

**Submission
No 10**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Parents for Trans Youth Equity (PTYE)

Date Received: 11 April 2024

Mr C.G. Barr, MP
Committee Chair
Legislative Assembly Committee on Community Services
Parliament of New South Wales
6 Macquarie Street
SYDNEY NSW 2000

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

11 April, 2024

Dear Mr Barr,

Re: Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023

Thank you for the opportunity to provide a submission to form part of the Committee on Community Services inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (the bill).

We are a group of parents and carers who seek to ensure all transgender and gender diverse (trans) youth are treated with respect, fairness and equity in the same way that non-gender diverse (cisgender) youth are.

There are approximately 127,500 transgender youth across NSW¹.

This submission is representative of an increasing and significant number of loving and supportive families of trans youth across NSW.

Trans youth are just like all other children; we just got their gender wrong at birth. They are inherently the exact same child prior to coming out as trans. They still won't eat enough fruit or vegetables or pro-actively finish their homework every day. Nothing about them inherently changes just because we got their gender wrong at birth.

Sadly, some in our community are not aware that trans children are loved just like other children, and that being transgender is a natural, normal (and frankly awesome!) part of our human diversity. We wish our trans children could focus on living their best life, rather than navigating unnecessary, discriminatory and outdated legislative barriers.

Parents for Transgender Youth Equity (P-TYE) welcomes the bill generally as it seeks to improve the lives of the transgender community, however with a few further amendments NSW can be on the long overdue road to equity for trans youth. The following pages contain details of our position on each piece of legislation that the bill proposes to amend, with reasons. Please note however that P-TYE have only provided comment on aspects of the bill that we perceive might significantly affect trans youth. We have confidence that amendments affecting the intersex community, trans adults and the LGBTIQA+ community more broadly will be covered in other submissions made by groups advocating in those areas. We only seek to advocate for trans youth under the age of 18.

P-TYE requests that the Committee complete the inquiry and facilitate progress of the bill promptly. Trans youth need our politicians to protect them equally before the law, and to ensure this occurs without lengthy, divisive debate fuelled by anti-trans disinformation and hate. The safety and well-being of trans youth depends on this.

P-TYE would also be pleased to meet with the Committee on Community Services to discuss any aspect of trans youth, or this submission further.

We love our kids just like other parents. Legalise the human rights of our trans children. Please.

Yours faithfully,

Lannen Stapleton
She/Her
Executive Director
Parents for Transgender Youth Equity

Barbara Taylor
She/Her
Member
Parents for Transgender Youth Equity

1. There is no accurate data on how many transgender youth are in NSW. Power et al (2022) reported in their study that 7.1% of high-school-aged young people are transgender. Using the rate of 7.1% and the ABS population statistics of all youth under age 18 in NSW (1,795,892), this equates to approximately 127,500 transgender youth across NSW. The majority of these youth would not be out to their parents or carers as per Fenaughty et al (2021).
A lot of transgender youth "never 'come out' at school due to fear of discrimination and harassment" (Rands, 2009), nonbinary young people are less likely to be out at school (Allen et al, 2020) and research has found a significant number of trans people were older than 18 years of age when they initially accessed trans specific services which indicates they may have waited to do so without parental support or knowledge (Strauss et al, 2021).

Executive Summary

Parents for Transgender Youth Equity (P-TYE) welcomes the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (the bill) generally as it seeks to improve the lives of the transgender community, however with a few further amendments NSW can be on the long overdue road to equity for trans youth.

This submission contains details of our position on each piece of legislation that the bill proposes to amend, with reasons. Please note that P-TYE has only provided comment on aspects of the bill that we perceive might significantly affect trans youth. We have confidence that amendments affecting the intersex community, trans adults and the LGBTIQA+ community more broadly will be covered in other submissions made by groups advocating in those areas. We only seek to advocate for trans youth under the age of 18.

The table below highlights P-TYE's high level position on the legislation to be amended, and references to the pages where the detail is contained. It should also be noted that there are further tables at the commencement of the sections on the Anti-Discrimination Act 1977 and the Births, Deaths and Marriages Registration Act 1995 which provide a high-level summary of P-TYE's position on those amendments.

