

**Submission
No 46**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Feminist Legal Clinic

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Mr Clayton Barr MP
Committee Chair
Committee on Community Services

By email: communityservices@parliament.nsw.gov.au

14 April 2024

Dear Mr Barr

**Submission to Inquiry into the
Equality Legislation Amendment (LGBTIQ+) Bill 2023**

Feminist Legal Clinic Inc. is a community legal service established to advance the human rights of women and girls. We are also the Australian country contact for Women's Declaration International (WDI) which has over 37,000 signatories from 160 countries.

Thank you for the invitation to make a submission to this inquiry. However, we must register our objection to the limited opportunity for the public to provide feedback on the Bill (submissions are by invitation to selected stakeholders only) and the tight time frame afforded to those interested to have their say. If passed this legislation will have extremely far reaching ramifications for the entire community and such a cursory inquiry is not fit for purpose.

This is particularly the case because every day brings new developments and information of bearing on the matters under consideration. For example, in the past week alone we have had the release of the final report of the Cass Review in the United Kingdom and here in Australia the Federal Court has been hearing the case of *Tickle v Giggle*.

I refer to our [submission of 18 September 2023 to the NSW Attorney General](#) in relation to this Bill and to our submission to the [Anti Discrimination Review being conducted by the NSW Law Reform Commission](#). Due to time constraints we largely repeat content from those earlier submissions. We now provide brief details of our specific concerns in relation to each of the amendments proposed by Mr Greenwich.

Schedule 1 - Amendment of Anti-Discrimination Act 1977

We understand the amendments relating to the *Anti Discrimination Act* will not be considered by Parliament until the NSW Law Reform Commission has completed its review. We have significant concerns regarding these proposed amendments and have already lodged a preliminary submission with the NSW Law Reform Commission. Anti discrimination law in Australia is characterised by an incoherent and inconsistent mix of federal and state based laws that have emerged on an ad hoc basis with no conceptual clarity. NSW has an opportunity to return to first principles and craft legislation that clearly enunciates the human rights of its citizens and offers appropriate protections against discrimination.

In particular, the protected attribute of 'sex' should unambiguously refer to 'biological sex, being either male or female'. Anti discrimination laws in Australia that recognise transgender status, 'gender identity', or some version of a gender related attribute, as a protected characteristic undermine legislation originally intended to protect women's sex based rights. Unlike biological sex, 'gender' cannot be defined except by reference either to stereotypical notions of masculinity or femininity, or to infinitely variable individual conceptualisations of the term. Unlike biological sex, gender has no legal clarity.

The inclusion of 'transgender', 'gender', 'gender identity' and 'gender expression' in anti discrimination laws has produced an intractable conflict between those claiming rights on the grounds of 'gender identity', and women's sex based rights. Changes to state based birth registration laws have compounded this dilemma by creating the fiction of the 'legal female', with only self identified declaration being required in a majority of states.

Battle lines have been drawn and litigation is currently on foot to address this issue. The NSW Parliament can avoid such challenges to its anti discrimination law by eschewing notions of 'gender' and instead ensuring women's sex based rights are clearly protected in its legislation.

Schedule 2 - Amendment of Births, Deaths and Marriages Registration Act 1995

The proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* (NSW) will permit applicants over the age of 16 to alter the sex marker on their birth certificate upon provision of a statutory declaration and a supporting statement from a person who has known them for 12 months (sex self identification). Parent(s) can apply to register such a change, with evidence of counselling, for children under the age of 16. Non parent guardians or children without parental support can apply to the NSW Civil and Administrative Tribunal to register a change, with the decision to be made 'in the best interests' of the child.

Birth certificate sex markers can be 'male', 'female', or any other permitted sex descriptor, such as 'non binary'. The suggestion in this Bill that '*agender, genderqueer and non binary*' are appropriate sex descriptors should alert all

parliamentarians to the extreme and nonsensical nature of the amendments proposed by Mr Greenwich.

