

**Submission
No 25**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Genspect Australia committee

Date Received: 13 April 2024

Clayton Barr MP
Committee Chair
NSW Committee on Community Services

Dear Mr Barr,

Re: Alex Greenwich's Equality Legislation Amendment (LGBTIQA+) Bill 2023

I am writing as a representative of Genspect Australia in response to an invitation for a submission to the Committee on Community Services inquiry into and report on the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

Genspect is an international alliance of parents, professional groups, transgender people and detransitioners who support a non-medicalised approach to gender dysphoria. We number in our thousands, including Australian clinicians and parents.

We appreciate the opportunity to express our concerns at the breadth of the scope of changes proposed by Alex Greenwich's Equality Legislation Amendment (LGBTIQA+) Bill 2023 which spans 20 existing Laws. Its reach affects most, if not all, community sectors from health (including provision of medical treatment to minors without parental consent), employment, crime, schools/education, sports, prostitution, surrogacy, provision of services for women, and registration of birth details. Whilst the goals are driven by concerns and wishes of a small sector of society, the impact on the rest of society has not been properly considered.

Collectively Alex Greenwich's proposed changes pose a significant threat to the human rights of women and children, aim to obscure the binary nature and reality of sex (eg. "different sex"), seek to compel female security staff to strip search males who "identify as women", seek to privilege transgender individuals in government sectors by way of "diversity" quotas and provision of funds for gender affirming care, do little to add to existing laws, and will in reality lead to less protections for females. As such, we call for the Bill to be opposed in its entirety.

Whilst we oppose the entire Bill outright, the attached submission provides details of concerns that are of most relevance to Genspect as an organisation.

Yours faithfully

Kate Williams

on behalf of the Genspect Australia committee



Submission to the Committee on Community Services Inquiry into and Report on the Equality Legislation Amendment (LGBTIQA+) Bill

GENSPECT Australia – Who we are

Genspect is an international alliance of parents, professional groups, transgender people and detransitioners who support a non-medicalised approach to gender dysphoria. We number in our thousands. We have an active group of Australian clinicians and parents committed to developing a healthy approach to sex and gender in medicine, education and law.

Schedule 1 - Amendment of Anti-Discrimination Act 1977

Genspect supports Feminist Legal Clinic Inc. stance as described in their letter to the NSW Law Reform Commission dated 5 October 2023.

See: <https://feministlegal.org/wp-content/uploads/2023/10/Preliminary-Submission-re-ADA-Final-version.pdf>

Recommendation: This amendment should be opposed.

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

1. Nonsensical definition of sex and provision for multiple “sexes”.

This amendment confuses sex with gender identity and extends the definition of "sex descriptor" to include anything unless the term is considered "obscene or offensive", or it "could not be practicably established by repute or usage", it is too long or contains symbols, or is excluded "for some other reason".

Terms such as agender, genderqueer and non-binary are types of "gender identity" (of which there are reportedly hundreds and the list continues to expand). These are unrelated to sex and are based on feelings which may change over time, and many are by definition fluid or of vague meaning.

"Sex" is by definition binary and immutable in humans ¹. It is defined as "a person's classification as male or female based on biological distinctions". There is no third sex, and



the “any other descriptor of sex” in the amendment is not necessary. Biological sex does not change with the use of puberty blockers, addition of cross-sex hormones and/or surgery.

It is important to state that intersex or disorders of sex development (DSD) conditions should not be conflated with transgender identities and should not be used as an argument that sex is not binary. DSDs are serious medical conditions that affect less than 0.02% of births ², and are almost all clearly defined as either male or female following investigation.

The legal class of sex, like other legal classifications, does not exist to validate or invalidate anyone's feelings. It is founded upon objectively verifiable characteristics, and it exists to identify sex-based rights and protections which include relational boundaries.

Recently the NHMRC acknowledged the importance of sex-based language for research as it removed the requirement for gender-neutral language from grant applications.

Recommendation: Legislation should use a clear biological definition of sex as male and female, and distinguish that from gender identity.

2. Biological sex should be retained on birth certificates and in medical and statistical data.

A birth certificate is a record of an historical event including the date, place of birth and sex. Historical records should not be altered. This is falsification of data. This does not actually help transgender individuals, as it promotes the idea that they should be able to become the other sex and hide their history. Living with such a deception and the fear of exposure is highly stressful. Transgender individuals will live with fewer mental health issues if they acknowledge their biological sex and take pride in their own life story and history. There should be no need for change of birth certificate.

