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EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches

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SUBMISSION TO THE LEGISLATIVE ASSEMBLY COMMITTEE ON COMMUNITY SERVICES FROM CATHOLIC BISHOPS OF NSW AND THE AUSTRALASIAN-MIDDLE EAST CHRISTIAN APOSTOLIC CHURCHES

INQUIRY INTO THE EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

14 APRIL 2024

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Introduction

The Catholic Archdiocese of Sydney is pleased to have been invited to provide a submission to the Legislative Assembly Committee on Community Services (**Committee**) regarding the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (**Bill**) and other matters relating to the safety and wellbeing of the LGBTIQA+ community. This submission is made on behalf of the Catholic Bishops of NSW and the Bishops of the Australasian-Middle East Christian Apostolic Churches named in this submission.

The Catholic Church has consistently defended and upheld the dignity of each human person. As recently as this week, the Dicastery of the Doctrine of the Faith confirmed this in its declaration *Dignitas Infinita*, stating:

> *"Every human person possesses an infinite dignity, inalienably grounded in his or her very being, which prevails in and beyond every circumstance, state, or situation the person may ever encounter. This principle, which is fully recognizable even by reason alone, underlies the primacy of the human person and the protection of human rights. In the light of Revelation, the Church resolutely reiterates and confirms the ontological dignity of the human person, created in the image and likeness of God and redeemed in Jesus Christ. From this truth, the Church draws the reasons for her commitment to the weak and those less endowed with power, always insisting on "the primacy of the human person and the defense of his or her dignity beyond every circumstance."*[1]

This "infinite dignity" means that each person must be afforded dignity and respect, and measures to affirm and uphold dignity can be supported.

Unfortunately, the key proposals of the the Bill run contrary to the dignity of the human person, particularly vulnerable women and children. While there are minor aspects of the Bill that might be supported, these are only minor and tangential to the Bill and it is difficult to separate them from the main provisions of the Bill. For this reason, the Committee should recommend that the NSW Parliament reject the Bill in its entirety.

The Bill also seeks to pre-empt the work of two inquiries currently being undertaken by the New South Wales Law Reform Commission. Each of these inquiries have already been running for a longer time period than the inquiry being conducted by this Committee and are only at stage two of a seven-stage inquiry process. Additionally, these inquiries are open for submissions from any member of the public, rather than the select organisations and individuals invited to make submissions to this Committee. For these reasons, it is further submitted that the Committee should not make any recommendations relating to provisions of the Bill that touch upon matters the subject of separate, more consultative and more comprehensive inquiries.

The Terms of Reference for this Inquiry are:

1. The provisions of the Bill.
2. Operational issues for government agencies raised by the Bill.
3. Additional ways of improving the safety and wellbeing of the LGBTIQA+ community.

This submission will address items 1 and 3 of the Inquiry's Terms of Reference.

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[1] Dicastery of the Doctrine of the Faith. 8 Feb. 2024. *Dignitas Infinita*. Retrieved from: https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2024/04/08/240408c.html

In relation to item 3 in the Terms of Reference, it is submitted that that the safety and wellbeing of the LGBTIQA+ community would be assisted by a transparent and far-reaching public inquiry into gender affirmative treatments on minors.

Schedule 1 – Proposed amendments to the *Anti-Discrimination Act 1977*

Schedule 1 proposes comprehensive changes be made to the *Anti-Discrimination Act 1977.* These proposals should be rejected in their entirety.

The New South Wales Law Reform Commission (**NSWLRC**) began a wholesale review of the *Anti-Discr*imination Act 1977 in June 2023, and this review is ongoing. According to the NSWLRC's own process, this review is only at the 'initial research and consultation' stage, which is the second step of a seven-step process[2].

All members of the public had the opportunity to make a written submission to the NSWLRC inquiry based on its terms of reference, which has allowed for much greater consultation of the general public than the survey being used by this inquiry. Additionally, the amount of time provided to the NSWLRC to complete its inquiry indicates it will have a greater opportunity than this Committee to thoroughly consider the matters before it. however a consultation paper is yet to be released.

It would be inappropriate for the NSW Parliament to make amendments to the *Anti-Discrimination Act 1977* while a concurrent process is being run by the NSWLRC and for this reason, this Committee should recommend that no changes be made at this time.

Schedule 2 – Proposed amendments to the *Births, Deaths and Marriages Registration Act 1995*

The key proposal contained in Schedule 2 of the Bill can be described as the introduction of a 'sex self-identification' law, permitting a person to amend their official documents to self-declare their sex.

Schedule 2, [1], [4] and [5]

The effect of these provisions is to remove the requirement for surgical intervention to be a prerequisite for changing a sex descriptor on official documents such as birth certificates and drivers' licenses. It also broadens the categories of sex to include, *inter alia*, male, female, agender, genderqueer and non-binary and provides a mechanism for parents and guardians to change the sex descriptor on official documents for children under their care.

