

**Submission
No 7**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: ACON

Date Received: 10 April 2024

ACON SUBMISSION TO THE INQUIRY INTO EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL

April 2024





About ACON

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives.

We are a fiercely proud community organisation, unique in our connection to our community and in our role as an authentic and respected voice.

Members of Australia's sexuality and gender diverse communities experience health disparities when compared to health and wellbeing outcomes experienced by the total population. They may also face significant barriers to accessing traditional healthcare pathways.

We recognise that members of our communities share their sexual and gender identity with other identities and experiences and work to ensure that these are reflected in our work. These can include people who are Aboriginal and Torres Strait Islander; people from culturally, linguistically and ethnically diverse, and migrant and refugee backgrounds; people who use drugs; mature aged people; young adults; and people with disability.

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ACON acknowledges the Traditional Owners of the lands on which we work. We pay respect to Aboriginal Elders past, present and emerging.

Introduction

ACON welcomes the opportunity to provide input to the Inquiry into *Equality Legislation Amendment (LGBTIQA+) Bill 2023*. The Equality Legislation Amendment (LGBTIQA+) Bill ('the Equality Bill') represents a landmark legislative initiative aimed at rectifying existing gaps in anti-discrimination legislation and advancing the rights of LGBTIQA+ individuals in NSW across various domains.

As NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders, ACON is well aware of the impact that bad or out-of-date legislation has on our communities' health and wellbeing.

ACON recommends passing the Equality Bill in full. There is great ambition and breadth of reform contained within this legislation. It will remove the discrimination contained in our current laws and strengthen protections for LGBTIQA+ people in NSW. The reforms follow best practice in other Australian jurisdictions and are an unprecedented opportunity to create a more inclusive, respectful, and safe society for our communities to live.

We believe the amendments to existing laws provide the best conditions for LGBTIQA+ people to thrive and are desperately needed to bring NSW's protections for LGBTIQA+ people up to the benchmarks set in other Australian states and territories.

For this submission, we seek not to comment in great detail on the specificities of the legislation, but rather to speak more broadly to key areas where the Equality Bill addresses health disparities for members of our communities.

We also wish to commend the Member for Sydney, Mr Alex Greenwich MP, for the work he has done and the extensive and ongoing engagement across the Parliament and in the community that he has undertaken to get this Bill to where it is today.

Again, we thank the Committee on Community Services for the opportunity to contribute to the Inquiry process. As always, we welcome opportunities to discuss these issues with you in more detail. To arrange a time, please contact [REDACTED] or [REDACTED].

The provisions of the Bill

Schedule 1: Amendment of Anti-Discrimination Act 1977 No 48

As a health organisation, ACON's work aligns with models of social determinants of health. Accordingly, we recognise that access to education, employment and income, stable housing, social inclusion, and non-discrimination are all factors that can positively or negatively influence a person's health.¹

Reforming the *Anti-Discrimination Act 1977* is critical to ensure that all people are protected equally, and able to participate in all areas of public life without fear of stigma or discrimination.

The *Anti-Discrimination Act* currently protects trans men and trans women but it does not extend this protection to non-binary people. Non-binary people deserve the full protection of the law, and the Equality Bill would provide this protection. The protected ground for homosexuality is also limited to lesbians and gay men, excluding people who are bisexual or asexual. This reform is much needed, as NSW is the only jurisdiction in Australia without anti-discrimination protections for bisexuals.

Stigma and discrimination, including perceived stigma and discrimination, present significant barriers to healthcare. Just 11% of LGBTIQ adults feel accepted at faith-based events or services, and 43% feel accepted accessing a health or social service.²

In addition, 60% of secondary school LGBTQA students feel unsafe or uncomfortable in their educational setting because of their sexuality or gender.³ These statistics demonstrate widespread feelings of stigma and discrimination, even outside of faith-based institutions, suggesting we have some way to go to improving safety and access in all areas of public life. The Equality Bill is a crucial step to ensuring that all people feel safe and protected in society.

While improvements to anti-discrimination legislation are not the sole solution to ensuring LGBTIQ+ people are safe at school, work, accessing services and in public life more broadly, the reforms contained in the Equality Bill are needed to ensure that LGBTIQ+ people are protected from discrimination, harassment, and vilification in our society, thus reducing health disparities.