Knowledge of biological sex is important and necessary for medical treatment of certain conditions and diseases. It is becoming increasingly apparent that biological males and females have a propensity for different illnesses/conditions and different sub-types of the same illness/conditions. In some cases serious injury has occurred because the sex of transgender patients has been mistaken in hospital. For example, a biologically female trans man who was unconscious suffered serious tracheal injury needing extensive hospitalisation and multiple surgeries because a large breathing tube suitable for a male trachea was used.³ Furthermore, we are observing differences in efficacy of treatment for males and females, and the types and severity of adverse events experienced by males and females in response to treatments.

In the field of clinical research there is a need to generate more data in females due to the abovementioned rising awareness of sex differences in medical conditions. In the clinical trial arena "sex" is defined as "a person's classification as male or female based on biological distinctions". Inaccurate sex details recorded on the birth certificate may lead to

inappropriate exclusion of potential participants from clinical trials, or it will become difficult to exclude genuinely ineligible subjects, thus leading to potentially confounding factors, unreliable data and less safe medicines.

Lastly, confusion between natal sex and gender identity confounds statistical and medical data and analysis of demographic trends. Collected data that fails to note both natal sex and transgender identification fails both the needs of society as a whole, and transgender people, as their medical and welfare needs would remain unrecognised. In the collection of crime statistics the recording of crimes committed by trans women, including violent and sexual crimes, as those of women will distort analysis of trends in criminal activity and the reasons behind it. It has been established that gender transition does not alter or reduce male-pattern criminality. ⁴

Recommendation: For safety and accuracy true biological sex must be retained on statistical records and all medical records. This will not occur if birth certificates are inaccurate. Transgender individuals could be given some other certificate of recognised gender that is separate from sex.

3. Permitting children to change name and 'sex' without parental approval

Parental rights are undermined by allowing NCAT to approve name and sex change of children aged under 16 against the wishes of parents, and the Bill instructs NCAT to not notify a parent/legal guardian about the application under some circumstances. Adolescence can be a difficult and turbulent time and can involve conflict with parents. The judgements of children are by definition "immature" and are unlikely to stand the test of time. This proposal is a gross violation of the rights of parents to look after their children and guard them against trends which they may rightly see as transient or dangerous to health and mental health. This is over-reach by the state, into the family.

The nefarious nature of this Bill is further emphasised by the absence of a lower age limit for change of name and sex, and that it is the applicant, a child, who determines whether the counsellor "has suitable qualifications, training or experience to provide the counselling". No child has the capacity to make such determinations.

A change of name and "sex" will reinforce in a child's mind the reality of a new identity they have taken on that might otherwise be transient. This is likely to be the first step on a pathway of medical intervention and resulting lifelong health complications. The Cass Report released this week by the English National Health Service cautions social transition of children and states "that there is no clear evidence that social transition in childhood has positive or negative mental health outcomes....However, sex of rearing seems to have some influence on eventual gender outcome, and it is possible that social transition in childhood may change the trajectory of gender identity development for children with early gender

incongruence." ⁵

A recent longitudinal study found that "gender non-contentedness is most common around the age of 11 and that the prevalence decreases with age" (i.e. the gender incongruence desists with time) ⁶. In the graph below (Figure 1) results show answers of "often" or "sometimes" to the statement "I wish to be of the opposite sex". The blue bars show the trend for children in the general population, and the red bars are from a psychiatric clinic. The authors stated that "it is normal to have some doubts about one's identity and one's gender identity during this age period and that this is also relatively common." Allowing children to amend their sex as recorded on the birth certificate based on relatively common temporary feelings of discontentment with their gender identity may secure them on the pathway to medical transition. They will become emotionally and legally invested in their new identity, and less likely to desist and avoid a lifetime of medical treatment and health complications.

Recommendation: No children should be able to change name and "sex" without parental approval as they are insufficiently mature, it will cement a transient identity, and this is an outrageous assault on the rights of families.

