

**Submission
No 39**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Equality Australia

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14 April 2023

Mr Clayton Barr MP
Chair of NSW Committee on Community Services
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By email

Dear Chair

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

Thank you for the invitation to make a submission to the NSW Committee on Community Services Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW) (the **Equality Bill**).

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people. Born of the successful campaign for marriage equality and established with support from the Human Rights Law centre, Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

Our submission focusses on the areas of the Equality Bill relevant to LGBTIQ+ people, although we support the provisions in the Bill that also provide protections to other groups, such as all families created through surrogacy, people living with HIV and sex workers.

OVERVIEW OF OUR POSITION ON THE BILL

Equality Australia welcomes and supports this Bill. This Bill will bring NSW closer into line with LGBTIQ+ equality reforms that have already taken place across most of Australia, and will modernise NSW laws to better protect all the people and families who call NSW home.

We saw extraordinary bipartisanship in the recent passage of the *Conversion Practices Ban Act 2024*. Now, the NSW Parliament has the opportunity to pass long overdue reforms that will provide equal respect and recognition to LGBTIQ+ people in many areas of NSW law.

Crucially, this Bill will:

- **Ensure trans and gender diverse people can access ID that matches their identity** without facing cruel and unnecessary legal barriers.¹ NSW is the only jurisdiction in Australia which requires trans and gender diverse people to undergo surgery on their reproductive organs to obtain a simple piece of paper to help prove who they are. Mismatched ID risks outing trans people. It makes it harder to apply for jobs, enrol to study or open a bank account without fearing harassment or violence. The Bill will allow people aged 16 years and over to update their gender marker with the support of an adult who has known them for 12 months or more, while young people can update their gender marker with the support of their parent(s) or approval from

¹ Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW) (**Equality Bill**), Schedule 2 [5].

NCAT.² These reforms are consistent with reforms in Victoria,³ and more conservative than reforms recently passed in Tasmania, the Australian Capital Territory and Queensland.⁴

- **Better protect LGBTIQ+ people from discrimination.** NSW has among the worst anti-discrimination protections for LGBTIQ+ people in Australia, with outdated definitions and extraordinary carve-outs for private educational institutions and faith-based service providers. NSW is the only jurisdiction in Australia where any private school can fire a teacher or expel a student simply because they are gay or transgender, without any qualification.⁵ While addressing these and other pressing gaps, the Bill otherwise retains exemptions for single-sex sport,⁶ exemptions for single-sex spaces,⁷ and allows faith-based schools and organisations to preference people of their own faith in employment, education and the provision of services, goods and accommodation, among other things.⁸
- **Better recognise rainbow (and other) families created through surrogacy.** While the Bill does not lift the ban on commercial surrogacy,⁹ it ensures that a child cannot be legally disadvantaged because of the circumstances of their conception. This ensures children are provided with the economic and emotional security that comes with the legal recognition of their parents, such as for the purposes of inheritance or superannuation. This can be done by the Supreme Court making an order to recognise the parents if, having regard to the surrogacy arrangement, it is in the best interests of the child and all parties (including the surrogate mother) consents, among other requirements set out in the *Surrogacy Act 2010* (NSW).¹⁰ The Bill also ensures surrogate mothers have stronger protections to manage their own pregnancy and birth.¹¹
- **Better protect LGBTIQ+ people from violence** by ensuring that threats to 'out' a person's sexuality, gender history, or intersex, sex worker or HIV status are recognised as forms of domestic and personal violence experienced uniquely by our communities.¹²
- **Allow access to healthcare without discrimination** by clarifying the laws on medical consent and ensuring people who obtain court permission for gender affirming healthcare do not also have to obtain permission from NCAT.¹³ The Bill does not (and cannot) alter the requirement imposed by the Family Court for court authorisation before puberty blockers or hormone treatments are provided to a

² Equality Bill, Schedule 2 [5], proposed ss 32B-32G.

³ *Births, Deaths and Marriages Registration Act 1996* (Vic), Part 4A.

⁴ *Births, Deaths and Marriages Registration Act 1999* (Tas), Part 4A; *Births, Deaths and Marriages Registration Act 1997* (ACT), Parts 4 and 4A, as amended by *Births, Deaths and Marriages Registration Amendment Act 2024* (ACT) [not yet commenced]; *Births, Deaths and Marriages Registration Act 2023* (Qld), Part 5 [not yet commenced].