One problem with this proposal is that it conflates biological sex, something that can be objectively determined, with gender, which is used to describe a variety of different concepts. 'Gender' is sometimes used to refer to a person's biological sex, at other times it is used to refer to their psychological sense of self

[2] NSW Law Reform Commission. 12 Feb. 2024, Our Law Reform Process. Retrieved from: lawreform.nsw.gov.au/about-us/our-law-reform-process.html

and at other times the public expression of their sex[3]. 'Gender' is grounded in and referent to biological sex, however, there are a variety of ways of being male or female.

Another problem with this proposal is that allowing a person to change their sex on official records will have the effect of making legislative exemptions that permit the creation of single-sex spaces such as schools, gymnasiums and refuges redundant, as those exemptions are based on sex. It would also leave the government with some difficulty in segregating prison populations by sex. The result of such a law would be to deny those who require single-sex gatherings for cultural or religious reasons, or for privacy and safety, the opportunity to gather in this fashion.

Additionally, allowing parents or guardians to change the sex descriptor on official documents for children under their care contributes to the push for gender transition of children and young persons, which has numerous associated risks. These risks are further outlined below in relation to the third term of reference.

If there was a desire to record a person's gender on an official document, it should be included as an optional, separate item rather than as a replacement for sex. This would be consistent with the approach taken by the Australian Bureau of Statistics[4]. It should also be limited to adults.

Schedule 2, [2] and [3]

The effect of these provisions would be to extend the time for registration of a birth of a child where it is difficult to determine their sex because of intersex characteristics. This proposal is supported.

Schedule 3 – Proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998*

The key proposal contained in Schedule 3 of the Bill is to allow medical practitioners to override the decision of parents in relation to medical treatment provided to a child.

Schedule 3, [1]

The effect of this provision would be to require a child's intersex status and gender identity to be taken into consideration when actions and decisions are made under the *Children and Young Persons (Care and Protection) Act 1988*. The inclusion of 'variation of sex characteristics' as a mandatory consideration can be supported, however, the inclusion of 'gender identity' cannot. While it is acknowledged that the inclusion of 'gender identity' would make this legislation consistent with the *Children's Guardian Act 2019*, the *Children and Young Persons (Care and Protection) Act* deals with medical treatment and so, the inclusion of 'gender identity' would present a legislative bias towards gender affirmation in children. The risks of

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[3] Australian Catholic Bishops Conference. 6 Sep. 2022. Created and Loved: A guide for Catholic schools on identity and gender. Retrieved from: https://bit.ly/CreatedandLoved

[4] Australian Bureau of Statistics. 14 Jan 2021. Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables. Retrieved from: https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release

providing gender-affirmative treatment to children is discussed briefly below and will be detailed later in this submission in relation to the third term of reference. In light of these risks, the inclusion of 'gender identity' as a mandatory consideration for the making of actions or decisions under the legislation is problematic and should be rejected.

Schedule 3, [2]

The effect of the proposed new section 174A(1) would be to provide legislative certainty that medical decisions made by a young person aged 16 or 17 years are as valid and effective as those made by an adult.

This provision appears to be an attempt to prevent any NSW court judgment of the nature of the decision of the UK High Court in *Bell v Tavistock*[5]. In that case, the Court decided that because of the long-term consequences of gender-affirmative clinical interventions in children aged 16 or 17 years and the "innovative and experimental"[6] nature of the treatment, "clinicians may well regard these as cases where the authorisation of the court should be sought prior to commencing the clinical treatment."[7] In effect, the Court stated that a young person was not capable of being able to consent to puberty blockers. While the High Court's decision in *Bell v Tavistock* was overturned on appeal, the UK Government has subsequently prohibited the use of puberty blockers in minors, putting into practical effect the original decision of the High Court in *Tavistock*.

In light of this development in the UK, as well as several other jurisdictions prohibiting the prescribing of puberty blockers and cross-sex hormones to minors (discussed further below in relation to the third term of reference), the proposed new section 174A(1) should be rejected.

The effect of the proposed new section 174A(2) would be to allow medical treatment to be administered to a child under the age of 16 with the consent of one parent only or, if that consent is not forthcoming, with the consent of the child alone if a medical practitioner is of the view that the treatment is in the child's best interests and if, in the medical practitioner's opinion, "the child is capable of understanding the nature, consequences and risks of the treatment."

Section 174A(2) proposes a dramatic change in the way medical treatment for children is dealt with, a radical undermining of the relationship between parents and children and provides an inappropriate amount of authority to medical professionals.

Overriding the wishes of parents when it comes to their child's medical care is very rare and usually requires a court order. For example, in cases where a child may require a blood transfusion and this conflicts with their own or the religious beliefs of their parents, a hospital must obtain a court order before they provide blood products to the child[8]. This is so even if the child's life will be at risk without the transfusion. The change proposed by section 174A(2) is such an extreme change to these procedures that it should not be considered without a full inquiry of its own, rather than being dealt with as part of an omnibus bill.

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[5] [2020] EWHC 3274
[6] Ibid at 151.
[7] Ibid at 152.
[8] See, for example, *The Sydney Children's Hospitals Network v AA* [2021] NSWSC 1123.