It is critical that people in our communities are protected from discrimination in their lives, including in their access to education, healthcare, and employment. As such, the reforms to our discrimination protections contained in the Equality Bill are urgently required.

ACON is therefore supportive of the removal of exemptions which allow staff and students at religious schools, healthcare services and other institutions to be discriminated against. The current exemptions for faith-based organisations in NSW are the broadest in the country, not in line with community standards, and have substantive health impacts.

ACON also supports the Equality Bill's introduction of two new grounds for discrimination for people with variations of sex characteristics (sometimes known as intersex) and sex workers, two groups especially vulnerable to discrimination.

ACON is aware the NSW Law Reform Commission is currently reviewing the *Anti-Discrimination Act*, and we provided a [preliminary submission to this Review in September 2023](#). It is our overall position that the Act needs to be repealed and replaced, however, this is a long and arduous process. It is our firm belief that the Equality Bill's amendments will provide a suitable short-term stop-gap solution while the Act is being replaced.

Schedule 2: Amendment of Births, Deaths and Marriages Act 1995 No 62

ACON strongly believes that the process to access gender concordant identity documentation must be simplified and believes that the Equality Bill achieves this. Adequate legal recognition of gender is fundamental for equal participation in society. Incorrect documentation can present barriers to accessing health and social services, travel, immigration, educational facilities, and employment opportunities, and infringe on trans people's privacy, safety, human rights, their health and wellbeing, their mental health, and promote further stigma and discrimination.⁴

Currently in NSW, as per the *Births, Deaths and Marriages Registration Act 1995*, trans people seeking to change their birth certificate are required to undergo a "sex affirmation" procedure, which involves the surgical alteration of their reproductive organs, always resulting in sterilisation.⁵

In addition to requiring surgery, the Act also warrants an unnecessary invasion of privacy by requiring that any application "be accompanied by... 2 statutory declarations [by registered medical practitioners] verifying that the person... has undergone a sex affirmation procedure."⁶ This requirement subjects trans people to multiple genital examinations, in order to comply with a civil process.

All other Australian jurisdictions – Tasmania,⁷ Victoria,⁸ Northern Territory,⁹ South Australia,¹⁰ Western Australia¹¹, the ACT¹², and most recently, Queensland¹³ – no longer require surgery to update one's birth certificate. NSW is lagging behind the rest of Australia, and many other countries in this regard.

Not all trans people affirm their gender through medical or surgical interventions.^{14,15} This may be because such interventions are not necessary to affirm their gender, the cost is prohibitive, or due to these kinds of interventions being completely unavailable within the Australian health care system.¹⁶ Trans people should be able to affirm their gender legally through a simple administrative process, in line with the process in other states, territories and countries.

The Equality Bill would introduce the world's best practice for trans people seeking updated documentation. It would replace part 5A of the *Births, Deaths and Marriages Registration Act*, which currently limits altered records of sex to surgery, with a new part, which would enable alteration with affirming documentation.

Removing the need for surgical interventions in order to update a NSW birth certificate or recognised details certificate would improve the health and wellbeing of trans people by: removing barriers to accessing services, employment, education and public life, affirming who they are, improving safety and privacy, and reducing the pathologisation of the trans experience.

Australian research demonstrates the impact discordant documentation has on trans people's mental health.¹⁷ Producing documents that do not match a person's name, appearance, or gender risks forced

exposure. This can lead to harassment, discrimination, and abuse, which is in turn associated with avoidance of services and as a result, substantial health impacts.¹⁸

Trans people report substantially poorer mental health outcomes than their cis counterparts,^{19,20} largely attributable to external factors such as stigma, including discriminatory legislation. Such external factors can be removed through the proposed reforms of the Equality Bill.

Research consistently demonstrates that mental health and well-being for trans people improves, especially outcomes related to anxiety, depression, and suicide ideation, when they are recognised, supported, and affirmed for who they are.^{21,22,23,24,25,26,27,28,29} Legal recognition of gender via a change in birth certificate or recognised details certificate is an example of affirmation and recognition.

