

**Submission
No 21**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: AEU NSW Teachers Federation

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**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

SUBMISSION TO

**THE COMMITTEE ON COMMUNITY SERVICES
NSW PARLIAMENT**

ON

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL

Authorised by



**per Maxine Sharkey
General Secretary
AEU NSW Teachers Federation**

12 April 2024

Equality Legislation Amendment (LGBTIQA+) Bill 2023

The Australian Education Union NSW Teachers Federation Branch (the Federation) represents teachers, executives and principals in NSW public preschools, infants, primary and secondary schools, schools for specific purposes and teachers working in consultant/advisory positions. Teachers in TAFE and Corrective Services are also represented by the Federation. The current financial membership totals 70,000 practising teachers and student members.

Federation agrees with the aim of the bill, as expressed in the Media Release to *'provide equality for LGBTIQA+ people'*¹ as it has long standing policies to work towards equality for all our members and their students regardless of their sexuality and gender identity.

Our submission does not aim to address all of the suggested legislative amendments, but to speak to those more likely to affect our members and the students in our schools, TAFE Colleges and Correctional Institutions.

Schedule 1: Amendments to the Anti-Discrimination Act 1977 no 48

Definitions

Schedule 1 (3)-(5)

Federation supports the amendments to section 38A of the Act which substitutes references to "the opposite sex" with "the other sex" and removing of the reference to indeterminate sex, as language which is consistent with expectations of modern society.

Exceptions to apply to private educational institutions

Schedule 1: (10) and (11), (14)-(17), (31)-(32)

As the recipients of NSW and Commonwealth Government funds, all schools and colleges should be required to be compliant with legislation designed to reduce discrimination in the community, including all aspects of the Anti-Discrimination Act. For that reason, Federation agrees with the removal of a number of exemptions for private educational authorities.

Access to sporting activities

Schedule 1: (12)

Federation agrees with the proposal that all children under 12 years of age have the right to equal participation in sport. However, Federation is concerned that the proposed amendments limit access to sporting activities for transgender people over 12 years of age. The phrase 'is part of a competition' could be interpreted in a manner which would mean that transgender students are precluded from taking part in certain sporting activities in a High School. Under the NSW Curriculum, Sport is mandatory for students until year ten. As nearly all sports have a scoring system of some sort, transgender students may find themselves unable to adequately access part of the curriculum, and particularly in representing their school.

¹ [Inquiry launch - Equality Legislation Amendment \(LGBTIQA+\) Bill 2023.pdf \(nsw.gov.au\)](#)

Another concern with the proposed amendment is that it leaves decisions to be made at a local level. Reasonable and proportionate is a broad idea. The concern is that this could lead to direct discrimination and community conflict e.g. when the teacher/coach decides that a year 8 Gala Day has a participation focus rather than competition, but there are calls from a third party, including a parent or community member to exclude a young person from a school activity on the basis of their gender identity, or for transphobic reasons.

Access to education

Schedule 1: (17)

Federation welcomes the amendments which make it unlawful to discriminate against a person on the ground of a variation of sex characteristics when they apply for admission as a student in an educational setting. Federation has worked closely with members, schools and community groups towards our schools being welcoming and safe places for intersex students.

It is also appropriate that people who are or have been employed as a sex worker should have equal access to adult educational settings, including TAFE colleges.

Sex characteristics and sexuality

Schedule 1: (23)

The definitions contained in 49ZF are welcomed as they broaden the definition of sexuality. Another reason to support this insertion is as it includes (homophobic) discrimination experienced by people based on their perceived sexuality. By doing so it recognises that individuals can experience discrimination not only because they are same sex attracted but because others have judged them to be so.

Schedule 1:(38)

It is appropriate to remove the exemption for private educational institutions.

Discrimination on ground of sex work

Schedule 1: (39)

Past employment in sex work should not, of itself, be a reason to reduce access to employment. Federation agrees with this amendment as it provides clear protections against discrimination by refusing to employ a teacher who had previously been employed as a sex worker or in an adult entertainment venue.

Schedule 1: (40)

Federation agrees that religious institutions including schools no longer have a general exemption under the Act.