Legislation that the bill proposes to amend	P-TYE's high level position	Page no. within this submission
<i>The Anti-Discrimination Act 1977</i>	Requires further amendments	4 – 6
<i>The Births, Deaths and Marriages Registration Act 1995</i>	Requires further amendments	7 – 15
<i>The Children and Young Persons (Care and Protection) Act 1998</i>	Requires further amendments	15 – 16
<i>The Children's Guardian Act 2019</i>	No comment	-
<i>The Court Security Act 2005</i>	No comment	-
<i>The Crimes Act 1900</i>	No comment	-
<i>The Crimes (Administration of Sentences) Act 1999</i>	No comment	-
<i>The Crimes (Domestic and Personal Violence) Act 2007</i>	Comment	17
<i>The Crimes (Forensic Procedures) Act 2000</i>	No comment	-
<i>The Crimes (Sentencing Procedure) Act 1999</i>	No comment	-
<i>The Drug Misuse and Trafficking Act 1985</i>	No comment	-
<i>The Government Sector Employment Act 2013</i>	No comment	-
<i>The Government Sector Employment (General) Rules 2014</i>	No comment	-
<i>The Interpretation Act 1987</i>	No comment	-
<i>The Law Enforcement (Powers and Responsibilities) Act 2002</i>	No comment	-
<i>The Mental health Act 2007</i>	Comment	17
<i>The Sheriff Act 2005</i>	No comment	-
<i>The Summary Offences Act 1988</i>	No comment	-
<i>The Surrogacy Act 2010</i>	No comment	-
<i>The Workers Compensation Act 1987</i>	No comment	-
A NSW Charter of Human Rights	Recommended	17

P-TYE requests that the Committee complete the inquiry and facilitate progress of the bill promptly. Trans youth need our politicians to protect them equally before the law, and to ensure this occurs without lengthy, divisive debate fuelled by anti-trans disinformation and hate. The safety and well-being of trans youth depends on this.

Amendment of Anti-Discrimination Act 1977 No 48

We support all proposed amendments to the Anti-Discrimination Act 1977 (the 1977 Act) that are relevant to trans youth, with the exception or noting of the following:

SUMMARY TABLE RE: ANTI-DISCRIMINATION ACT 1977			
P-TYE point	Bill reference	The 1977 Act Reference	High level P-TYE summary
1.1	Schedule 1[11]	Section 38K Education	Strongly support
1.2	Schedule 1[12]	Section 38P Sport	Support in principle. Expansion required to ensure trans adolescents not discriminated against Alternative provided.
1.3	Schedule 1[43]	Part 9C Forms	Support in principle. Expansion required to ensure trans youth not discriminated against. Additional paragraph required

1.1 Strongly support removal of s.38K(3) of the 1977 Act

We strongly support Schedule 1[11] of the bill, which will remove **Section 38K(3), education**. No child should ever be discriminated against in an educational setting of their (usually) parents choosing for being who they are.

We appreciate the work that the majority of faith-based individuals perform in the community each day supporting trans youth despite a current climate where a minority of loud voices demonise their existence each day from large platforms.

We have many parents of trans youth at private educational facilities (including faith-based schools) who have been embraced for who they are, similar to their cisgender peers. It is a small minority who seek to segregate and expel children for simply being who they are, often after these children have grown up in their community. Education is a human right for all children and their education should not be disrupted or cause psychological trauma due to adult choices. This includes trauma caused by faith leaders who have told parents to choose between their religious community or their trans child.

'Harm thy neighbour' should never be legally protected. 'Love thy neighbour' however appears to align with the overwhelming majority of religious beliefs in NSW.

Lawful discrimination against students does not reflect the values of inclusion and equality that the majority of schools (including the majority of faith-based schools) and the majority of the NSW population hold, when it comes to the education of children. It is reasonable that educational facilities who receive substantial government funding reflect these widely held values of inclusion and equality.

1.2 Do not support discrimination against trans adolescents aged 13 – 18 in sport

P-TYE recognises the amendments in Schedule 1[12] of the bill are a significant improvement from the current situation in NSW, which allows wide ranging discrimination against trans people in sport.

However, the proposed amendment to **Section 38P, Sport** (outlined in Schedule 1[12] of the bill) enables discrimination against trans adolescents in sport, which we do not support. Adolescents often do not have the administrative capacity or psychological bandwidth to appeal local exclusionary competition decisions rooted in transphobia. The bill's proposed wording operationalised would lead to widespread discrimination against trans children aged 13 through to 18. Most local sports competitions including intra and inter-school competitions, do not have resources to stand up to loud, and sometimes violent voices of bigotry that can arise. Often it might seem easier in the moment for adults responsible for the competition to segregate the affected trans adolescent to calm the violent bigotry. This proposed amendment will also lead to cisgender girls being segregated from competition that do not conform to western standards of feminism, and are unable or unwilling to prove in the moment that they are not trans.

"Do male to female transgender athletes have a physical advantage in competition against non-transgender females? **No**. If a young person transitions from male to female prior to puberty, as in the case of some transgender people, no accommodation is necessary at all and this student should be treated as any other competitor in girls' or women's sports. Additionally, **if a transgender student transitions after puberty, medical experts increasingly agree that the effects of taking female hormones negate any strength and muscular advantage that testosterone may have provided** and places a male-to-female transgender athlete who has completed her transition in the same general range of strength and performance exhibited by non-transgender females who are competing. A female-to-male transgender athlete has no physical advantage before, during or after transition and should be permitted to participate fully on male sports teams" – [Women's Sports Foundation](#).