The requirement to have invasive and unnecessary medical or surgical interventions, and then be examined by two additional physicians, in order to be affirmed as who they are pathologises the trans experience, placing further stigma on trans lives without due cause or purpose.^{30,31}

Across the world, research has demonstrated that gender-concordant identification has resulted in better health and wellbeing outcomes for trans people,³² in areas as diverse as mental health,³³ reduction in tobacco smoking,³⁴ and increased uptake of HIV treatment and prevention.³⁵

Further research has identified that gender-concordant identification “serves as an important structural intervention”, improving other social determinants of health, including stable housing, income, employment, and legal legitimacy.^{36,37}

Reforming the process for changing legal sex classification will have a clear benefit for a greater number of trans people born in NSW, as well as ensuring NSW is meeting adequate human rights standards.

In jurisdictions that have adopted such reforms, there is no evidence of the misuse of such laws, and research suggests that there are adequate safeguards in place to prevent any misuse.^{38,39} Arguments against reform that focus on the possibility of misuse are misguided attempts at fearmongering.

Schedules 3-20: Various Amendments

ACON is supportive of the other various amendments contained within the Equality Bill. These amendments will strengthen protections for LGBTIQ+ people and sex workers in NSW and are desperately needed. Collectively, these reforms represent an unprecedented opportunity to create a more inclusive, respectful, and safe society for our communities to live.

The Bill also contains a number of definitional revisions and additions in an attempt to ensure inclusivity and cultural competence, thereby extending protections to encompass diverse sexualities, genders, and variations of sex characteristics, and ACON is supportive of these definitional revisions.

The Bill also recognises the vulnerabilities and discrimination faced by sex workers and their associates, and explicitly extends anti-discrimination protections to this population, thereby affording them the dignity and respect they rightfully deserve. We support these in full.

Operational issues for government agencies raised by the Bill

For the reforms contained within the Bill to be successful, it will be essential that there is adequate resourcing to facilitate timely interventions in cases of discrimination towards LGBTIQ+ people and sex workers, with robust mechanisms for monitoring compliance and addressing complaints. This will require increased funding for Anti-Discrimination NSW to allow them to bolster enforcement capacities and other associated running costs.

Training and capacity building will be essential to cultivate cultural competence and sensitivity towards LGBTIQ+ people, including the development of tailored resources and education. This will be particularly important for staff working at the NSW Registry of Births, Deaths and Marriages.

It will also be vital that the NSW Government establishes robust data collection mechanisms to track instances of discrimination targeting LGBTIQ+ people and sex workers. Data plays a pivotal role in informing evidence-based policy development, resource allocation, and strategic interventions to combat individual and systemic discrimination and promote social cohesion.

Additional ways of improving the safety and wellbeing of the LGBTIQ+ community

LGBTIQ+ communities experience disproportionately worse health and wellbeing outcomes compared to the general population in Australia⁴⁰ due to a number of systemic and societal factors. These disparities are, in many cases, a result of stigma, discrimination and a fundamental lack of understanding about people of diverse sexualities and genders.

The following recommendations will positively impact the safety and wellbeing of sexuality and gender diverse people in NSW. We recognise that these programs and services may fall under a number of diverse portfolios and therefore believe that a centralised portfolio, Minister, and Strategy for a whole-of-government approach to LGBTIQ+ communities to streamline service provision is needed to improve the safety and wellbeing of sexuality and gender diverse people.

1. Strengthen community trust in the NSW Police Force, address the Special Commission of Inquiry into LGBTIQ Hate Crimes, and protect our communities from far-right attacks.

In the weeks leading up to the 2024 Mardi Gras parade, there was significant media attention on a number of issues concerning LGBTIQ+ communities and their relationship with the NSW Police Force.

The media attention had significant focus on the devastating and tragic murders of Jesse Baird and Luke Davies, however, at the same time our communities were grieving this terrible tragedy, we were also advocating that the NSW Government and Police Force adequately respond to the Special Commission of Inquiry into LGBTIQ Hate Crimes, and address community concerns about our safety, outlined at the City of Sydney's LGBTQIA+ Safety Summit.