The change would also represent a radical undermining of the relationship between parents and children. It is parents who have the privilege and responsibility of raising and caring for their children. The change proposed by section 174A(2) not only disrupts the relationship between parent and child, it also risks using medical interventions on children as a potential wedge in relationship breakdown.

Additionally, the proposal provides medical professionals with an inappropriate amount of authority. The test proposed relies solely on the opinion of the treating medical professional as to the child's level of understanding of the nature, consequences and risks of the treatment, ie it is an entirely subjective test. This would elevate the medical professional's opinion on competence to be above challenge, which is highly problematic.

The entirety of the proposed section 174A must be rejected.

Schedule 3, [3]

This section proposed that consent of the NSW Civil and Administrative Tribunal to special medical treatment is not required if court approval or consent has otherwise been obtained. This proposal can be supported.

Schedule 4 – Proposed amendments to the *Children's Guardian Act 2019*

The proposed amendment seeks to include a child's intersex status and gender identity to be taken into consideration when actions and decisions are made under the *Children's Guardian Act 2019*. This proposed amendment can be supported.

Schedule 5 – Proposed amendments to the *Court Security Act 2005*

Schedule 5, [1], [2], [4]

The proposed provisions seek to amend search and seizure laws to allow intersex persons or those who identify as transgender to choose the individual who will conduct a personal search on them. The provisions go further than giving an intersex person or a person who identifies as transgender the ability to choose the sex of a person to conduct a search, but also the specific person who will conduct that search. This presents a security risk as it could allow for prior collusion between the officer chosen and the person searched.

Notably, to avail themselves of this right, there is no requirement for a person to have had any alteration to their sex on official documents; rather, they can simply self-declare at the time of search and not offer any evidence of the same.

Such rights are not granted to any other person and would create differential treatment in search and seizure laws. These provisions should be rejected.

Schedule 5, [3]

The proposed new section 5(3) would have the effect of making the *Anti-Discrimination Act 1977* applicable to personal searches. In particular, it would remove the ability of a security officer to decline to conduct a personal search on a person who identifies as the same sex as the security officer but is biologically the opposite sex to the security officer. Some faith communities have very strict rules about contact between unrelated persons of the opposite sex and removing the ability of a security officer to decline to conduct such a search will place them in the unnecessary position of needing to choose between following their faith and being subject to an anti-discrimination complaint. Even those who do not have religious reasons for not wishing to conduct a search on a person of the opposite sex should be permitted to decline such a search. Where practicable, any security officer should be permitted to decline to search an individual without being subject to the threat of an anti-discrimination claim. For this reason, this proposal should be rejected.

Schedule 6 – Proposed amendments to the *Crimes Act 1900*

Schedule 6 proposes to amend section 93Z of the *Crimes Act 1900* to include 'sex work' as an attribute for which threatening or inciting violence is an offence.

While threatening or inciting violence against any person, including a prostitute, should not be condoned, the inclusion of 'sex work' in this section is problematic.

Section 93Z currently only applies to attributes that are protected attributes under the *Anti-Discrimination Act 1977* and the proposed addition of 'sex work' here appears to be consequential to the changes proposed in Schedule 1 [39] of the Bill. As the proposals in Schedule 1 [39] should be rejected for the reasons outlined earlier in this submission, so too should any consequential amendments.

Further, there is currently a separate parliamentary NSWLRC inquiry that is tasked with reviewing the provisions of section 93Z, submissions for which are still open. It would be inappropriate for the NSW Parliament to make amendments to the *Anti-Discrimination Act 1977* while a concurrent process is being run by the NSWLRC.

Schedule 7 – Proposed amendments to the *Crimes (Administration of Sentences) Act 1999*

Schedule 7, [1]

The proposed definitional changes seek to ensure that the chest area of a person who identifies as transgender or non-binary is treated as sensitive or private for the purposes of a personal search. However, treating the chest area as sensitive or private for all persons without reference to their sex would be a clearer and more equal way to achieve this goal.

Schedule 7, [2], [3] and [4]

The proposed provisions seek to amend search provisions in a similar way to those outlined in Schedule 5 of the Bill. They should be rejected for the same reasons.

Schedule 8 – Proposed amendments to the *Crimes (Domestic and Personal Violence) Act 2007*

Schedule 8, [1]. [2], [3], [4] and [6]

These proposed provisions include 'outing' or 'threatening to out' a person as an act of domestic or personal violence. This could be problematic because a person's sexual conduct outside a relationship is highly relevant to relationships that are built on sexual fidelity.

The proposed provisions would, for example, operate so as to impose criminal penalties on a woman who tells a friend that her husband has been unfaithful to their marriage by having a sexual relationship with another man. While there can be differing opinions about the propriety of such conversations, raising such discussions – or the threat of such discussions – to the level of domestic or personal violence or coercive behaviours is extreme and inappropriate.

Schedule 8, [5] and [7]

The proposed subsections 21(2)(d)(v) and 53(5)(c)(v) should be rejected. These sections currently only apply to attributes that are protected attributes under the *Anti-Discrimination Act 1977* and the proposed addition of a protected person 'being a person who engages, or has engaged, in sex work' appears to be consequential to the changes proposed in Schedule 1 [39] of the Bill. As the proposals in Schedule 1 [39] should be rejected for the reasons outlined earlier in this submission, so too should any amendments that are consequential to the broader proposals.

