are accessible to Indigenous LGBTQ+SB families requires targeted outreach and support, addressing these barriers to make the reforms meaningful.

Dalarinji Report “Your Story” [[Dalarinji - 'Your Story': Final Report to Community | Western Sydney University ResearchDirect](#)] shares stories from LGBTQ+SB, First Nations youth. Below are some of the reflections that underpin the importance of Community engagement with these proposed amendments:

- “I feel a lot safer when there is an acknowledgment of country in a prominent place in a health service. Also a preferred name and pronouns section on an intake form”
- “I think they just need to learn more about the fact we have different health needs and different bodies and to not be judgemental”
- “In the GP clinic, have a sticker that says it’s a safe space. Also have doctors who are welcoming of the queer/aboriginal community”

For the bill to positively impact Indigenous LGBTQ+SB individuals, it’s crucial that they are represented in the development, implementation, and review of these policies. This involvement ensures that the forms and processes are not only inclusive in language but are also designed in ways that are culturally respectful, long lasting and responsive to the needs of Indigenous communities.



While the bill addresses specific areas of representation and recognition, it's essential to consider it within the broader context of inequalities affecting Indigenous peoples in Australia. True inclusivity requires addressing these systemic issues alongside changes to forms and policies to ensure that Indigenous LGBTQ+SB individuals and families can fully benefit from these reforms.