

**Submission
No 6**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Name: Professor Nicole L Asquith and Dr Justin Ellis

Date Received: 9 April 2024

TO: Committee on Community Services, Legislative Assembly, Parliament of NSW
FROM: Professor Nicole L Asquith (University of Tasmania, and Australian Hate Crime Network)
Dr Justin Ellis (University of Newcastle).
DATE: 9 April 2024
RE: Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill

Thank you for the opportunity to respond to the Committee's Terms of Reference in relation to the Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill as proposed by Independent Member for Sydney, Alex Greenwich.

From our perspective this Bill is simply updating a variety of legislation that has not kept pace with changing social expectations around sex, sexuality, gender and sex work. The proposed amendments bring the named Acts into line with other policy and practices—within and outside of NSW—that recognises the human rights of transgender, non-binary, intersex people and sex workers. There is nothing in these amendments that should cause concern for the government given most of the proposed changes are administrative.

The two most contentious amendments—revoking the right of religious institutions to discriminate against sex, sexuality and gender diverse staff, students, and clients, and limited provision for transgender people's involvement in organised sport—represent critical law reform that ensures the human rights of all NSW residents and visitors are protected.

As to the former, there is more than sufficient evidence that exempting religious institutions from respecting the rights of sex, sexuality and gender diverse staff, students and clients has significant and long-term effects on individuals, and ripple effects on wider LGBTIQA+ communities. This is especially the case in relation to conversion practices, as well as the right of religious institutions to sack staff and/or exclude students and clients in a context where religious institutions are now the main employers and service providers in the welfare, social support and private education sectors. Exempting only religious institutions, in a secular democracy, empowers these institutions to permit hate and to exclude some communities from both religious practice as well as important social infrastructure such as welfare services and education. No other social institution is exempt. Nearly 40% of Australians do not have a religious affiliation, with that rate increasing with each generation (ABS 2022 Religious affiliation in Australia)—a figure just under the proportion of Australians who identify as Christian. To impose the views of *some* religious institutions on such a

large proportion of the population who do not identify as being religious is counterintuitive in a secular democracy such as Australia. If the government is truly committed to a thriving and healthy democracy and enhancing social inclusion, then this amendment must be upheld along with the other provisions.

Of the latter amendment, Alex Greenwich has provided measured text for enabling transgender people to engage in organised sport, whilst protecting those who perceive a biological advantage from transgender women participating in women's competitive sport. If we are to have equal access to recreation—a critical factor in mental health and wellbeing—then the provisions must reflect the needs of all participants, including transgender men, non-binary people, and intersex people, all of whom are largely ignored in the culture wars over transgender women's participation in organised sport. The text provided by Alex Greenwich does this respectfully and with caveats on competitive sport *and* where strength, stamina or physique is relevant. Even with the caveats imposed, it is still likely that women such as Caster Semenya (and many intersex people who identify as women), who do not meet the unscientific standards of being female, will still be excluded as she was in 2018 due to *naturally* high levels of testosterone.

As to the third term of reference—additional ways of improving the safety and wellbeing of the LGBTIQ+ community—we suggest that the Committee of Community Services consider the recommendation of the Sackar Special Commission of Inquiry into LGBTIQ Hate Crimes. The current Bill cannot be considered in isolation from the findings of this inquiry, given the multiple gaps in law, policy, and practice that the Commission identified. While amendments to anti-discrimination and anti-vilification laws are critical to the wellbeing of this community, the harms encountered by the community do not end with discrimination or vilification. The Sackar Inquiry identified the need for more robust law, policy, and practice in response to hate crimes, especially in terms of police practice. We suggest that in addition to hate crime law reform that enhances the reporting, recording, and investigation of hate crime incidents by police and the courts and, as with domestic and family violence, there is a desperate need for bespoke targeted victim support packages. As with DFV victims, hate crime victims experience long-term consequences from victimisation. Current victim packages do not acknowledge or provide the necessary support for victims of that targeted violence.

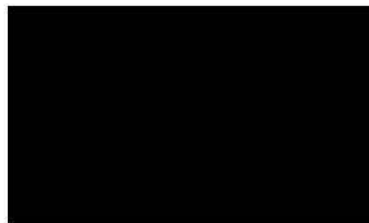
Further, we note that the NSW government is simultaneously inquiring into the provisions in 93Z, but only as they relate to race and religion. That law covers most targeted communities. Solely considering the nature of those laws only in relation to race and religion, yet again isolates and

demotes the interests and needs of all targeted communities, some members of which are also sex, sexuality and/or gender diverse and/or HIV positive. 93Z is already partial in that it does not recognise the harms of ableist vilification. Only inquiring into the efficacy of this law for racial and religious minorities further undermines the applicability of this provision for all targeted communities. Reforming this law to account only for the needs racial and religious minorities damages the intent of the law.

We commend the Bill as is without further amendment, but advise that the Committee considers the broader policy and practice reforms necessary for enhancing safety and wellbeing, and providing the critical support needed by LGBTIQ+ people who encounter prejudice, animus, and hatred beyond the scope of the current Bill.



Professor Nicole L Asquith
University of Tasmania



Dr Justin Ellis
University of Newcastle