Schedule 9 – Proposed amendments to the *Crimes (Forensic Procedures) Act 2000*

Schedule 9, [1] and [8]

The proposed definitional changes seek to ensure that the chest area of a person who identifies as transgender or non-binary is treated as sensitive or private for the purposes of search. As outlined above in relation to Schedule 7, [1], the same outcome could be achieved in a more clear and equal manner by treating the chest area as sensitive or private for all persons, without reference to their sex.

Schedule 9, [2] to [7] inclusive, and [9] to [12] inclusive

The proposed provisions seek to amend search provisions in a similar way to those outlined in Schedule 5 of the Bill. They should be rejected for the same reasons.

Schedule 10 – Proposed amendments to the *Crimes (Sentencing Procedure) Act 1999*

Schedule 10, [1] and [2]

This amendment is unnecessary because the list that currently exists in section 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999* is non-exhaustive. For this reason, it should be rejected.

Schedule 11 – Proposed amendments to the *Drug Misuse and Trafficking Act 1985*

This proposal seeks to remove references to HIV as an 'infection.' This proposal can be supported.

Schedule 12 – Proposed amendments to the *Government Sector Employment Act 2013*

Schedule 12, [1]

This proposes to include sexual orientation and intersex status in the definition of 'workplace diversity.' This amendment is unnecessary, given the current definition is non-exhaustive. Additionally, the rationale for the specific inclusion of these attributes when other attributes – including religious belief or activity, marital status and age – are not specified, is not clear. Listing some attributes to the exclusion of others could result in an unequal outcome and consequently, should be rejected.

Schedule 12, [2]

This change proposes a dramatic change to existing diversity policy for government sector employees. Instead of these being dealt with in general employment rules, the provisions propose the creation of a 'diversity and inclusion standard' that, if created, would be obligatory for government sector agencies.

It would be preferable if a 'diversity and inclusion standard' was framed in a way that ensured more equal inclusion amongst people with various attributes, for example, that wherever practicable, a government agency should reflect the diversity of the population of the state.

Schedule 13 – Proposed amendments to the *Government Sector Employment (General) Rules 2014*

The proposed amendment seeks to privilege intersex persons and those who identify as transgender for employment in government agencies. Currently, the provisions privilege Aboriginal and Torres Strait Islander persons, persons with disabilities, persons under the age of 25 years and refugees. It is not clear that there is similar disadvantage in employment being experienced by intersex persons or those who identify as transgender as there is for existing beneficiaries of these provisions. If such evidence did arise, the Public Service Commissioner can designate a group of persons to be 'eligible persons' without the need for legislative change.

Schedule 14 – Proposed amendments to the *Interpretation Act 1987*

While the proposed provisions appear, on their face, to be similar to existing provisions, the amendments have the effect of conflating 'sex' and 'gender.' When the *Interpretation Act* was passed in 1987, 'sex' and 'gender' were commonly used interchangeably and so the meaning of 'gender' in the existing section 8(a) was clear.

However, as outlined above in comments relating to Schedule 2, [1], [4] and [5], gender is now used to describe a variety of different concepts that are related to, but distinct from, sex. Amending the *Interpretation Act* to extend references to gender is likely to make matters opaquer, rather than provide greater clarity. Given the purpose of the *Interpretation Act 1987* is to aid interpretation of all legislation rather than muddy the waters, the proposals should be rejected.

Schedule 15 – Proposed amendments to the *Law Enforcement (Powers & Responsibilities) Act 2002*

The proposals outlined in Schedule 15 are similar in nature to those proposed in schedules 5, 7 and 9. For the reasons outlined above in relation to these schedules, the proposals should be rejected.

Schedule 16 – Proposed amendments to the *Mental Health Act 2007*

The proposals seek to ensure that a person is not treated as mentally ill or mentally disordered merely because of their chosen gender identity or gender expression. Noting that for the purposes of the *Mental Health Act 2007*, the categorisation of a person as 'mentally ill' or 'mentally disordered' is for the purposes of involuntary admission into a mental health facility, the proposal can be supported.

Schedule 17 – Proposed amendments to the *Sheriff Act 2005*

The proposals outlined in Schedule 17 are similar in nature to those proposed in schedules 5, 7, 9 and 15. For the reasons outlined above in relation to these schedules, the proposals should be rejected.

Schedule 18 – Proposed amendments to the *Summary Offences Act 1988*

This provision seeks to repeal the Part 3 of the *Summary Offences Act 1988* in its entirety. Part 3 relates to matters of prostitution. While prostitution has already been decriminalised in NSW, Part 3 contains certain public decency measures that mean it is not advertised or conducted in the same way as any other service.

This repeal would have the effect of permitting solicitation in or near churches and schools, dwellings and hospitals and allow for the overt, public advertising of commercial sex services. It would also allow prostitution or solicitation in massage parlours, saunas and steam baths, gyms and photographic studios.

Prostitution has already been decriminalised in this state, so these provisions are simply about removing any remaining public decency limitations on the selling of sex and treating prostitution in a similar fashion to any other commercial activity.