'Transgender adolescents vary in athletic ability; just as other youth do. There is no evidence to support claims that allowing transgender student athletes to play on the team that fits their gender identity would affect the fairness of the sport of competition. There is ample evidence that an opportunity for adolescents to participate in sports results in positive outcomes, such as better grades, greater homework completion, higher educational and occupational aspirations, and improved self-esteem' – [American Psychological Association](#).

"Majority of female athletes support the inclusion of transgender women" – [SMH](#).

'There are deep connections between anti-trans sports bans, body policing, and the enforcement of sex stereotypes which hurt all girls and women – whether transgender/ cisgender/ intersex. Where states enact hostile policies to bully trans and nonbinary students, fewer girls in total play school sports. When government's enforce sex stereotypes, everybody loses' – [National Women's Law Center](#).

No child should ever be lawfully discriminated against due to who they inherently are, whether in sport or elsewhere. There is no science to support the proposed discrimination against trans adolescents, however the science does confirm that anti-

trans sports bans harm all women and girls, and as such we strongly advocate for its replacement.

P-TYE advocates the proposed amendment should be removed in its entirety, and replaced with the following subsection:

- (1) Nothing in this part makes it lawful to exclude a transgender person from participation in a sporting activity for members of the sex the person lives, seeks to live or identifies with.

1.3 Preferred name and pronouns required to be on government forms

We support the amendment outlined in Schedule 1[43] of the bill, and we suggest an additional paragraph under **Part 9C Forms, Section 122Y(2)** as follows:

- (2)(c) allow a person's preferred name and pronouns to be provided

Many trans youth are unable to update their name or gender marker on their birth certificate regardless of the bill's proposed amendments and as such, forms must provide an option for preferred name and pronouns where a legal name and birth certificate sex marker is required to be given. One common scenario is trans youth being repeatedly misgendered when admitted to hospital due to lack of collection of this vital information.

Referring to people by the pronouns they determine for themselves is basic to human dignity.

Amendment of Births, Deaths and Marriages Registration Act 1995 **No 62**

Note: P-TYE has replaced the bill's 'record of sex' terminology with the term 'gender marker'.

We welcome the lowering of age and the removal of the cruel and unnecessary current requirements for surgery to correct birth certificate gender markers. We support all proposed amendments to the Births, Deaths and Marriages Registration Act 1995 (the 1995 Act) that are relevant to trans youth, with the exception or noting of the following:

SUMMARY TABLE RE: BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 1995			
P-TYE point	Bill ref.	The 1995 Act Reference	High level P-TYE summary
2.1	Schedule 2[5]	Division 2 – Section 32B Division 2 – Section 32C Division 2 – Section 32D Division 3 – Section 32E Division 4 – Section 32EA Division 4 – Section 32EB Division 4 – Section 32EBA Division 4 – Section 32ECA Division 6 – Section 32I(3)	Strongly disagree with age 16 being minimum age to correct gender marker on birth certificate without parental authority. Amendment required – lower to a minimum age of 14, reduce discrimination, in line with their cisgender peers' legal autonomy. Reasons provided
2.2	Schedule 2[5]	Division 2 – Section 32B Division 4 – Section 32EA	Strongly disagree with requirement for both statutory declaration *and* support statement by witness. Amendment required – only one requirement. Preferable statutory declaration. Reasons and alternative provided
2.3	Schedule 2[5]	Division 2 – Section 32C(2)(b) Division 3 – Section 32D(2)(c) Division 3 – Section 32E(3)(b) Division 4 – Section 32EB(3)(c) Division 4 – Section 32ECA(2)	Strongly disagree with requirement for counselling – pathologises trans identity, costly, disproportionately affects single parents. Remove requirement for counselling. Reasons provided
2.4	Schedule 2[5]	Division 2 – Section 32C(3) Division 2 – Section 32CA Division 4 – Section 32ECA(3) Division 4 – Section 32ED	Strongly disagree with requirement for NCAT to notify "each parent" Amendment required – at least one parent Reasons provided
2.5	Schedule 2[5]	Division 2 – Section 32CA(2)(ii)	Recommend "14 days" be amended to 21 days. Decision likely to be traumatising. Reasons and alternative provided
2.6	Schedule 2[5]	Division 2 – Section 32CA(3) Division 4 – Section 32ED(3)	Strongly disagree with the test for "not adversely affected" Amendment required – 'adversely affected' Reasons and alternative provided
2.7	Schedule 2[5]	Division 3 – Section 32D (1) Division 4 – Section 32EB(2) Division 4 – Section 32EBA Division 3 – Section 32E(1)(a)	Strongly disagree with "all" parents or guardians required to apply to Registrar Amendment required – 'at least one'. Reasons and alternative provided
2.8	Schedule 2[5]	Division 3 – Section 32D Proposed new additional paragraph: s.32D(1)(g)	Additional paragraph required to reflect other courts approvals/consent Reasons and addition provided
2.9	Schedule 2[5]	Division 4 – Section 32EB(2)(e)	Expansion required to include international legal jurisdictions Australia recognises as just
2.10	N/A	N/A	New Section required to ensure a trans child's gender marker update automatically updates any younger sibling birth certificates