⁵ *Anti-Discrimination Act 1977* (NSW), ss 38K(3), 49ZO(3), 38C(3)(c) and 49ZH(3)(c).

⁶ *Anti-Discrimination Act 1977* (NSW), ss 38 and 38P, as amended by Equality Bill, Schedule 1 [12].

⁷ See e.g. *Anti-Discrimination Act 1977* (NSW), ss 31(2)(b)-(h), 31A(3)(b), 31A(4), 33(2), 34A(3)-(5), 35, 38, 57 and 59.

⁸ See Equality Australia (2023) [Act for Equality: Legal Explainer on the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 \(NSW\)](#), at 6-7.

⁹ *Surrogacy Act 2010* (NSW), ss 8-10; See also Equality Bill, Schedule 19 [2], which repeals only the extended geographical nexus for the offences.

¹⁰ *Surrogacy Act 2010* (NSW), Part 3, as amended by Equality Bill, Schedule 19 [3]-[5].

¹¹ Equality Bill, Schedule 19 [1].

¹² Equality Bill, Schedule 8 [2]-[4].

¹³ Equality Bill, Schedule 3 [2]-[3].

child under 18 years where a parent disputes the child's competence, diagnosis or treatment for gender dysphoria.¹⁴

- **Ensure equal protection of the law** by strengthening statutory interpretative principles to ensure all genders are equal before the law, removing stigmatising language and provisions (particularly for people living with HIV and sex workers) and ensuring our laws apply to all of us, equally – no matter our sexual orientation, gender identity or sex characteristics.¹⁵

We **attach** with our submission:

- **Act for Equality**, our detailed legal explainer on the Bill. This explainer describes the effect of the legal provisions of the Bill in detail, as well as how they compare with state/territory equivalents.
- **Dismissed, Denied and Demeaned**, our 2024 report on LGBTQ+ discrimination in faith-based schools and organisations. This report provides extensive evidence of the endemic nature of LGBTQ+ discrimination in religious schools and organisations in NSW, including personal stories of teachers and students who have been fired, denied opportunities or refused enrolment because they are gay or transgender.
- **There's No Safe Place at Home**, our 2020 report with the Centre for Family Research and Evaluation on domestic and family violence affecting LGBTQ+ people. This report estimates that over 1 in 10 LGBTQ+ people are at risk of domestic or family violence, with young people, those who are not 'out' about their sexuality and/or those who are trans or gender diverse at greatest risk. This report also summarises the literature on forms of domestic or family violence uniquely experienced by LGBTQ+ people, including threats to 'out' a person.

THE GENESIS OF THE EQUALITY BILL

The Equality Bill reflects the needs, hopes and experiences of the many LGBTQ+ people in NSW who helped develop this historic community-led legislation.

On 17 March 2022, in the lead up to Sydney WorldPride and the 2023 NSW election, the Independent Member for Sydney Alex Greenwich MP announced he would propose a bill to modernise NSW laws to protect the rights of LGBTQ+ people.¹⁶ The Member for Sydney invited the community to make submissions on the issues his legislation should address.

In July 2022, Equality Australia made two submissions to the Member for Sydney on NSW laws which disadvantage or discriminate against LGBTQ+ people stemming from our audit of over 500 NSW laws and a consultation with LGBTQ+ community organisations, victim-survivors and advocates in NSW. Together, these submissions were endorsed by 35 community organisations, including ACON, Health Equity Matters (formerly AFAO), Twenty10, LGBTQ+ Health Australia, Rainbow Families, BlaQ Aboriginal Corporation, Inner City Legal Centre, HIV/AIDS Legal Centre, Hunter Gender Alliance, Parents for Trans Youth Equity, Trans Pride Australia and Transcend Australia, as well as conversion survivor groups, multifaith and multicultural LGBTQ+ groups, and groups advocating for people living with HIV and sex workers.

Many of the issues in Equality Australia's submissions, along with issues raised by others in our communities, were consulted on by the Member for Sydney in the period leading up to the introduction of the Equality Bill into NSW Parliament. Some proposals were discussed and refined; while others were not progressed further.