It would result in an even greater sexualisation of our advertising industry and remove the ability of parents to shield their children from these types of matters until they were at an appropriate age.

Additionally, the proposal to allow solicitation outside churches appears to be a direct attack on religious belief and worship. While Schedule 18 in its entirety should be rejected, the specific targeting of on religious belief and practice in the name of 'equality' should not only be rejected but condemned by this Committee.

Schedule 19 – Proposed amendments to *Surrogacy Act 2010*

The proposals outlined in this schedule seek to make amendments to the *Surrogacy Act 2010* that would pave the way for commercial surrogacy. It should be noted that a review into the *Surrogacy Act* was conducted by the NSW Department of Justice (now the NSW Department of Communities and Justice) in 2018, and this review concluded that the law should not be amended to allow commercial surrogacy[9].

Schedule 19, [1]

This proposal appears to make it clear that there can be no contractual arrangement between commissioning parents and a surrogate mother in relation to the management of the pregnancy and birth. While this is a necessary inclusion in any law that would allow any form of surrogacy, it is submitted that all proposed changes to the *Surrogacy Act 2010* should be rejected.

Schedule 19, [2]

In seeking to repeal the geographical nexus for offences, this provision has the effect of allowing a person ordinarily resident or domiciled in NSW to enter into a commercial surrogacy arrangement outside of NSW.

[9] NSW Department of Justice. Jul. 2018. Statutory Review: *Surrogacy Act 2010*. Retrieved from: https://www.parliament.nsw.gov.au/tp/files/73919/Review%20of%20Surrogacy%20Act%202010.pdf

In most cases, this would involve going engaging in commercial surrogacy arrangements with women from overseas.

Such arrangements do not accord with the dignity of the human person, particularly the surrogate mother and the child. As Pope Francis has said, surrogacy "represents a grave violation of the dignity of the woman and the child, based on the exploitation of situations of the mother's material needs. A child is always a gift and never the basis of a commercial contract."[10]

While some countries like the United States have highly-regulated surrogacy industries, many countries that allow commercial surrogacy have little or no regulation at all, leaving wide open the possibility of abuse. Additionally, women in countries with high poverty rates are especially at risk of exploitation[11].

Former Chief Justice of the Family Court, John Pascoe, called international surrogacy "the new frontline in the trafficking and commodification of women and newborn children." He said that international commercial surrogacy "is being used by people ill-suited to be parents, driven by cash with no oversight by any regulating body, and likely to expose vulnerable women and children to terrible abuse." The European Union has recognised forced surrogacy as a form of human trafficking.

Allowing NSW residents to enter into commercial surrogacy arrangements with women in countries overseas but not in NSW demonstrates a lesser concern for the plight of women in other countries than the plight for those locally. This is unacceptable.

Schedule 19, [3]

The effect of this proposal is to remove the requirement that a court may only make a parentage order where a precondition (other than a mandatory precondition) of making such an order set out in the *Surrogacy Act 2010* have not been met in 'exceptional circumstances.'[12]

The non-mandatory preconditions listed in the *Surrogacy Act 2010* include:

- a birth mother must be over the age of 25 years;
- the birth mother has received counselling from a qualified counsellor about the social and psychological implications of the surrogacy arrangements; and
- the birth mother has received independent legal advice about the legal implications of the surrogacy arrangements.

Dispensing with the need for these preconditions to be met in all but exceptional circumstances provides no consequences for intending parents who commission a surrogate mother under the age of 25, or who continue with the arrangement notwithstanding the surrogate mother has not received appropriate

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[10] Pope Francis. 8 Jan. 2024. Address to Members of the Diplomatic Corps Accredited to the Holy See. Retrieved from: https://www.vatican.va/content/francesco/en/speeches/2024/january/documents/20240108-corpo-diplomatico.html

[11] Prior to the commencement of the war in Ukraine, more than one-third of Ukrainians were living below the poverty line. It was also one of the most frequently used countries by Australians seeking commercial surrogacy arrangements.

[12] While on its face, this proposal does not appear to remove the 'exceptional circumstances' requirement but only replace it with the parentage order being in the 'best interests of the child,' the 'best interests' requirement is already contained in section 22 of the *Surrogacy Act 2010*, meaning that the proposal removes the 'exceptional circumstances' requirement altogether.

counselling or legal advice. The effect of this proposal is to place vulnerable women at risk and, for this reason, must be rejected.

Schedule 19, [4]

The effect of this proposal is to remove the mandatory condition that a surrogacy arrangement must be altruistic before a parentage order can be made. As noted above, removing barriers to commercial surrogacy arrangements have the effect of placing vulnerable women at risk and should be rejected.

Schedule 19, [5]

The effect of this provision would be to remove the requirement that a child is under the age of 18 at the time a parentage order is made. It is not clear why a court would need to make a parentage order for an adult.

Schedule 20 – Proposed amendments to the *Workers Compensation Act 1987*

The proposals outlined in Schedule 20 are similar in nature to those proposed in Schedule 11. These proposals can be accepted.