Sex self identification creates a 'legal' sex category that deliberately obfuscates the understanding of 'sex' as an immutable biological reality and thereby entirely compromising the sex based rights of women and girls. This is a matter that has a fundamental and devastating impact on the human rights of women and girls, undermining the ability to provide exclusively females spaces, services or special measures designed to achieve the substantive equality of women (for example: women and girls toilets, changerooms, hospital wards, prisons, domestic violence shelters, sport, political quotas, scholarships etc). We therefore urge the Government to strongly oppose these proposed amendments.

Sex self identification at law facilitates the fraudulent 'sex change' industry and must now be strongly opposed to avoid the NSW Government being dragged further into the global scandal that is currently unfolding. Sex is binary and aside from some provision for those rare persons with intersex conditions, there is no need to allow for unlimited descriptors of sex on official documents.

The NSW Government should not pass provisions allowing for the alteration of sex descriptors on birth certificates based on self declaration, and they should also consider repealing the existing provisions that allow for alteration of sex where an individual has undergone a so called 'sex affirmation procedure'. The suggestion that it is possible to change sex by undergoing surgery, let alone by self declaration, runs counter to both scientific understanding and common sense.

The misconception that it is possible to change sex is causing significant harm to young and vulnerable people. There is nothing kind or compassionate about encouraging delusional thinking that results in substantial injury to young people struggling with relatively common adolescent anxieties about their bodies and their identities.

Provisions allowing for the alteration of children's sex only encourages proponents of an agenda that, at its most extreme, resembles a Skoptsy castration cult. It is important to be aware that the World Professional Association for Transgender Health (WPATH) Guidelines heavily relied on by health practitioners conducting these interventions have been drafted by individuals with questionable connections.¹

Legislation plays an important educative role, and it is urgent that the NSW Government acts to reverse the harm it put in train with the provisions introduced in 1996 allowing for change of sex on birth certificates. In view of the recently released [final report of the Cass Review](#), the Government must urgently wind back its promotion of unsound medical interventions if they wish to limit the State's liability

¹ <https://reduxx.info/top-trans-medical-association-collaborated-with-castration-child-abuse-fetishists/>
<https://www.theguardian.com/commentisfree/2024/mar/09/disturbing-leaks-from-us-gender-group-wpath-ring-alarm-bells-in-nhs>

to those young and vulnerable individuals currently on track to be sterilised and mutilated.

While we understand that other Australian jurisdictions and various countries around the world have been similarly afflicted with gender mania, the tide is now turning on the issue of medical and surgical interventions for gender non conforming children and young people. Some jurisdictions have banned these medical and surgical interventions and others have limited them to carefully controlled clinical trials. This Bill is an opportunity for the NSW Labor Government to respond in a way that demonstrates leadership rather than having its policy dictated by an extreme and dangerous lobby.

Schedule 3 - Amendment of Children and Young Persons (Care and Protection) Act 1998

‘Gender’ is a socially constructed concept based on stereotypical notions of femininity and masculinity. While the term has in the past been used as a euphemism for ‘sex’, it is essential to avoid legislative conflation of the evolving concept of ‘gender’ or ‘gender identity’ with ‘sex’, which relates to a fixed biological reality. The Government should oppose amendments requiring the inclusion of definitions for ‘gender identity’ or ‘transgender person’ in legislation. This makes about as much sense as including a definition of ‘femininity’ or ‘masculinity’. Gender identity ideology does not liberate men and women from sex based reality but instead imposes new socially constructed constraints.

The Government must strongly resist Mr Greenwich’s proposed amendments as they will further expose children to fraudulent and harmful ‘gender affirming’ medical and surgical interventions. A young person is clearly more vulnerable than adults and even adults are unduly influenced by those wielding medical authority, not to mention legislative approval. Those medical professionals poised to deliver these life altering interventions are not to be trusted to determine a young person’s best interests and their capacity to consent, since they are likely to have a conflict of interest in the matter.

Mr Greenwich proposes to ‘legislate Gillick competence’ by amending the Children and Young Persons (Care and Protection) Act 1998 (NSW) to provide that ‘a young person who is 16 or over is able to make a decision about their own medical and dental treatment as validly and effectively as an adult’, subject only to the standard requirements for informed consent. The notion of the ‘mature minor’ put forward in Gillick was premised on young people having ‘a sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law’.

