

**Submission  
No 22**

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

**Organisation:** BEING - Mental Health Consumers

**Date Received:** 12 April 2024

## About BEING

BEING – Mental Health Consumers is the independent, state-wide peak organisation for people with a lived/living experience of mental health issues (consumers). We work with consumers to achieve and support systemic change.

BEING – Mental Health Consumers ( <https://being.org.au/> ) works in the following areas:

- Policy: advocacy and consultation
- Training: capacity building for consumers and workplaces
- Consultation and representation: stakeholder engagement, awareness raising and promotion of consumer issues.
- Research and
- Organisational and governance development

## Response to the proposed Amendments

BEING notes that section 16 of the *Mental Health Act 2007 No 8*<sup>1</sup> (the Act) currently contains a clause at subsection 16, (1), (d) that excludes sexual orientation as an indicator of mental health issues or mental illness. BEING therefore believes it is appropriate that gender identification also be excluded as grounds for a diagnosis of mental health issues or mental illness.

This position is reflective of broader progress made in societal and scientific views about gender diversity and it will support the provision of trauma-informed and trans-affirming mental health services for gender diverse people in NSW.

BEING believes all mental health services should support people experiencing elevated levels of psychological distress. This includes LGBTQIA+ people, who have very high occurrence of mental health challenges. The ABS advised in data released this year, that the lifetime prevalence<sup>2</sup> of mental health issues for people who are non-binary is 85.2%. For transgender people lifetime prevalence of mental health issues for people aged 16 to 34 is 70.6%.<sup>3</sup> The most distressed LGBTQIA+ mental health consumers may be subjected to involuntary inpatient mental health treatment, or community mental health treatment. In these circumstances, the NSW Mental Health Act will apply.

Making this amendment will also better align the Mental Health Act with the current *NSW LGBTIQ+ health strategy 2022 - 2027*, which recognises that LGBTQIA+ people have a right not to be misgendered, not to be subject to derogatory language, and not to have their partner recognised as their partner when they are accessing the healthcare system.<sup>4</sup> In this case NSW

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<sup>1</sup> <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2007-008#statusinformation>

<sup>2</sup> Note that the ABS defines lifetime mental health disorder presence as the occurrence of a mental health issue that satisfied diagnostic criteria at least once across the lifespan.  
<https://www.abs.gov.au/statistics/health/mental-health/national-study-mental-health-and-wellbeing/latest-release>

<sup>3</sup> <https://www.abs.gov.au/articles/mental-health-findings-lgbtq-australians>

<sup>4</sup> See Pg. 15, <https://www.health.nsw.gov.au/lgbtiq-health/Publications/lgbtiq-health-summary.pdf>



Health Policy has proven to be more progressive than NSW law. This lack of alignment needs to be remedied.

A demonstrated commitment to respecting the rights of people who are gender diverse will also make it more likely that gender diverse and other LGBTQIA+ people will feel safe reaching out to the NSW mental health system when they are experiencing mental distress or crisis. Therefore, to be effective, mental health services need to build and maintain the trust of consumers, and one way is by ensuring that the rights of gender diverse people are protected within all relevant legislation.

Whilst this diverges somewhat from the parameters of this inquiry, BEING also believes that to further improve the quality of service provided to members of the LGBTQIA+ community seeking support with mental health issues, there is need for more LGBTQIA+ peer workers across the NSW mental health system. In addition to inpatient services, emergency departments are also common locations for people to present when they are seeking help, and so appropriately skilled and experienced peer workers are needed in hospital emergency departments to be able to support LGBTQIA+ people appropriately.