2.1 P-TYE strongly advocates for trans adolescents being able to update their birth certificate gender marker without parental authority from age 14.

Being empowered from age 14 to correct the gender marker on their birth certificate themselves aligns trans youth with other legal milestones their cisgender peers experience.

In NSW, the age of criminal responsibility is 10. Why can't a 14-year-old trans adolescent update their own state issued identity documents? They are not hurting others or themselves in obtaining a corrected identification document.

From the age of 12, NSW youth are presumed capable of providing proper instruction to their legal representative. Again, why can't a trans 14-year-old then have autonomy over their gender marker on their birth certificate?

Across Australia, all adolescents from 14 years of age are entitled to their own Medicare card and medical privacy away from their parents. Why can't a trans adolescent update their own state issued identity documents at the same age of their own accord, allowing them a level of privacy currently reserved only for their cisgender peers?

Significant numbers of homeless adolescents are transgender, often escaping violence in the family home, with the dangers of homelessness perceived as safer for them. If an adolescent can be kicked out of their home, or need to escape their family home at the age of 14 (or even younger in some cases) simply due to who they inherently are, why can't these same adolescents correct the gender marker on their birth certificate themselves?

From the age of 14, many adolescents secure their first form of paid part-time employment, apply for a tax file number, and commence superannuation contributions. For trans youth with unsupportive parents, this can mean outing themselves to their first employer as being trans. Lowering the age to 14 can also mean that a trans adolescent may never be burdened with the administrative demands of changing gender with the Australian Taxation Office and being outed to a new government department. It can also mean avoiding the alternative administrative demands required by Medicare and Centrelink to correct their gender, as the corrected birth certificate can just be used. This is not only better for the individual, it is more efficient for government administration.

For trans adolescents in out of home care, the administrative and psychological burden of approaching birth parents or the department for approval can be overwhelming. Reducing the age to 14 will empower them to have correct identity documents prior to gaining their first part-time job, and obtaining a tax file number, as they approach the critical intervening years prior to foster care support ending.

We also note that the Australian Capital Territory's *Births, Deaths and Marriages Registration Act 1997* allows trans youth from age 14 to correct their gender marker on their birth certificate without parental authority.

It is also well known that possessing correct identity documents can induce gender euphoria in trans youth, increasing self-confidence, self-esteem and personal resilience. Parents of trans youth in other states, who have significantly improved access to updating identity documents, regularly attest to this fact.

The arbitrarily proposed age of 16 sanctions discrimination by the state against trans youth when comparing other laws and freedoms applicable to younger children and adolescents.

P-TYE strongly encourages the adoption of 14-years of age as the minimum age to update their birth certificate gender marker without parental authority.

2.2 P-TYE disagrees with the requirement of a statutory declaration *and* a support statement by a witness they have known for 12 months

Proposed amendments to the 1995 Act set out a requirement for trans adolescents (preferably from 14 years of age upwards) to provide a statutory declaration, as well as a statement of support by an adult who has known them for at least 12 months.

It is P-TYE's position that a statutory declaration is sufficient, that it be contained within the approved form, and that the form asks for confirmation that the trans person identifies as being of the sex specified in the approved form, and that they live, or seek to live, as a person of that sex. A support statement from a witness they have known for 12 months confirming this again is an unnecessary additional administrative burden that provides no additional benefit to the people of NSW.

Trans people know who they are. They do not need other people to tell them or verify to others. Trans adolescents often know who they are before they start school, despite many not having the verbal skills or confidence to express this until a later age.

Completing a statutory declaration already forces a trans person to approach (usually) a stranger in the community, out themselves to that stranger, and then have that stranger signify they have witnessed the trans person state who they know themselves to be.

A statutory declaration is a written statement that a person swears, affirms or declares to be true in the presence of an authorised witness, and is made under the *Oaths Act 1900*. There are significant penalties for false declarations.

An additional statement of support from someone confirming what is already in the statutory declaration is not necessary when considering the purpose of a statutory declaration, the penalties that can apply, and this particular situation of wanting a corrected gender marker on identification documents.