Given the wealth of research demonstrating that human executive function is not fully mature until the age of approximately 25 years, it is entirely plausible that a 16 year old will not be capable of ‘sufficiently’ understanding the impact of medical and surgical interventions that will likely render him or her infertile or sterile, and incapable of adult sexual function. In fact, the full health and developmental

consequences of medical and surgical transition commenced in adolescence are entirely unknown. To legislate for the ability of a 16 year old to fully understand and consent to these consequences is dangerous in the extreme.

Further, the WPATH Guidelines noted above have now been discredited as having an insufficient evidence base. Investigation of individuals involved in the development of these guidelines has shown connections to paedophile groups and castration cults.² The Government must decline amendments that will otherwise embroil the state in an emerging global scandal.

Schedule 4 - Amendment of Children's Guardian Act 2019

The proposed amendment should be opposed. Since 'variations of sex characteristics' are unlikely to be visible, this amendment could conceivably open the way for intrusive and inappropriate examinations of children placed in care.

Schedule 5 - Amendment of Court Security Act 2005

These amendments open the way for female security staff to be compelled to conduct personal searches of males who identify as women. They must be opposed.

Schedule 6 - Amendment of Crimes Act 1900

The proposed amendment to the *Crimes Act 1900* (NSW) to add sex workers to a list of those deemed worthy of protection from threats or incitement of violence is piecemeal and inadequate. Surely it must be an offence to publicly threaten or incite violence against any person or group of persons?

For example, there are many public threats currently being made against women advocating for their sex based rights, with 'Kill TERFs' a popular rallying cry among those who support Mr Greenwich and his agenda. If anything, we would recommend that this list should be amended with the addition of 'feminists' as a protected group, as those advocating for women's liberation have been hunted and attacked throughout history.

In terms of protecting women from the perils of prostitution, we would recommend that the NSW Government instead introduce the Nordic Model adopted by many countries around the world. Legislation along these lines has recently been under consideration by the South Australian Parliament. Addressing the prostitution system should not be done by piecemeal reforms that benefit only pimps and sex buyers and do little to tackle the questions of endemic violence and exploitation in prostitution, especially directed at women.

² <https://reduxx.info/top-academic-behind-fetish-site-hosting-child-sexual-abuse-fantasy-push-to-revise-wpath-guidelines/>
<https://genevievegluck.substack.com/p/castrating-children-in-the-service>

Schedule 7 - Amendment of Crimes (Administration of Sentences) Act 1999

Again, these amendments open the way for female staff to be compelled to conduct intimate searches of males who identify as women.

It is our experience that females who identify as men would still prefer to be searched by a woman rather than a man. This amendment caters to the wishes of trans identifying males only, while ignoring the rights of female staff and should be opposed.

Schedule 8 - Amendment of Crimes (Domestic and Personal Violence) Act 2007

The Government must strongly oppose amendments to include 'threats to out a person' as a form of domestic violence. This domestic violence legislation was originally designed to protect women from male violence. However, increasingly it is being weaponised by men and unfairly used against women. The proposed amendments are designed to further constrain women from voicing objections to emotional abuse by males and will effectively silence 'trans widows' and other women suffering from their male partner's unbridled sexual indulgences. Expanding the list of specific topics on which harassment is to be regarded as domestic abuse is also counter productive in terms of protecting women from male cruelty. This legislation will work to further constrain women from objecting to their male partner's illicit sexual behaviour rather than keeping women and children safe from violence and abuse in keeping with the objects of the legislation.

Schedule 9 - Amendment of Crimes (Forensic Procedures) Act 2000

The proposed definition of 'private parts' does not add anything to the existing definitions in the legislation which already take account of the needs of transgender individuals.

The proposed definition of 'transgender person' also adds nothing other than to use the words 'different sex' rather than 'opposite sex' to further obscure the reality that there are only two sexes.

The remaining amendments similarly are an effort to obscure the binary nature of human sex and to open the way for female staff to be compelled to conduct forensic procedures on male suspects.