Additional ways of improving the safety and wellbeing of the LGBTIQA+ community.

The Terms of Reference for this inquiry also invite submissions into additional ways of improving the safety and wellbeing of the LGBTIQA+ community. It is submitted that the primary way to improve safety and wellbeing of young persons who identify as transgender is to pause all gender-affirmative treatment on children and conduct a full, transparent and wide-reaching public inquiry into the same.

There is significant divergence of opinion in the medical community in Australia and overseas as to whether gender-affirmative treatment is appropriate, particularly for children experiencing gender dysphoria and a growing body of research that warns against an unquestioned affirmative approach to gender dysphoria.

This submission will outline recent developments in Australia, the findings of the UK's Cass Report released this week and offer several additional examples of jurisdictions where a gender- affirmative approach has been questioned or even prohibited.

<u>Australia</u>

In Australia, questions regarding the appropriateness of gender-affirmative treatment are also beginning to surface.

In February 2023, senior doctors from Westmead Children's Hospital's gender clinic published a study of 79 children and young people referred to the clinic in the five-year period between 2013 and 2018[13].

The study found:

- 88% of the children and young people reported ongoing mental health concerns, four to nine years after transition;
- some of the children placed on puberty blockers experienced decreased bone density and weight gain;
- 51 of the 79 children (65%) had also been placed on cross-sex hormones, with the average age for commencement of cross-sex hormones being 16 years of age, the youngest age at which this is legally permissible. 20 of those 51 (39%) children had obtained cross-sex hormones from unregulated providers, and many of them were under the age of 16 at the time of prescription.

The study's authors stated that if gender-affirming treatment is the right choice for a young person, it "may well support ongoing adaptation and wellbeing." However, they also warned that if it is not the right choice, "it may seriously distort both the young person's life choices and ongoing sense of wellbeing"[14].

The authors went on to state that if the current NSW LGBTIQ+ Health Strategy for 2022-2027, which promotes gender-affirmative medical treatments even if a child does not meet the diagnostic criteria for gender dysphoria are followed, "one could project that more than a fifth of the sample (17/77, or 22.1 per cent, in our study) could have been exposed to inappropriate medical treatment, future regret, and potential harm"[15].

On 1 July 2023, Australian medical insurer MDA National ceased providing insurance to medical practitioners who assess "a patient under the age of 18 years is suitable for gender transition" or who initiate the "prescribing of gender affirming hormones for any patient under the age of 18 years." In explaining the decision, MDA National stated that the decision was made "[in] response to the risk of potentially high-value claims arising from irreversible treatments provided to those who medically and surgically transition as children and adolescents." MDA National went on to note that the risk was compounded by the following factors:

- "there is growing criticism globally of the research that underpins medical and surgical transition of children in response to gender dysphoria;
- recent studies suggest the real rates of detransition or discontinuance are much higher than the previously reported 1% or 2%; and
- there has been a dramatic increase in demand for these services from children in Australia
- with regard to people under 18, the Courts are likely to allow claims for many years after the statutes would normally allow.
- this risk exists even with the consent of the parent(s) and /or the family court."[16]

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[13] Elkadi, J.; Chudleigh, C.; Maguire, A.M.; Ambler, G.R.; Scher, S.; Kozlowska, K. Developmental Pathway Choices of Young People Presenting to a Gender Service with Gender Distress: A Prospective Follow-Up Study. Children 2023, 10, 314. https://doi.org/10.3390/children10020314.

[14] Ibid.

[15] Ibid.

[16] MDA National. Jul. 2023. Update in cover for the treatment of Gender dysphoria in patients under 18. Retrieved from: https://www.mdanational.com.au/gender-dysphoria

The risks of this unquestioned approach in Australia are exacerbated by Australian reliance on the World Professional Association for Transgender Health (**WPATH**)**.**

The *Australian Standards of Care and Treatment Guidelines for trans and gender diverse children and adolescents*[17] are based primarily on WPATH treatment guidelines and position statements. It is these guidelines that are listed as a recommended clinical guidance resource by NSW Health[18] and so the reliability of WPATH's guidelines is directly relevant to clinical care for young people who identify as transgender in NSW.

Internal files from WPATH were leaked to the media[19]. Among the revelations contained in these files is:

- an acknowledgment in internal panel discussions that understanding the gender-affirmative medical treatments is out of the comprehension of some of the children receiving those treatments, suggesting that the giving of informed consent is not possible;
- children who present to these clinics have high rates of pre-existing psychological conditions; and
- an acknowledgement of the phenomena of transition regret and detransition, with a focus on reframing detransition as 'normal' exploration of gender over time.

United Kingdom

Following the *Bell v Tavistock* case cited above, England's National Health Service (**NHS**) commissioned an independent review of the Tavistock Clinic, headed by Dr Hillary Cass, former President of the Royal College of Paediatrics and Child Health (**Cass Review**).

The interim report of the Cass Review raised concerns such as:

- the significant increase in referrals (a 5000% increase of annual referrals between 2009 and 2020);
- the lack of data collected to track the outcomes for children treated at Tavistock;
- the lack of national and international long-term follow up data on children who have transitioned; and
- the "very limited research on the sexual, cognitive or broader developmental outcomes"[20].