A requirement for a support statement *and* a statutory declaration could reasonably be perceived as NSW defaulting to not believing trans people when they complete a statutory declaration, given the support statement is replication of what has been statutorily declared.

In the alternative, should it be perceived by the committee that a support statement is of higher value to the people of NSW than a statutory declaration from the transgender person, then P-TYE would support the removal of the statutory declaration requirement, leaving only the support statement as a requirement. P-TYE is of the view that only one is required, and preferably the statutory declaration from the individual.

2.3 *P-TYE strongly disagrees with the proposed requirement of counselling evidence for trans youth under the (preferable) age of 14 if an application must be made to NCAT*

Proposed amendments to the 1995 Act set out a requirement for trans children (preferably aged younger than 14 years) to submit evidence of counselling undertaken, should an application to NCAT for consideration of gender marker correction be required.

These trans kids already live, or seek to live, as the gender they inherently know themselves to be. This means attending school as their identified gender, being part of their local community as their identified gender. On a daily basis. Correcting their birth certificate gender marker is never the first action taken by trans kids or their families.

This proposed amendment states that a child who has been living, or seeks to live as their inherent gender requires additional and specific counselling about their life finally being reflected through a corrected gender marker on their identity documents. This could be perceived as absurd?

Firstly, this pathologises the trans identity. Being trans is not a mental illness. Counselling is not required. Trans depathologisation is required globally, and NSW can support this human right through removing this proposed requirement.

Secondly, obtaining counselling and a medico-legal written report to submit to NCAT specifically about correcting a trans child's gender marker is prohibitively costly for most families. Should this requirement not be removed, NSW must ensure free and accessible counselling and medico-legal reports are available for all trans youth and their families who seek a corrected gender marker on their trans child's birth certificate. With the current cost of living crisis, most of our families are struggling to make it through each week, let alone the cost of a medico-legal report that does not appear to be necessary.

Thirdly, the requirement for counselling and evidence of this will unjustly and disproportionately impact loving supportive single parents much more than other families. Historically and currently, disputes in the family court over treatment consent and approval for trans youth have overwhelmingly arisen in situations where the parents are separated. The loving parent with majority custody trying to do their best for their trans child, will have to arrange, pay for, collect, submit evidence of counselling because their ex-spouse is transphobic and a bigot. Often the reason they split in the first place. The emotional labour alone is exhausting, just to correct the gender marker on their child's identification documents. All this, whilst their child has usually already been living as the gender they know themselves to be, every day, out in their community.

Fourthly, there is a dearth of accessible counselling services for trans youth prior to puberty. All supportive and loving families of trans youth will share with you the extreme difficulty they face in finding someone with expertise in this area who can provide counselling services to their child, prior to puberty. The advice before puberty is usually 'there's not much we can do. Just support and love your child, affirm them socially (name, pronouns, clothes, haircut) and come back and see us once they commence puberty'. This is a reflection of trans depathologisation, and a lack of need to intervene psychologically with any trans child, simply because they are trans, because trans children are a natural and normal part of every society on earth. They always have been and always will be.

When trans children express persistently and consistently that they are trans from the time they are able, including sometimes from toddlerhood, live as their inherent gender (not gender assigned at birth) without any hesitation since, have supportive family, school and community, then there is no need for any psychological intervention. At all. This proposed requirement will force some happy, healthy and well-adjusted trans children to speak to a counsellor they would not otherwise see, which will undoubtedly confuse them and lead them to question what is wrong with them, and what is wrong with being trans? This requirement could actually harm some trans kids. Internalised transphobia is a real concern, and the state forcing them to undergo counselling for a gender marker correction when no one else in their life has questioned who they are, will without a doubt, lead some trans kids to develop this debilitating condition. If this requirement is not removed from the bill's proposed amendments, then P-TYE requests the NSW government provide accessible and free counselling for these trans kids that depathologises their trans identity and overcomes any developed internalised transphobia.

Further, once the child commences puberty and if they need medical affirmation then Australian gender clinics within the walls of our public hospitals will commence multidisciplinary holistic assessments of each child prior to any medical affirmation. In cases where trans youth seek medical affirmation, it takes years of multidisciplinary assessments (through state health gender clinics, or private specialists) across Australia. This is why there are NO detransitioners in Australia who were medically affirmed prior to age 16. The Australian affirmation process is probably too cautious, but it is definitely not a tick and flick exercise which some transphobic people with a large public platform would like you to believe. We do not believe NSW Health gender clinics have the resources to also write a medico-legal report supporting gender marker correction on identity documents, in addition to the comprehensive work they already do.

Finally, there is no requirement for trans adults to obtain evidence of counselling when making an application to correct their gender marker. That is because being trans is not a mental illness. The bill recognises trans depathologisation as a human right, but only for those aged over (preferably) 14 years, albeit silently. Pathologisation of trans identities should never be introduced, let alone as a result of age discrimination. This would be a breach of the [Yoghakarta Principles plus 10](#).