Schedule 10 - Amendment of Crimes (Sentencing Procedure) Act 1999

It is proposed to amend this legislation to introduce prejudice or hatred based on gender identity or variations in sexual characteristics as aggravating factors to be considered in sentencing for a criminal offence. This amendment is unnecessary as the list of attributes provided in the legislation is not intended to be exhaustive. If gender identity is to be added, then sex must also be added to capture the many violent crimes that are fuelled by misogyny.

Schedule 11 - Amendment of Drug Misuse and Trafficking Act 1985

This amendment is insignificant and unnecessary. We note that the World Health Organisation still refers to HIV as an infection on its website.

Schedule 12 - Amendment of Government Sector Employment Act 2013

This amendment is unnecessary. The definition of 'workforce diversity' is not intended to be exhaustive and there is no advantage in expanding the list in the manner suggested.

Efforts to mandate 'gender affirming leave' should also be strongly opposed. Are leave arrangements going to be extended to all cosmetic procedures and body modifications desired by those dissatisfied with their appearance?

If these amendments are passed, it is probable men wanting breasts will be given greater priority and more generous leave entitlements than women seeking breast reconstructions following breast surgery for cancer.

Schedule 13 - Amendment of Government Sector Employment (General) Rules 2014

This is another unnecessary amendment to expand a list that is not intended to be exhaustive in the first place.

Schedule 14 - Amendment of Interpretation Act 1987

We suggest that the term 'gender' should be dispensed with altogether in legislation and replaced instead with the more precise term 'sex' to avoid ongoing confusion.

Schedule 15 - Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Again, these amendments are unnecessary and primarily aim to replace the words 'opposite sex' with 'different sex' to obscure the binary nature of human sex. Other provisions proposed open the way to compel female staff to conduct searches of male suspects.

Schedule 16 - Amendment of Mental Health Act 2007

We do not support this amendment. We believe that the desire to take hormones and surgeries in a misguided effort to change sex is an example of mentally disordered thinking and appropriate mental health treatment should not be precluded.

Schedule 17 - Amendment of Sheriff Act 2005

These amendments should be opposed again as they attempt to obscure the binary nature of sex and compel female staff to conduct personal searches of males who identify as women and should be opposed.

Schedule 18 - Amendment of Summary Offences Act 1988

We support the repeal of Part 3 on Prostitution *only* insofar as it creates offences for which exploited women may be prosecuted. However, we do not support the repeal of provisions that criminalise pimps, traffickers, brothel owners and clients in the prostitution system.

We support the repeal of this section if it is to be replaced with provisions implementing the Nordic Model similar to that proposed by the Summary Offences (Prostitution Law Reform) Bill 2023 recently introduced in the South Australian Parliament. Such an approach gives priority to the health, safety and well being of women in prostitution or exiting from it, and needs to be underwritten by a comprehensive inquiry into the necessary measures to do this. Otherwise, the piecemeal reform proposed gives priority instead to securing the entitlement of men to sexually access women, and diminishes the rights of women to sexual autonomy and independence.

Schedule 19 - Amendment of Surrogacy Act 2010

We understand that the Government does not intend to revisit the subject of surrogacy since it was reviewed recently, and that the Labor Government will therefore not entertain Mr Greenwich's proposed amendments on this topic. Our position is that the existing prohibitions against commercial surrogacy need to be more rigorously enforced rather than reduced in the manner proposed by Mr Greenwich. The involvement of dozens of Australian couples in the recent scandals in Ukraine, Georgia and Greece is evidence of the urgent need for Australian governments to begin rigorous enforcement of our laws in this area.

Schedule 20 - Amendment of Workers Compensation Act 1987

As with Schedule 11, these amendments are insignificant and unnecessary. We note that the World Health Organisation still refers to HIV as an infection on its website.

Conclusion

The multiple amendments proposed by the Equality Legislation Amendment (LGBTIQA+) Bill are not only lacking in merit but pose a substantial threat to the human rights of women and children and must be opposed by the Government. If passed, this Bill will create legislation which is incompatible with the protection of women's sex based rights and therefore in breach of Australia's international human rights obligations pursuant to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Feminist Legal Clinic Inc.

Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.