The Cass Review also heard from staff who said they were "under pressure to adopt an unquestioning affirmative approach and that this is at odds with the standard process of clinical assessment and diagnosis that they have been trained to undertake in all other clinical encounters"[21]. As a result of the interim report, the Tavistock Clinic was closed.

The NHS further announced that four regional clinics would replace the work of the Tavistock Clinic, but puberty blockers would not be part of the care offered because "there is not enough evidence to support

[17] Telfer, M.M., Tollit, M. A., Pace, C.C., & Pang, K.C. 2020. Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents Version 1.3. The Roal Children's Hospital, Melbourne. Retrieved from: https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf

[18] NSW Ministry of Health. 14 Jul. 2023. Framework for the Specialist Trans and Gender Diverse Health Service for People Under 25 Years. Retrieved from: https://www.health.nsw.gov.au/lgbtiq-health/Publications/tgd-framework.PDF

[19] Hughes, M. 4 Mar. 2024. The WPATH Files. Retrieved from: https://environmentalprogress.org/big-news/wpath-files

[20] The Cass Review. Feb. 2022. Independent review of gender identity services for children and young people: interim report. Retrieved from: https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf

[21] Ibid.

their safety or clinical effectiveness as a routinely available treatment"[22]. In March 2024, clinicians were instructed by the NHS to stop the routine prescription of puberty blockers to kids attending gender identity clinics[23].

On 10 April 2024, just days before submissions to this Committee closed, the final report of the Cass Review[24] was released.

The findings in the final report of the Cass Review included:

- the use of puberty blockers did not demonstrate any alteration to gender dysphoria or body satisfaction and, given that most children and young people who take puberty blockers continue to cross-sex hormones, there is no evidence that the use of puberty blockers provides a child time to think;
- there is "insufficient/inconsistent evidence about the effects of puberty suppression on psychological or psychosocial wellbeing, cognitive development, cardio-metabolic risk or fertility";
- Due to the lack of high-quality research on the outcomes of cross-sex hormones, "no conclusions can be drawn about the effect on gender dysphoria, body satisfaction, psychosocial health, cognitive development, or fertility" and "uncertainty remains about the outcomes for height/growth, cardiometabolic and bone health"; and
- There was no evidence to support the claim that the use of cross-sex hormones reduces the risk of suicide.

World Health Organisation

In January 2024, the World Health Organisation announced that its forthcoming guidelines on trans and gender diverse health would not address gender affirmative treatments for minors because "the evidence base for children and adolescents is limited and variable regarding the longer-term outcomes of gender affirming care for children and adolescents."

Sweden

A 2020 study undertook research on more than 95 per cent of Sweden's total population, of which approximately 2700 experienced gender dysphoria, 1000 of whom underwent gender-affirming surgery. The study found that neither surgical nor hormonal treatment provided mental health benefits to the patient, and that those who underwent surgical treatment were at higher risk of mood or anxiety disorders[25].

The study's authors originally attempted to mask this finding, claiming that the results supported "the decision to provide gender-affirming surgeries to transgender individuals who seek them." However, this

[22] NHS England. 9 Jun. 2023. Consultation report for the interim service specification for specialist gender incongruence services for children and young people. Retrieved from: https://www.england.nhs.uk/wp-content/uploads/2023/06/Consultation-report-on-interim-service-specification-for-Specialist-Gender-Incongruence-Services-for-Children-.pdf

[23] O'Dowd, A. 14 Mar. 2024. NHS services in England are told to stop routine prescribing of puberty blockers. BMJ 2024; 384 doi: https://doi.org/10.1136/bmj.q660

[24] The Cass Review. Apr. 2024. Independent review of gender identity services for children and young people: Final report. Retrieved from: https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview_Final.pdf

[25] Bränström, R., Pachankis, J.E. 4 Nov. 2019. Reduction in mental health treatment utilization among transgender individuals after gender-affirming surgeries: A total population study, European Journal of Public Health, Volume 29, Issue Supplement_4, https://doi.org/10.1093/eurpub/ckz185.465

conclusion was widely criticised for being inconsistent with the study's results and the *Journal of American Psychiatry* was forced to issue a correction, with the conclusion restated as: "the results demonstrated no advantage of surgery in relation to subsequent mood or anxiety disorder-related health care visits or prescriptions or hospitalizations following suicide attempts in that comparison."

In May 2021, Sweden's Karolinska Children's Hospital announced that it would end the practice of prescribing puberty blockers and cross-sex hormones to patients under the age of 18[26]. The Karolinska Children's Hospital approach was followed by other gender centres in Lund and Linköping[27].

In December 2022, Sweden's National Board of Health and Welfare (**NBHW**) prohibited the use of puberty blockers, cross-sex hormones and surgery on patients under the age of 18. In its reasoning, the NBHW stated that it "currently assesses that the risks of puberty blockers and gender-affirming treatment are likely to outweigh the expected benefits of these treatments." The NBHW went on to say that the increase of the number of children presenting with gender dysphoria, particularly teenage girls, as well as the "documented prevalence among young adults of medical detransition" also contributed to the decision-making[28].