¹⁴ See *Re Imogen (No 6)* [2020] FamCA 761 at [35].

¹⁵ Equality Bill, Schedule 1 [21], [36]-[37]; Schedule 3 [1]; Schedules 4-7; Schedules 9-11; Schedule 12 [1], Schedules 14-18 and Schedule 20.

¹⁶ L Cormack (2022) "[World is watching: MP seeks equality bill ahead of WorldPride and state election](#)", Sydney Morning Herald, 17 March.

The final omnibus legislation presented to the NSW Parliament represents nearly two years of careful and detailed work led by the community which this reform is designed to protect. The Equality Bill shapes NSW laws so they better include and protect all of us, equally. Given it is a private members' bill, the Bill does not and cannot address all of the reforms we would like to see for our communities. Some of the organisations who have been involved in the work on this Bill would also like to see it go further. Nevertheless, if passed, this Bill would represent a community-led law reform project that makes history in closing gaps and modernising NSW laws that have for too long stigmatised, excluded and failed to protect equally LGBTIQ+ people in NSW.

THE URGENT CASE FOR REFORM

The acute need for this legislative reform package is extensively ventilated in our legal explainer on the Equality Bill, as well as our reports on LGBTIQ+ discrimination in religious schools and organisations and domestic and family violence affecting LGBTIQ+ people. We do not propose to repeat the material in these documents, except to make the following points about why this Bill is so significant for improving almost every aspect of life for LGBTIQ+ people in NSW.

Unfortunately, LGBTIQ+ discrimination remains endemic in NSW. Sometimes the source of this discrimination is our laws themselves, and sometimes our laws fail to protect us when others seek to harm or discriminate against us. Through its operative provisions and the broader message it sends, this Bill addresses many of these experiences of LGBTIQ+ discrimination and disadvantage.

Harassment, discrimination and violence on the basis of sexual orientation, gender identity and expression, and sex characteristics remains a lived experience for members of our communities.¹⁷ Our communities continue to curb the expression of their identities, their lives and their love in an effort to avoid harassment, discrimination and violence in public.¹⁸

In the 2020 *Private Lives 3* national survey of 6,835 LGBTIQ Australians (being the largest survey of its kind), many participants indicated that they did not feel accepted in a number of public venues, including at work, school or in public places. While 68.5% of LGBTIQ participants indicated feeling accepted 'a lot' or 'always' at LGBTIQ events and venues, only 52.2% indicated feeling the same with family members, only 43.4% indicated feeling the same when accessing health or support services, only 30.5% indicated feeling the same in public (such as on the street or in a park) and only 28.7% indicated feeling the same at mainstream events or venues. Non-LGBTIQ dating apps and websites, and faith-based events or services, were the places that the fewest participants felt accepted (21.7% and 10.5% respectively).¹⁹

Private Lives 3 also documented alarming rates of violence and harassment persisting against our communities. The 6,835 participants in *Private Lives 3* reported the following experiences of violence and harassment due to sexual orientation or gender identity in the year before the survey:

- 34.6% – verbal abuse (including hateful or obscene phone calls);
- 23.6% – harassment such as being spat at and offensive gestures;
- 22.1% – written threats of abuse via emails, social media;
- 14.6% – threats of physical violence, physical attack or assault without a weapon;
- 11.4% – receiving written threats of abuse in other ways;
- 4.8% and 3.7% respectively – deliberate damage to property or vandalism of a house and/or car; and

¹⁷ See e.g. Hill et al (2020) *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*, Melbourne: ARCSHS, La Trobe University, at 37-41; Leonard et al (2012) *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians*, Melbourne: ARCSHS, La Trobe University, at 47-8; Australian Human Rights Commission (2015) *Resilient Individuals: Sexual orientation, gender identity and intersex rights*, Sydney: Australian Human Rights Commission, at 15-16.

¹⁸ Leonard et al (2012) *Private Lives 2*, Melbourne: ARCSHS, La Trobe University, at 45-7; Australian Human Rights Commission (2015) *Resilient Individuals*, Sydney: Australian Human Rights Commission, at 18.