For trans children happy and content since primary school (or earlier) with their inherent lived gender, correcting their gender marker on their birth certificate prior to commencing high school can be incredibly empowering, confidence-boosting and provide greater safety for that child. A requirement for costly inaccessible and identity-questioning counselling and evidence will delay, or even prevent, some trans kids commencing high school with the correct identity documents.

2.4 P-TYE strongly disagrees with the proposed NCAT requirement to give notice of the application to each person with parental responsibility when a person (preferably) under 14 years of age applies to correct their record

Whilst the concept of loving a child conditionally and/or being transphobic is foreign to members of P-TYE, sadly not all children win the lottery of childhood and have parents or carers that love them **un**conditionally.

A gender marker on a trans child's birth certificate belongs to that child. If an application is made with demonstrable agreement of at least one parent or carer for the child, with confirmation that the child has lived persistently and consistently as their inherent gender (as opposed to their gender assigned at birth), that should be sufficient for correcting the gender marker for all trans children aged (preferably) under 14 years.

P-TYE therefore recommends the removal of the requirement for an applicant to state in their application that they 'understand NCAT must contact **each** parent or other person with parental responsibility'. This should be replaced with the applicant stating in their application they 'understand NCAT must contact **at least one** parent or other person with parental responsibility, if no parent/s or other person/s with parental responsibility have formed part of the application'.

Further reasons and explanations are provided in point 2.7 below.

2.5 *P-TYE strongly recommends applicants be given at least 21 days to withdraw their application in cases where NCAT makes a determination against the applicants wishes about informing a person with parental responsibility*

Gender is inherently personal and important to most of us. That includes children.

In situations where the applicant indicates external parties to the application should not be contacted, yet NCAT disagrees with this request, the child applicant (or single parent/carer) is left to determine whether someone opposed to the their inherent gender should be avoided or faced.

This will likely cause trauma for the child applicant. They **have** to choose between fighting for identity documents correctly reflecting who they know themselves to be, or avoiding likely repetition of trauma-inducing denial-of-identity statements. The application to NCAT will not be the first time the child will have had to face a parent or carer who denies the child's identity.

Given the serious implications for this situation, P-TYE strongly recommends that at least 21 days is given to the applicant to make this deeply personal decision, as proposed in subparagraph 32CA(2)(b)(ii) of the 1995 Act. It is not likely to be an easy decision for any applicant to make and they should be granted more time to consider all impacts of NCAT's decision.

2.6 *P-TYE strongly disagrees with the test for "not adversely affected"*

Subsection 32CA(3) of the 1995 Act as detailed in the bill sets out the test an applicant must meet when NCAT is determining if a person will be adversely affected by a parent being notified of their application to alter their gender marker. P-TYE struggles to imagine any situation would arise where a parent or carer denies a trans child's identity and it is not traumatic for the child (and any supportive parent or carer). The inclusion of this "not adversely affected" test in the bill could be perceived as redundant.

In operation NCAT may request medical evidence that the child will experience trauma by having an unsupportive parent contacted, and their gender identity fought over, as

part of NCAT's collection of evidence. The act itself of having to tell someone how traumatic a parent denying their identity is, would be traumatising to the child.

If removal of this test is not possible then P-TYE suggests an amendment to the bill that provides a test **for** 'adversely affected' that includes and recognises the trauma of having an unsupportive parent, specifically and definitively outlining there will be no obligation in these situations to obtain medical evidence. The research conclusively supports this.

2.7 P-TYE strongly disagrees with the requirement that "all" parents or guardians are required to support an application to the Registrar

A gender marker on a trans child's birth certificate belongs to that child. If an application is made with demonstrable agreement of at least one parent or carer for the child, that should be sufficient for correcting the gender marker for all trans children aged (preferably) under 14 years, and that application should go directly to the Registrar. Not via NCAT.

A mandatory application to NCAT for cases where "all" parents and carers have not supported an application for gender marker correction will prove to be a waste of precious bureaucratic resources. Given that every single application for medical affirmation made to the family court for trans children under the age of 14 has been approved historically there is no reason that NCAT would deny a child who lives as their inherent gender (as opposed to their gender assigned at birth), the right to have identification documents that correctly reflect their gender.

The only children under the age of 14 who will have an application made on their behalf to correct their gender marker will have been persistent and consistent in their inherent gender for many years, sometimes since toddlerhood. P-TYE wishes to note here that parents and carers often cannot make their children eat enough fruit and vegetables, or always keep their room clean. They definitely cannot make a child trans!