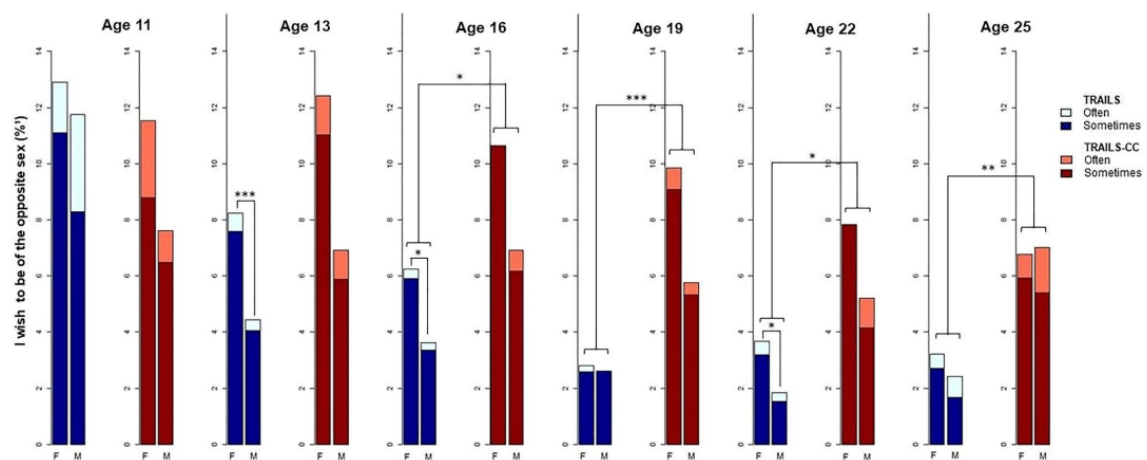


Fig.1 Prevalence of gender non-contentedness in both cohorts over time, distributed by sex assigned at birth. ¹Percentages refer to the percentage of females or males reporting gender non-contentedness of the total female or male sample of TRAILS (n=2229) or TRAILS-CC (n=543). Age refers to the mean age of the assessment wave.

F=Female sex. M=Male sex. * $p < .05$ of the chi-square testing if a relationship exists between sex (male or female) and gender non-contentedness (dichotomized for the chi-square test as No (never) or Yes (sometimes or often)).*** $p < .001$ of the chi-square test of sex and gender non-contentedness

4. Minimum age (16yo) for changing sex descriptor on birth certificate is too young

As discussed above, adolescence is a time of gender non-contentedness and uncertainty for many adolescents and this is considered normal and relatively common. As illustrated in

Figure 1, the prevalence of gender non-contentedness remains common at age 16yo, although lower than for ages 11 and 13 yo, but then declines substantially at age 19.

Allowing adolescents (16yo and above) during this time of great change to independently legally amend the sex descriptor on their birth certificate may secure their transgender identity and pathway to lifelong medicalisation and/or surgery which comes with side effects (some potentially life-threatening), when there is a good chance they will have naturally desisted.

Recommendation: The sex marker on birth certificates should not be able to be changed by anyone, as this is falsification of data. However, if this is permitted, 16 year olds are not sufficiently mature to initiate this change as their identity is still evolving.

5. Removing women's rights and endangering women and children

The amendments will make a change of "sex descriptor" on a birth certificate very easy to achieve. This is a falsification of an official document about the circumstances of birth. The consequences are far-reaching for women's rights and women's and children's safety. This is not to assert that transgender individuals are an inherent danger. However, once it is accepted in society that anyone can decide their own "sex" and then gain access to what were formerly women's private spaces, this will be exploited by fetishists, exhibitionists, voyeurs and pedophiles. It will not be necessary for them to legally change sex to access, for example, women's changing rooms, because women will not be able to challenge any males entering their spaces. This is already being experienced in other countries with self-ID laws, including a number of cases of sexual assault and rape in women's domestic violence shelters in Canada.⁷ There are numerous other reported instances of assault or voyeurism in women's prisons, change rooms and toilets and we are happy to provide multiple documented instances if that is needed.

Under the proposed amendments it will not be possible to maintain any biological-women-only services or spaces, and this affects safety, amenity, fairness or information gathering in the following situations:

- prisons
- domestic violence shelters
- rape crisis counselling
- toilets and change rooms
- gyms
- sporting events
- lesbian groups
- psychiatric wards
- selection of staff for strip searching

- medical services
- nursing home accommodation
- intimate care for disabled people
- awards, grants or scholarships
- quotas designed to redress women's disadvantage
- recording and reporting of male crimes as female

This will disproportionately affect women from minority groups who must not be intimate spaces with males. Many Muslim women may have to withdraw from much of public life.

Recommendation: All features of the Bill that promote access of biological males, regardless of their gender identity, into female spaces should be removed.