The findings from the Special Commission of Inquiry into LGBTIQ Hate Crimes represent a landmark moment in NSW's history, and a unique opportunity for the NSW Government to mark a turning point in the relationship of the NSW LGBTIQ communities with the NSW Police Force.

The recommendations (10-12) note the necessity of the NSW Police Force to be adequately resourced to implement the recommendations around reform to its systems in particular; but this resourcing also needs to cover Recommendation 8, around "additional mandatory and ongoing training be provided to NSWPF officers concerning the LGBTIQ community", as well as the case-specific recommendations that require a fresh inquest into four cases.

The Inquiry report also suggests that the NSW Government consider an independent review of the NSW Police Force focused upon its institutional approach to the LGBTIQ community, including its LGBTIQ employees. Such a review could help to build community trust and work to better ensure the safety of LGBTIQ communities.

In addition, there has been an alarming increase in far-right hate group attacks targeting LGBTQ+ events, and forcing their cancellation, for safety concerns. Extremists and fringe groups have targeted drag story time at libraries and local councils with intimidation, hate speech and fear. Members of our communities, including members of our staff, have also been targeted with online threats, vilification, and doxing.

Performers and council workers have been harassed in-person and online, and rather than deal with angry, hateful mobs, some performances are being cancelled. This is occurring across NSW, including in Sydney, Newcastle, Goulburn, Wollongong, and other regional centres.

Disappointingly, coupled with these experiences of violence, ACON has also heard from our communities that they have received poor responses from the NSW Police Force, and from some, that they do not trust the NSW Police to respond to these incidents. We have heard from LGBTQ+ people about slow and inadequate responses to hate incidents, including responses delayed by months, and refusals to take reports.

In response to these threats to community safety, in February, the City of Sydney held an LGBTQIA+ Safety Summit. The recommendations from the Summit were summarised in the Lord Mayoral Minute "Progressing Action on Safety for Our LGBTQIA+ Communities" unanimously endorsed by Council on 19 February 2024. We understand that the City of Sydney has provided a submission to this Bill, which we endorse.

The Safety Summit also identified the significant need for increased funding for Anti-Discrimination NSW and Community Legal Centres. If LGBTQ+ people's safety is to be taken seriously, then our communities require greater support to make complaints or report incidents, and Anti-Discrimination NSW requires significantly more funding in order to be able to adequately, and in some cases, proactively, investigate complaints and discriminatory behaviour, including instances of systemic discrimination.

The Safety Summit also recognised the importance of implementing the recommendations of the Special Commission of Inquiry into LGBTIQ Hate Crimes, and especially action to improve the relationship between the NSW Police Force and LGBTQ+ communities. This includes training, as outlined in the Inquiry recommendations and earlier in this Submission, but also initiatives that work to build community trust, and change the culture, in the broader police force and the way it works with LGBTQ+ communities. The Summit advised that training initiatives should also extend to Council officials across NSW.

We previously provided the following list of recommendations to the Minister for Police and the Police Commissioner, as actions we believe will strengthen trust and build partnerships between LGBTQ+ communities and the NSW Police Force. We believe implementations of these recommendations will go a long way to improving LGBTQ+ community safety in NSW.

- a. Implement in full, and adequately resource, the recommendations of the Special Commission of Inquiry into LGBTIQ Hate Crimes.
- b. As per the suggestion of the Honourable John Sackar KC,⁴¹ commission an independent review of the NSW Police Force's institutional approach to the LGBTIQ community, including LGBTIQ employees, a review of the effectiveness of the GLLO program, and the role of the NSW Police Spokesperson.
- c. Publicly rescind the findings of Strike Force Neiwand, and revert to the findings of the earlier Coronial Inquests. Additionally, make a public apology regarding the adversarial findings of Strike Forces Neiwand, Parrabell and Macnamir, and the adversarial conduct at the Special Commission of Inquiry.
- d. Establish a whole-of-government Ministerial LGBTQ+ community advisory group, with sub-committees dedicated to particular portfolios, including justice.
- e. Strengthen partnerships with community groups, including LGBTQ+ community groups and ACON, with a commitment to close collaboration on issues that affect our communities and other marginalised populations, including First Nations people.
- f. Urgently reconsider the response to the Law Enforcement Conduct Commission's Review of NSW Police Force responses to domestic and family violence incidents, in particular the recommendations pertaining to investigations of officers.
- g. In conjunction with the enactment of NSW coercive control legislation, urgently elevate police understanding of LGBTQ+ coercive control and sexual, domestic and family violence.