Matters relating to gender diversity and same sex relationships

Schedule 1: (43)

All Government forms need to be updated to allow for 'a person's sex to be described in a non-binary way' as well as provide open ended choices to describe relationships. An

example would be the current PDF version of the Enrolment Form for Public Schools in NSW. Although it conforms with the proposed 122Y(2) (b) by having spaces for Parent/Carers to name their relationship to the child, the choice of tick boxes for Male or Female does not conform with the proposed 122Y (2) (a).²

Schedule 2: Amendments to Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2: (5)

The definitions in S32A should be broadened as proposed in the bill. Federation emphasises that a 'recognition certificate' should allow for the individual to nominate male, female or 'any other descriptor of sex'.

Persons under the age of 16 should be able to apply for an alteration of record of their sex so Federation welcomes the inclusion of S32C. Federation emphasises the need for young people to be kept safe through this process, for this reason it is essential that (3)(b) is included as this allows the person to make an application that one or more of their parents is not informed of the application. As further outlined in S32CA(b) any denial of this request to NCAT must be in writing (i) and provide 14 days for the person to decide whether to withdraw the request (ii) or continue with the knowledge that each parent or other person with parental responsibility will be informed (iii). These details must be included in the legislation to ensure safety and privacy.

Federation also emphasises the importance of the provisions at S32G(3) which direct NCAT to take into account:

(a) the outcomes of the counselling undertaken by the child,

(b) the views of the child, however expressed,

(c) whether the child is sufficiently mature to understand the meaning and legal implications of the alteration of the record or registration of acknowledgement of the sex of the child.

Schedule 3: Amendment of Children and Young Persons (Care and Protection) Act 1988 No157

Medical decisions made by those under 16 and between 16 and 18 years old.

Schedule 3: (1)

Federation agrees with the widening of the Principles of the Act to include, 'gender identity, variations of sex characteristics' of Children and Young People.

Schedule 3: (2)

There has been a need for clarity about when a young person is able to make decisions about their own medical treatment with or without parental consent. For this reason, Federation supports the provisions in the bill as they provide clearer guidelines for the rights

² <https://education.nsw.gov.au/content/dam/main-education/going-to-a-public-school/media/documents/translated-documents-/nsw-enrolment-form/english-nsw-enrolment-form.pdf>

of young people to be a proactive decision maker in matters affecting their health and wellbeing.

Schedule 5: Amendment of Court Security Act 2005 No 1

Schedule 5: (4)

The proposed 10(g)(i) allows for a person under 12 years of age who is intersex or transgender to express a preference as to the 'class' of the person who undertakes a personal search. This is followed by (ii) which provides that all other children are searched by a female officer or in the company of a female.

It is unclear why this distinction is included and why it was considered necessary.

Schedule 7: Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Schedule 7: (2)

The definitions of intersex and transgender are clear and it is appropriate to include the references to the *Births, Deaths and Marriages Registration Act 1995*.

Schedule 12: Amendments to the Government Sector Employment Act 2013 No 40

Schedule 12: (2)

The provision that the Public Service Commissioner **may publish** a diversity and inclusion standard that provides for minimum diversity and inclusion standards for government sector agencies should be strengthened to **must publish**.

Without a set standard it will not be possible to ensure that agencies are, in fact, compliant.

Federation agrees that specific quotas and targets may be included but should not be mandated.

Schedule 13: Amendments to the Government Sector Employment (General) Rules 2014

Schedule 13

It is appropriate that intersex and transgender people are included in workplace diversity considerations, programs and policies as this allows for opportunities and transparency.

Schedule 19: Amendments to the Surrogacy Act 2010 No 102

Schedule 19

Federation has advised and supported members who have been involved in surrogacy arrangements both outside of NSW and internationally. These families had great difficulty in receiving the parenting orders which were required to be granted parental leave to care for their children. Federation agrees with the inclusion of clauses which allow orders to be provided when it is in the best interests of the child, and with the obligation of the court to consider the wishes of children who have the maturity to be involved in such decisions.

Proposed amendments to the bill

Removal of exemptions for micro businesses

The provisions of the amendments should apply equally to all workers, in all businesses. Students and young people, who often take their first jobs in local businesses, deserve the same protections and rights regardless of the number of people employed on the payroll for the business in question. For these reasons, Federation supports the amendment proposed by The Greens.

The Officers with responsibility for this submission are Sam Clay, Deputy Secretary (Research/Industrial and Professional Support) and Angela Catalo, Relieving Research/Industrial Officer. They can be contacted on 9217 2100 or mail@nswtf.org.au