P-TYE therefore advocates an amendment reflecting that where a child has lived consistently and persistently as their inherent gender (as opposed to their gender assigned at birth) prior to the application, and is supported by "at least one parent or carer" that should be sufficient for applying directly to the Registrar to correct the gender marker on their birth certificate.

2.8 P-TYE suggests an additional paragraph to be called Section 32D(1)(g)

In the event an adolescent under age 14 has already been through an alternative court and gained consent or approval for gender affirmation, they should not have to then navigate NCAT to make essentially the exact same arguments. The ability to produce the court outcome documents should be sufficient to apply directly to the Registrar and will streamline the government administration process.

For example, if one parent disputed gender affirmation of a trans girl but through an alternative court process gender affirmation was approved as the court found it was in the best interests of the trans girl, that girl should not have to then navigate NCAT to obtain essentially the same decision.

NCAT would not deny a birth certificate gender marker correction to Female for a trans girl that another court had found was able to commence puberty blockers and/or stage 2 hormones (oestrogen) as that other court determined they are a trans girl.

From a parent point of view also, having to make another submission on essentially the same topic (having your child recognised as the girl they know they are), which could refresh pre-existing domestic disputes, is an abhorrent thought. Particularly when many of these cases are single parents stretched already, fighting for their child's right to exist as they know themselves to be. Replicating this is unnecessary at best, cruel at worst.

This proposed additional paragraph will stop replication of court proceedings for especially vulnerable trans kids and would be similar to the proposed amendment that forms Schedule 3[3] of the bill.

2.9 P-TYE suggests an additional sentence be added to paragraph 32EB(2)(e)

Some parents have sole parental responsibility for their child and have (luckily!) immigrated to NSW, Australia for a fresh start from an overseas country. For those parents who have been granted sole parental responsibility in an international legal jurisdiction that is recognised by Australia, they should also be able to apply directly to the Registrar with a copy of their legal documents (translated, if required) rather than navigate NCAT repeating arguments another court has already found to have merit, in order to correct the gender marker on their trans child's identity documents.

P-TYE therefore recommends that this be reflected through extension of 32EB(2)(e), or as part of a new paragraph that follows immediately.

2.10 P-TYE suggests an additional section in Division 3 reflecting the automatic updating of gender markers on younger siblings' birth certificates

If a child is born in NSW and they have any older siblings, those older siblings are listed on their birth certificate along with their older siblings' gender.

This has outed some trans youth whose younger siblings commence school or employment and must produce their birth certificate as identification. These younger siblings birth certificates misgender the trans youth.

P-TYE requests the Committee on Community Services support the creation of a new Section, potentially called Section 32F, that sets out a requirement for any younger sibling birth certificates to be updated with the older trans child's correct gender and name by the Registrar at the same time that the trans child's birth certificate is corrected.

The current situation has distressed some families with some told that every member of the family must come into a Service NSW branch together at the same time to apply for and attempt to correct the trans child's gender and name on all the younger sibling's birth certificates.

P-TYE wishes to see this automatic correction of sibling birth certificates occur in all instances the applicant requests this, no matter their age. P-TYE recommends that this

request be a mandatory part of the Registrar's approved form for application of gender marker correction.

This should be an automatic entitlement for trans children to have all state issued identification documents reflect their corrected gender, including when the identification document is not specifically theirs, but they are listed.

This has been a great violation of their privacy and is proving an insurmountable barrier to cross for families in this situation. This situation is not restricted to trans youth. It also includes trans adults, and it requires addressing through legislative amendments.

*P-TYE acknowledges that some trans adults may not wish for their siblings to be aware of their gender marker correction, which is why it should be automatic only in cases where the applicant requests this change.

Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157

We support the proposed amendments to the Children and Young Persons (Care and Protection) Act 1998 (1998 Act) outlined in Schedule 3 of the bill, and recognise the importance of young people (16 years and over) and children (under 16 years) who are Gillick competent being able to consent to their own medical treatment, in conjunction with their medical health providers.

Section 175 – Special Medical Treatment

P-TYE strongly advocates:

- that puberty blockers and 'Stage 2' gender affirming hormones (testosterone and oestrogen) are not classified as "Special Medical Treatment", as defined under section 175 of the 1998 Act, when administered to trans youth as part of their medical affirmation
- for puberty blockers and Stage 2 hormones to be prescribed in the Children and Young Persons (Care and Protection) Regulation 2012 as not rendering trans youth infertile, in line with up-to-date research. This will then allow NSW Health, Consent to medical and healthcare treatment manual, Part 8.12: "[Consent requirements for gender affirming medical treatments for Minors \(young people under age 18\)](#)" to be updated and reflect consent requirements set out in Schedule 3[2] of the bill (section 174A of the 1998 Act).