- h. Develop a NSW Police Force LGBTIQ+ Safety and Protection Action Plan, in co-design with community.
- i. Conduct a full independent review of user pays policing and specifically policing at LGBTIQ+ events, including the huge volume of police, the use of drug dogs inside venues (or at all), strip searching and banning re-entry.
- j. Work with the City of Sydney to resource and implement the recommendations of the Lord Mayor following the City of Sydney Safety Summit, including:
 - i. increased funding for Anti-Discrimination NSW and Community Legal Centres in the 2024-2025 NSW State Budget to enable them to better respond to and assist with complaints of anti-LGBTIQ+ violence, discrimination, vilification, harassment and abuse;
 - ii. in co-design with community organisations, develop pathways to increase rates of reporting and the improved collection of information from LGBTIQ+ community members of acts of violence, discrimination, vilification, harassment and abuse in both the public domain and online;
 - iii. the provision of community based legal, social and emotional support for individuals who seek redress for acts of violence, discrimination, vilification, harassment or abuse against them - including funding for local community legal centres that support members of the LGBTIQ+ communities seeking redress for acts of violence, discrimination, vilification, harassment or abuse against them; and
 - iv. community-led initiatives to keep LGBTIQ+ communities safe and supported;
- k. Provide resources to ACON and other community organisations to better facilitate third-party or peer reporting of instances of violence, to maintain registers of violence, and to enhance community safety programs and community care services.

2. Increased investment in the peer workforce

Embedding the peer workforce within the health and community services sector in NSW is vital to improve community safety and wellbeing when accessing health and social services. This includes through the ongoing, long-term commitment to peer-based community organisations, but also by embedding peers across the health and social services workforce more broadly.

The benefits of a peer workforce are well documented,⁴² particularly within the mental health sector.⁴³ Across the health and social services sector, there is a vibrant peer workforce that needs to be provided with the opportunities to contribute their personal experiences and insights into how services can respond to and best support people in NSW.

Peers need support to thrive in the working environment. The peer workforce needs to be professionalised – including providing professional development and supervision/mentoring opportunities, as well as adequate recognition and remuneration that acknowledges the inherent value and benefit of lived experience and peer labour, clearer job descriptions and boundaries.⁴⁴

Peers also need mental health support,⁴⁵ and policies to address unconscious or conscious power imbalances in the workforce.⁴⁶ Furthermore, integration of service models is necessary to effectively integrate, peer, clinical and allied health approaches. Peer integration training is required for managers and other staff to effectively integrate peers into service and treatment models and recognise and celebrate the unique approaches to working with clients that different workers, from peer to clinical, bring.

NSW needs greater investment to expand peer programs, strengthen existing programs, to consider further peer programs where they may currently not operate, and to ensure these programs are adequately supported and promoted.

3. A whole-of-government LGBTIQ+ Strategy

Our communities are often ignored in government decision-making processes and data collection. While research shows that a number of health gaps between people in our communities and the general population persist, government departments do not systematically collect indicators that could inform the design and monitoring of policy interventions for our communities.

When Equality Australia surveyed LGBTIQ+ people in the lead up to the 2022 federal election, 94.8% of respondents indicated that ensuring the needs of LGBTIQ+ people are better reflected in government programs, services and decision-making was important to them.⁴⁷

We applaud and welcome the *NSW LGBTIQ+ Health Strategy 2022-2027* and its commitments to improving the health and wellbeing of our communities, however, a whole-of-government approach is needed to address the safety and wellbeing of our communities.

This process should also involve the establishment of a whole-of-government Ministerial LGBTIQ+ community advisory group, with sub-committees dedicated to particular portfolios and seed funding to establish relevant initiatives and co-design processes.