¹⁹ Hill et al (2020) *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*, Melbourne: ARCSHS, La Trobe University, at 37.

- 3.9% – physical attack or assault with a weapon (knife, bottle, stones).

When compared with the 2012 national *Private Lives 2* survey of 5,476 LGBT Australians, the 2020 results suggest that the incidence of violence and harassment may have in fact increased over time. Particular sub-populations within the LGBTIQ+ community, such as trans and gender diverse people, report even higher rates of violence and harassment than the broader LGBTIQ+ population.²⁰

With 1 in 3 students and almost 2 in 5 staff enrolled or employed in private schools in Australia, our review of Catholic and independent schools also found evidence of a systemic suppression of positive and public expressions of LGBTIQ+ identities and lives in religious schools across Australia.²¹ We found that only 4 in 10 Catholic educational authorities have publicly available evidence of LGBTIQ+ affirming practices, and independent schools are more likely to be discriminatory rather than affirming places for LGBTIQ+ people.²² (44 out of the 98 independent schools in our review sample were in NSW).²³ We also found that almost 1 in 10 of Australia’s largest faith-based service providers publicly discriminate against LGBTIQ+ people, with a further 4 in 10 unclear in their positions on LGBTIQ+ inclusion. Together, this cohort receives over \$5 billion in government funding and employed over 69,500 people in 2020.²⁴

Among the numerous NSW-based examples of pernicious discrimination in private schools and faith-based service providers included:

- **James Elliot-Watson**, a student who was denied the role of a prefect at a Christian school in Sydney in 2011 because he was gay.²⁵
- **“Caroline”**, the mother of an eight-year-old trans girl living on the Northern Beaches of Sydney, who was refused enrolment for her daughter at four religious schools. Two schools refused outright, and two imposed extreme conditions as a condition of her enrolment, including that the principal should be involved in her daughter’s medical treatment.²⁶
- **Emma Harris**, a teacher at a Catholic school in Sydney, who was told she would be fired if she took maternity leave to have a baby with her female partner in 2022, and who was overlooked for promotion in the same year by a person with far less experience and qualifications than her.²⁷
- **Steph Lentz**, an English teacher who was fired from a Christian school in Sydney in 2021 after she came out as a lesbian. In her letter of termination, the school indicated that they expected her to ‘*prayerfully live a celibate life*’ and attend a church that denounced homosexuality as a condition of her employment.²⁸

The discrimination and disadvantage faced by LGBTIQ+ people is a key driver for the appalling mental health and other health disparities our communities experience. As the 2022-2027 NSW LGBTIQ+ Health Strategy makes clear, LGBTIQ+ people experience poorer health outcomes, overall, than the general population. The strategy states: “*Mental and emotional distress is the most prevailing issue faced by LGBTIQ+ people, with persistent exposure to stigma, discrimination, social isolation, and environments that create social anxiety, being the key causes. Exposure to and experiences of violence,*

²⁰ See e.g. Trans Justice Project and Victorian Pride Lobby (2023) [Fuelling Hate: Abuse, harassment, vilification and violence against trans people in Australia](#).

²¹ Kassisi et al (2024) [Dismissed, Denied and Demeaned: A national report on LGBTIQ+ discrimination in faith-based schools and organisations](#), Sydney: Equality Australia, at x, 26, 30-31, 113-114.

²² Ibid.

²³ Id, at 31, 35.

²⁴ Id, at xi, 49-51, 114.

²⁵ Id, at 13.

²⁶ Id, at 15.

²⁷ Id, at 17.

²⁸ Id, at 21.

abuse and neglect, and harmful patterns of alcohol and other drug use, are also connected to these causes."²⁹

Whether it is because of its operative provisions or the broader message it sends, the Equality Bill directly addresses much of the endemic discrimination and disadvantage that continues to affect the lives of LGBTIQ+ people in NSW. The Bill does so carefully, mirroring many reforms passed in other states and territories, and does not have the legal effect that some of its critics have alleged.

If anything, there are further reforms that NSW could embark upon to further protect and modernise our laws, including following the ACT's recent landmark reforms prohibiting unnecessary medical procedures on intersex people without personal consent and broader reforms to our anti-discrimination framework. However, accepting the terms of reference for this committee is limited to the Equality Bill, our recommendation is that:

RECOMMENDATION 1

The Equality Legislation Amendment (LGBTIQ+) Bill be passed by the NSW Parliament.

