

**Submission  
No 20**

## **EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023**

**Organisation:** Trans Justice Project

**Date Received:** 12 April 2024

**12<sup>th</sup> April 2024**

The Hon Clayton Barr MP

Chair of NSW Committee on Community Services

[communityservices@parliament.nsw.gov.au](mailto:communityservices@parliament.nsw.gov.au)

Dear Chair,

**The Trans Justice Project Submission to the Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill 2023**

The Trans Justice Project has been invited to make a submission to the inquiry by the NSW Legislative Assembly Committee on Community Services into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (Equality Bill). The Trans Justice Project is Australia's first trans-led national campaigning organisation, a registered charity combining lived experience with cutting-edge research and strategic organising to stand up for freedom, justice, and equality for all trans and gender-diverse people. In line with this expertise, the focus of our submission will be on the measures of the bill that will affect trans and gender diverse people.

The Trans Justice Project supports many of the measures in the Equality Bill. We would like to acknowledge that we have added our name in support of Equality Australia's robust submission to this process. However, we are making this additional submission to place extra emphasis on the commendable measures in the Bill that will greatly increase quality of life for trans and gender diverse people in NSW.

These particularly important actions are:

**Enabling trans and gender diverse people to amend the gender on their birth certificates without the need for surgery.**

As of now, NSW is the only state in Australia that requires trans and gender diverse people to have undergone a "sex affirmation" surgery in order to change the gender marker on their birth certificate. This requirement forces all trans and gender diverse people who wish to change their gender marker to pursue surgery; a decision that comes at a highly prohibitive cost (up to \$80,000 for phalloplasty and up to \$30,000 for vaginoplasty in Australia<sup>1</sup>), and which also places undue external influence on their own personal bodily autonomy. However, at the same time, lacking representative documentation places barriers between trans and gender diverse people and participation in public life, leading to difficulties when interacting with official

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<sup>1</sup> ACON, 2021, "GRS: Genital Reconfiguration Surgery", *TransHub*, <https://www.transhub.org.au/grs>, Accessed [12th April 2024]

institutions like police, with health records, with access to schooling, university, and other forms of education, with marriage and adoption, and with employment<sup>2</sup>.

The Bill amends this previous provision to enable a person over 16 years of age to change their gender marker with the support of an adult who has known the person for over 12 months, and allows a person under 16 to change their gender marker with the support of their parents, a counsellor, and NCAT<sup>3</sup>. This measure will have a hugely beneficial effect on the lives of trans and gender diverse people. The ability to change gender marker to correspond with a person's lived gender has been shown to have a positive impact on employment<sup>4</sup>, mental health<sup>5</sup>, and social determinants of health<sup>6</sup> for trans and gender diverse people. Further, as NSW is the only state with the surgery requirement, this change will bring NSW in line with the rest of the country, with measures similar to those already in effect in Victoria<sup>7</sup>.

### **Protecting young people's access to gender-affirming care.**

Gender-affirming care is vital healthcare for trans and gender diverse people. Research has demonstrated that receiving gender-affirming care has vastly positive effects on the mental health of trans and gender diverse youth<sup>8,9</sup>. Schedule 3 of the Bill mandates that a young person (i.e. between the ages of 16 and 18) can make decisions about their own

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<sup>2</sup> Mottett L, 2013, "Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People", *Michigan Journal of Gender & Law*, vol.19, no.2, pp.373-470, <https://repository.law.umich.edu/mjgl/vol19/iss2/4>

<sup>3</sup> Equality Legislation Amendment (LGBTIQA+) Bill 2023 [NSW] (Equality Bill), Schedule 2 [5], proposed ss 32B-32G.

<sup>4</sup> Mann S, 2021, "Transgender employment and gender marker laws", *Labour Economics*, vol.73, <https://doi.org/10.1016/j.labeco.2021.102072>

<sup>5</sup> Restar A, Jin H, Breslow A, Reisner SL, Mimiaga M, Cahill S, Hughto JMW. 2020, "Legal gender marker and name change is associated with lower negative emotional response to gender-based mistreatment and improve mental health outcomes among trans populations", *SSM - Population Health*, vol.11, 100595, <https://doi.org/10.1016/j.ssmph.2020.100595>

<sup>6</sup> Hill BJ, Crosby R, Bouris A, Brown R, Bak T, Rosentel K, VandeVusse A, Silverman M, Salazar L. 2018, "Exploring transgender legal name change as a potential structural intervention for mitigating social determinants of health among transgender women of color.", *Sexuality Research and Social Policy*, vol.15, no.1, pp.25-33, <https://doi.org/10.1007/s13178-017-0289-6>

<sup>7</sup> Births, Deaths and Marriages Registration Act 1996 (Vic), Part 4A.

<sup>8</sup> Allen LR, Watson LB, Egan AM, Moser CN, 2019, "Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones", *Clinical Practice in Paediatric Psychology*, vol.7, no.3, pp.302-311, <https://doi.org/10.1037/cpp0000288>

<sup>9</sup> Horton C, 2022, "Experiences of Puberty and Puberty Blockers: Insights From Trans Children, Trans Adolescents, and Their Parents", *Journal of Adolescent Research*, vol.39, no.1, pp.77-103, <https://doi.org/10.1177/0743558422110059>

medical care as validly and effectively as an adult<sup>10</sup>. Similarly, the Bill allows medical practitioners to administer treatment to a child with the consent of the child's parents or if the child consents, understands the nature, consequences, and risks of the treatment, and if the treatment is in the best interests of the child's wellbeing<sup>11</sup>. These changes clarify the standards for young people consenting to medical treatment and thus have implications for trans and gender diverse youth accessing gender-affirming care. The Bill ensures that there is no double standard between gender-affirming care and other treatment, and that trans and gender diverse youth are able to exercise self-determination across all medical decisions. While authorisation is still required from the Family Court if a parent or medical practitioner disputes either a child's diagnosis of gender dysphoria or their ability to consent to treatment, the measures in the Equality Bill still provide some safeguards for the access of gender-affirming care by children and young people.

We know that there is strong support in the trans and gender diverse community for both of these reforms. That being said, the Bill has some elements that do not go far enough in their proposed protections, such as allowing for the continued exclusion of trans and gender diverse people from participation in sport<sup>12</sup>. This aside, the actions of the Bill represent a clear leap forward in equality for trans and gender diverse people in NSW. All this being said, the Trans Justice Project wishes to lodge their support for the Equality Bill, with the reservations expressed above, and recommend that it be passed into law by the NSW Parliament.

Yours sincerely,

Freya Kerwick,

Research Campaigner  
Trans Justice Project

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<sup>10</sup> Equality Bill, Schedule 3 [2], proposed ss 174A

<sup>11</sup> Equality Bill, Schedule 3 [2], proposed ss 174A

<sup>12</sup> Equality Bill, Schedule 3 [2], proposed ss 38P