4. A resourced drug summit, including resources to implement its recommendations

The proposed drug summit represents an historic opportunity to improve the safety and wellbeing of our communities. Prior to the 2023 election, NSW Labor committed to “hold a drug summit in its first term to bring together health and medical experts, police, drug user organisations, families, and other stakeholders to build consensus on the way NSW deals with drug misuse. A Labor Government will listen to the experts and take a whole-of-government approach to issues relating to drug use, abuse, supply, law enforcement, and treatment.”

We strongly welcome this commitment from the NSW Government, however, it is important that the drug summit is an effective mechanism for reform. The success of the 1999 Summit is in large part due to the decision to pause Parliamentary business and actively engage and educate all NSW MPs over a

five-day period. The Summit must bring together Government officials, MPs, experts, advocates and consumers to engage with the evidence in a meaningful way, in order to develop drug policy that achieves real outcomes for the people of NSW.

The NSW Government must also be prepared to resource the recommendations that come from the Summit. The NGO alcohol and other drugs sector is underfunded, and not able to meet community demand. The NSW Government must be prepared to address current gaps in alcohol and other drug service provision, policy, and strategic direction.

5. Ongoing implementation of the NSW LGBTIQ+ Health Strategy 2022-2027

The *NSW LGBTIQ+ Health Strategy 2022-2027* is a major milestone in improving the health of LGBTIQ+ people, and the continued support for it will be critical to advance the wellbeing and safety of our communities. We have already seen significant milestones achieved in areas of trans and gender diverse health, and improving service gaps and training for NSW Health staff.

However, specialist services and clinicians who have particular expertise in LGBTIQ+ healthcare are in short supply in NSW. While efforts to educate and build the capacity of mainstream services will make a difference over time, immediate steps are required to strengthen access to expertise across the State. GPs and clinicians working in the NSW Health system need support from clinicians and clinics where there is more expertise.

There is an opportunity to strengthen and better support healthcare delivery for LGBTIQ+ people in NSW through telehealth and other digital health care technologies. Key priorities of NSW Health include delivering more care in communities and closer to home – these goals require more investment in virtual healthcare delivery.

In addition to better access to inclusive services, interventions to improve health literacy are needed to encourage greater health seeking behaviour among sexuality and gender diverse communities, so that service gaps can be addressed at both the service and consumer level.⁴⁸

Furthermore, a key pillar of the Strategy is improved data collection. Robust data collection, locally relevant LGBTIQ+ health research and evidence is critical to design and implement data-driven and evidence-based health initiatives that can improve LGBTIQ+ communities' health outcomes.

Similarly, data and research are fundamental in the ongoing monitoring and evaluation of initiatives supported by the Strategy in order to measure their success against the Strategy's aims and vision.⁴⁹ Because of the complex nature of NSW Health's data systems, we are aware that improving routine data collection is a complex and costly, but fundamentally necessary undertaking.

6. Greater certainty for LGBTIQ+ organisations

Community organisations are resilient, and consistently demonstrate their capacity to achieve outcomes for the communities they serve. Their continued strength is paramount to ensure the safety and wellbeing of LGBTIQ+ communities.

As a result of the ongoing cost-of-living crisis, many community organisations are feeling financial strain. Longer-term funding agreements are essential to provide a degree of certainty that allows our organisations to plan ahead for our communities. Short-term grants make planning and recruiting suitably qualified staff more challenging when they aren't offered long-term employment.

Long-term funding agreements require a degree of flexibility, for example, annual implementation plans or adjusted key performance indicators, to allow community organisations to be flexible in their service delivery and responsive to the safety and wellbeing needs of our community. Long term funding agreements also need to be indexed to appropriately match inflation, and reflect the real cost of delivering quality services.

The retention of staff in our organisations requires appropriate compensation for the work, including adjustments to reflect inflation. The NGO sector has a clear competitive disadvantage in attracting and retaining staff, and so workforce retention is of particular concern, especially when funding arrangements can't guarantee long-term contracts, job security, and reasonable remuneration.

Organisations like ACON are funded by a number of grants from different departments of the State and Federal Governments. Funding arrangements need to account for overhead and administrative costs, where staff such as managers and administrative staff may be required to oversee or work across a number of programs with different funding sources.

These funding changes will ensure that the community sector can continue to thrive and deliver services and programs to address the safety and wellbeing needs of our communities.

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