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

Removal of requirement for parental consent on medical procedures

We hold grave concerns regarding this amendment and believe it is geared to enabling vulnerable children and adolescents experiencing gender dysphoria to make ill-considered and harmful decisions regarding interventions with puberty blockers, cross-sex hormones and surgery, given the nature of this bill.

This Bill will give minors adult-like responsibility in medico-legal consent, overriding the valid and reasonable concerns of parents and legal guardians about the safety or suitability of interventions, including those related to gender. This is particularly concerning in an environment where treatment for gender dysphoric/incongruent individuals is "client-led" and fiercely influenced by social media.

Given the emerging evidence about the dangers of puberty blockers and cross-sex hormones, and systematic reviews resulting in countries implementing more careful measures including exploratory psychotherapy as first line treatment, there are serious concerns about legislation that reduces or removes safeguarding and allows children to take such serious medical decisions⁵. Indeed, on January 15th 2024, the World Health Organisation acknowledged that the evidence base for gender affirming treatments for children and adolescents is 'limited and variable regarding the longer-term outcomes', and they will not be preparing guidelines for those under 18.⁸

Our concerns are further compounded by the increasing numbers of detransitioners, some of whom are now publicly speaking out about their regret about gender transition along with their ongoing mental and physical issues.



Whilst a young person may be able to competently make smaller decisions (eg. contraception), they are widely recognised in science and medicine to have a very limited capacity compared to adults to comprehend lifelong changes such as loss of sexual desire or functioning, loss of fertility, increased risks of cancers and cardiovascular disease, potentially decreased IQ, and worsening psychological distress due to administration of puberty blockers and cross-sex hormones. Indeed, the recent release of the WPATH (World Professional Association for Transgender Health) Files has revealed discussions between WPATH members that confirm and acknowledge that minors are not capable of consenting to interventions that will cause such lifelong changes, especially when they are yet to experience them (eg. sexual functioning).⁹

As discussed above and shown in Figure 1, children have decreasing discontent with their sex as they age, and therefore, they should not be allowed to pursue harmful medical treatments with no parental input.

Recommendation: This amendment should be opposed.

Schedule 4 - Amendment of Children's Guardian Act 2019

Intersex or disorders of sex development (DSD) conditions should not be conflated with transgender identities. DSDs are serious medical conditions that affect less than 0.02% of births², and are almost all clearly defined as either male or female following investigation. 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.

Recommendation: The proposed amendment should be opposed.

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".

All children, irrespective of their sex or perceived gender, should have the same rights to choose which security officer they are comfortable with for personal searches.

Recommendation: The amendments must be opposed.

Schedule 14 - Amendment of Interpretation Act 1987

The wording is nonsensical, as are the examples. These amendments further seek to undermine the binary nature and physiological significance of human sex. The term 'gender' should be dispensed with altogether in legislation and replaced instead with the more precise term 'sex' to avoid ongoing confusion

Recommendation: The amendments must be opposed.

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

These amendments aim to replace the words 'opposite sex' with 'different sex' to obscure the binary nature of human sex.

Other provisions proposed pave the way to compel female staff to conduct searches of male suspects.

Recommendation: The amendments must be opposed.

Schedule 16 - Amendment of Mental Health Act 2007

Gender Identity/Expression/Incongruence is often accompanied by multiple co-morbid psychological disorders and/or may be the symptom of a psychological disorder(s). Clinicians should not be prevented from conducting necessary assessments to ensure the mental well-being of patients.

Recommendation: The amendments must be opposed.

Summary

In summary, the amendments are profoundly anti-women and anti-parent and present a danger to children. Legal recognition of a supposed change of sex is a powerful psychological message for a gender questioning child, that will lock them into a pathway of lifelong medical treatment and health harms. Allowing a change of "sex" on a birth certificate (including to categories that are not sexes) falsifies data, perpetuates a myth that sex change is indeed possible and does not encourage an individual in a healthy acceptance of their body.



Distortion of sex-based protections is harmful in effect and serves no legally cognizable legitimate purpose. No rational basis exists for allowing biological men to violate women's sex-based rights on the basis of their internal feelings. Moreover, the Bill will disproportionately affect women from cultural and religious minorities who must not be in intimate spaces with males. Many Muslim women, for example, will withdraw from public life and be increasingly isolated. The changes will be discriminatory and regressive.

In conclusion, Genspect advocates for:

- opposing the proposed amendments
- maintaining the current sex descriptors as male and female
- maintaining current protections and safeguarding of children for medical decisions
- upholding the protection of women and girls by not allowing males to self-identify into female spaces

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