We appreciate the Committee has also been tasked with looking in detail at the provisions of the Bill and considering any operational issues for government agencies raised by the Bill.

Equality Australia is available and would be pleased to assist the Committee with any questions regarding the Equality Bill and matters raised in our or other submissions.

Some of the organisations who have been involved in consultations on the Bill would also like this Bill to go further or be amended in small yet significant ways that would further protect LGBTIQ+ people and their families. We, too, would have liked to see further reforms, such as to the anti-discrimination framework in NSW or addressing other instances of exclusionary language in our statute book. However, even without these changes, this Bill would be a huge step forward for NSW. Should the Committee wish to explore further areas of improvement to the Bill however, we would be happy to provide further information on these areas.

ENDORSEMENT OF OUR SUBMISSION

The following organisations endorse our submission and the Equality Bill:

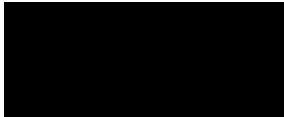
1. ACON
2. Ambassadors & Bridge Builders International (ABBI)
3. Amnesty International Australia
4. Ascension Midland – a church of the Anglican Church Diocese of Perth
5. Asian Australian Alliance
6. ASHM Health
7. Athletes for Life
8. Australian Association of Buddhist Counsellors and Psychotherapists
9. Australian Lawyers for Human Rights
10. Australian Services Union, NSW/ACT (Services) Branch
11. Black Dog Institute
12. BlaQ Aboriginal Corporation
13. Blue Gum Sangha
14. Bobby Goldsmith Foundation
15. Buddhist Society of Western Australia
16. Catholics For Renewal
17. ChillOut Dayesford Inc
18. Community Legal Centres NSW
19. Dykes on Bikes Melbourne Inc
20. Emerald City Kickball Australia
21. Family Planning Alliance Australia
22. Family Planning Australia
23. Growing Families
24. Health Equity Matters
25. HIV/AIDS Legal Centre
26. Human Rights Law Centre
27. Hunter Gender Alliance
28. Inner City Legal Centre (ICLC)
29. International Women's Development Agency
30. Kingsford Legal Centre
31. LGBTIQ+ Health Australia
32. NSW Council of Social Service (NCOSS)
33. NSW Users and AIDS Association

²⁹ NSW Government (2022) *NSW LGBTIQ+ Health Strategy 2022-2027: For people of diverse sexualities and genders, and intersex people, to achieve health outcomes that matter to them*, at 8.

34. Parents for Trans Youth Equity
35. Pitt Street Uniting Church
36. Positive Life NSW
37. Qtopia
38. Rainbow Catholics Interagency Australia
39. Rainbodhi LGBTQIA+ Buddhist Community
40. Rainbow families
41. ReachOut
42. Redfern Legal Centre
43. Sakyadhita
44. Scarlet Alliance
45. Stephen Page, Page Provan
46. Sydney Gay and Lesbian Mardi Gras
47. Sydney Queer Muslims
48. Sex Workers Outreach Project (SWOP) NSW
49. The Aurora Group
50. Transcend Australia
51. Trans Justice Project
52. Trans Health Australia
53. Trans Pride Australia
54. Trikone
55. Tropical Fruits
56. Twenty10
57. Voices of Influence Australia
58. Women's Electoral Lobby
59. Women's Legal Service NSW

If we can assist by providing the Committee with further information or evidence, please contact Danielle Yung, Legal Policy Advisor on [REDACTED] or at [REDACTED].

Yours sincerely,



Anna Brown
CEO
Equality Australia



Ghassan Kassisieh
Legal Director
Equality Australia

Attachments included with submission

1. Equality Australia, [Act for equality: Legal explainer on the Equality Legislation Amendment \(LGBTIQA+\) Bill 2023 \(NSW\)](#), 18 September 2023
2. Equality Australia, [Dismissed, Denied and Demeaned: A national report on LGBTQ+ discrimination in faith-based schools and organisations](#), 25 March 2024
3. Equality Australia, [There's no safe place at home report](#), 30 November 2020