This would provide clarity for young trans people, their families and medical practitioners, enabling administration of gender affirming treatment at a time-critical period in the adolescent's life, supporting the mental health and wellbeing of trans adolescents.

P-TYE's advocated position is based on the following:

- Research confirms that puberty blockers for affirming trans youth are completely reversible when prescribed to trans youth for a maximum of 2-3 years
- Increasing research that demonstrates Stage 2 hormone treatment does not impact permanently on fertility.

P-TYE wishes to draw the Committee on Community Services' attention to medical affirmation of trans youth and misconceptions that continue to circulate in some parts of the community, relevant to Schedule 3 in the bill. It is important to note that not all trans adolescents require medical affirmation.

However, it is also important to note that Gender Affirming Medical Treatment (GAMT) when it is needed, including puberty blockers and Stage 2 hormones, have been deemed therapeutic by the family court (i.e. they are not cosmetic procedures) and can be life-saving, which we have observed first-hand as parents and carers.

Puberty blockers are completely safe for medical affirmation of trans youth. They are completely reversible with no adverse side effects when prescribed to trans youth for 2 – 3 years, in line with the majority of other prescription medicines for adolescents. Puberty blockers have been used by medical practitioners for decades for precocious puberty, and the evidence demonstrates that risks materialise when used for more than 3 years, which is longer than trans kids require them. Across Australia, medical affirmation occurs in gender clinics after rigorous multidisciplinary assessments, with puberty blockers 'buying time' to further assess if it is in the best interests of the adolescent to commence Stage 2 hormones.

References have been made by some to the recent decision by the NHS in England to cease prescribing puberty blockers to trans youth. However, we wish to point out that the NHS continues to prescribe puberty blockers to cisgender youth when required. The decision to cease trans youth accessing them through the NHS directly was not based on science. It was based on politics and transphobia. Puberty blockers are still available to trans youth in England, though trans youth are now a captured audience and *must* participate in research in order to access them.

Increasing research confirms that '**Stage 2' hormones (oestrogen/testosterone)** do not impact on an individual's fertility. Trans adults are increasingly reported in published peer-reviewed studies as having paused hormones to successfully conceive and often birth a baby, then resume their hormones.

It is P-TYE's position that Stage 2 hormones should no longer be considered "special medical treatment" as they do not, and are not reasonably likely to, render the recipient permanently infertile, as per the definition provided in subsection 175(5)(a) of the 1998 Act.

Classifying Stage 2 hormones as a "special medical treatment" is based on outdated science and is harming some of our children by delaying their access to gender affirming treatment, requiring them to remain on puberty blockers beyond the 2-3 year timeframe that is considered safe. In particular, classifying Stage 2 hormones as "special medical treatment" affects those who do not have capacity to navigate NCAT for various reasons. Trans adolescents living away from their families, and trans youth living with single parents are disproportionately affected by this classification. It is unacceptable that a child's mental health must deteriorate to the point that a practitioner determines that gender affirming hormones are required as a matter of urgency in order to save the child's life or to prevent serious damage to the child's mental (or physical) health.

P-TYE supports the amendment of only one parent or carer being required to provide support for trans youth who are not Gillick competent and under the age of 16 years as

set out in Schedule 3[2], specifically subsection 174A(2)(a) for both puberty blockers and Stage 2 hormones.

P-TYE looks forward to trans youth being able to make autonomous, private, and informed choices about their medical affirmation in the future based on science, not politics, in conjunction with their medical team, as their cisgender peers do from age 14 in most medical situations. Trans adolescents deserve to receive timely gender affirming treatment that supports their physical and mental health.

Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

We support the proposed amendments to the Crimes (Domestic and Personal Violence) Act 2007 and wish to strongly endorse the amendments that threatening to out, or actually outing trans youth without their permission, and harassment of trans youth are acts of violence and abuse. As parents we have seen first-hand the trauma that the playground, wider community and social media can inflict on our precious children, just for being who they know themselves to be.

We cannot express adequately our thanks for these amendments that our kids might be entitled to the same level of protection from violence and abuse as their cisgender peers.

Amendment of Mental Health Act 2007 No 8

P-TYE strongly supports Schedule 16 of the bill. Being transgender and/or gender diverse is not a mental illness. Trans youth are a natural, normal (and awesome!) part of every community on earth. They always have been and always will be.

Establishment of a Human Rights Charter

P-TYE strongly recommends NSW establishes a Human Rights Act or Charter to protect and promote the human rights of all its citizens, but particularly from the point of view of the trans youth of NSW. Anti-trans moral panics which are sweeping the globe, endanger all young people, sending messages that bodily autonomy is not acceptable.

All children deserve to grow up without discrimination. Trans youth particularly do not currently enjoy this right across all aspects of society and this discrimination is not okay. A Human Rights Act or Charter would go some way towards bridging this inexcusable divide.