Norway

In March 2023, the Norwegian Healthcare Investigation Board stated that "the knowledge base, especially research-based knowledge for gender-affirming treatment (hormonal and surgical), is deficient and the long-term effects are little known" and recommended that puberty blockers, hormonal and surgical gender confirmation treatment for children and young people be "defined as experimental treatment"[29].

The need for a cessation of gender-affirmative interventions and a public inquiry

Despite the growing unease of gender affirmative treatment for minors both in Australia and around the world, and the landmark final report of the Cass Review, NSW still persists in favouring gender-affirmative treatments for children and young persons, with a new gender clinic dedicated to those 25 years to be opened in Sydney[30].

Additionally, every attempt at a public inquiry into gender clinics proposed in Australia has failed, and so-called 'conversion practices ban' laws that favour an affirmative approach in children continue to be passed and proposed.

Given the terms of reference for this inquiry include the safety and wellbeing of young people who identify as LGBTIQA+ and in light of the increasing caution being raised about gender-affirmative treatment in children and young people, the Committee must recommend that the prescribing of puberty blockers and

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[26] Nainggolan, L. 12 May 2021. Hormonal Tx of Youth with Gender Dysphoria Stops in Sweden. Medscape News. Retrieved from: https://www.medscape.com/viewarticle/950964?form=fpf

[27] Ibid.

[28] The National Board of Health and Welfare. Dec. 2022. Care of children and adolescents with gender dysphoria: summary of national guidelines. Retrieved from: https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2023-1-8330.pdf

[29] Norwegian Healthcare Investigation Board. 9 Mar. 2023. Patient safety for children and young people with gender incongruence. Retrieved from: https://ukom.no/rapporter/pasientsikkerhet-for-barn-og-unge-med-kjonnsinkongruens/sammendrag

[30] Silmalis, L. 13 Apr. 2024. New gender clinic set to open as more than 1000 youths and adults in NSW seek support. Daily Telegraph. Retrieved from: https://www.dailytelegraph.com.au/news/nsw/new-gender-clinic-set-to-open-as-more-than-1000-youths-and-adults-in-nsw-seek-support/news-story/bfd9b56552161d2605b1a1bb3053045c

cross-sex hormones for young people cease, and that the NSW Parliament conduct or commission Australia's very first inquiry into gender affirmative treatments in children.

Conclusion

Under the misnomer of 'equality,' the Bill proposes amendments to a range of NSW laws that would not only result in inequality, but also undermine the infinite dignity of each human person, particularly the most vulnerable.

This submission has provided comments on the proposed amendments to each of the 20 items of legislation within the scope of the Bill and, despite a very small number of those amendments being capable of support, they are minor and extrinsic to an otherwise radical Bill. For the sake of clarity, the Bill should be rejected in its entirety.

In addition, and in light of concerns being raised domestically and internationally on the use of puberty blockers and cross-sex hormones on children and young persons, the Committee should recommend an immediate cessation of these interventions and a comprehensive and transparent public inquiry into their use.

Signatories

Most Rev. Anthony Fisher OP
Archbishop of Sydney

Most Rev. Richard Umbers
Auxiliary Bishop of Sydney

Most Rev. Danny Meagher
Auxiliary Bishop of Sydney

Most Rev. Christopher Prowse
Archbishop of Canberra and Goulburn Most

Most Rev. Michael Kennedy
Bishop of Maitland-Newcastle

Most Rev. Anthony Randazzo
Bishop of Broken Bay

Most Rev. Michael McKenna
Bishop of Bathurst

Most Rev. Mark Edwards OMI
Bishop of Wagga Wagga

Most Rev. Columba Macbeth-Green OSPPE
Bishop of Wilcannia-Forbes

Monsignor Edward Wilkes
Diocesan Administrator of Armidale

Most Rev. Robert Rabbat
Eparch of the Melkite Catholic Eparchy of Australia, New Zealand and All Oceania

Most Rev. Antoine-Charbel Tarabay DD
Maronite Bishop of Australia, New Zealand and All Oceania

Most Rev. Amel Shamon Nona, DD
Archbishop of St Thomas the Apostle of the Chaldeans in Australia

Most Rev. Anba Daniel
Bishop of the Coptic Orthodox Church, Diocese of Sydney & its affiliated Regions

Most Rev. Basilios (Kodseie)
Metropolitan of Antiochian Orthodox Church of Australia, New Zealand and the Philippines

Most Rev. Mor Malatius Malki Malki
Metropolitan Archbishop of the Syrian Orthodox Church

Most Rev. Haigazoun Najarian
Primate of The Armenian Apostolic Church of Australia and New Zealand

Most Rev. Georges Casmoussa
Apostolic Visitor, Syriac Catholic Church

Very Rev. Msgr Basil Sousanian
Patriarchal Vicar of the Armenian Catholic in Australia

Very Rev. Chorbishop Joseph Joseph
Vicar General of the Ancient Church of the East of Australia & New Zealand

Rev. Fr. Andrawes Faraj
St Mark's Coptic Catholic Church