

**Submission  
No 26**

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

**Organisation:** NSW Council of Churches  
**Date Received:** 13 April 2024

Partially  
Confidential

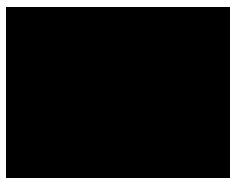
Submission to the  
Parliamentary Joint Committee  
on Human Rights  
re the  
NSW Equality Legislation Amendment (LGBTIQA+) Bill 2023



Submitted on behalf of the  
**New South Wales Council of Churches**

12 April 2024

Dr Ross Clifford AM  
Executive Director  
NSW Council of Churches



Congregational Churches



## Background:

The New South Wales Council of Churches (NSWCC) has served as a 'mouthpiece' for major Protestant churches on matters of public interest since its inception in 1925. Its areas of interest, concern and expertise include Education and Welfare. The NSWCC comprises their "Heads of Churches" plus representatives of the eight evangelical Christian denominations: Anglican, Baptist, Reformed, Churches of Christ, Congregational, Presbyterian, Salvation Army, Missionary Alliance of Australian Churches. NSWCC member denominations have strong connections with many non-government Christian schools, welfare agencies at a governance, advisory or local church level.

The NSWCC welcomes the opportunity to make this submission. We give consent for this submission to be published. Our contact details can be found on the 1<sup>st</sup> and last page of this submission.

## Context:

THE NSWCC is aware of other submissions being made. It is not our intent to cover the extensive legislative changes that have been proposed. The detailed submission coordinated by Freedom for Faith (of which we are a signatory) would be consistent with the thoughts and concerns of our member bodies. In fact, a number of these member bodies are referred to in the Freedom for Faith submission. For the NSWCC, the Freedom for Faith submission is the benchmark.

## The Human Rights and Moral Implications:

1. Articles 18, 19 & 30 of the "Universal Declaration of Human Rights" clearly set out the primary human right of religious belief and practice. (See Below) This is confirmed by Article 18 of the "International Covenant on civil and Political Rights" (1966) and in particular article 18 (4).

Australian governments have sought to enact legislation that is consistent with these fundamental ethical and legal obligations. However, this proposed Bill, in a number of sections infringes on these basic human rights. In particular they intentionally or unintentionally delimit the rights of parents and guardians and their preferred places of education.

2. This Bill, in its current form, may unintentionally provoke civil disobedience as morally expressed in the New Testament Book of Acts, Chapter 5:29 (*Peter and the Apostles replied "we must obey God rather than men - any other human authority"*) and Acts 4:19. In this Bill there are basic breaches of the democratic separation of Church and State, where State is seeking to be the interpreter and enforcer of religious practice. These are fundamental issues that override any other consideration. It is submitted that the NSW Government should take cognisance of same.

*Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

*Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.*

*Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

**Universal Declaration of Human Rights (1948)**

## General Education Concerns:

1. Of particular concern to the NSWCC is Religious Schools, Bible and Theological Colleges, and other Christian tertiary institutions obligation and right to maintain and practice their faith-based character and values. We agree with Freedom for Faith in that the Bill “hollows out” the general protections for religious bodies in Section 56 of the “Anti-Discrimination Act 1977 (NSW)”. In particular the said Equality Bill requires that their appointments and actions are “reasonable and appropriate”. (Outside of the appointment and training of leaders and those engaging in religious practices.) Even this bracketed exemption evidences the inappropriateness of State intervention into religious affairs. Christian and religious education is so diversified today that the categories are inappropriate. The concept that a Judge or secular authority would determine what is “reasonable and appropriate” is shifting determination from one who understands the history, rights and models of such institutions to one who conceivably has no knowledge of same and/or has hostility to same.
2. The Bill as expressed would take away employment freedoms, or at least create confusion over the right of appointment of staff according to the institution’s values. Faith based schools and tertiary institutions need to be reasonably protected in not only the appointment of staff, that is consistent with their values and world view, but also the management of staff with respect to same.

Case Study: In my previous role as Principal of Morling College (a Christian Tertiary Education Institution and Residential College) we had a faculty member that indicated that she was going to marry someone of the same gender. I was not previously aware of this proposal even though employment contract forms and code of conduct forms had been signed. The Code of Conduct states sexual intimacy is between a man and woman in marriage. Outside of marriage is celibacy. After pastoral care and open discussion, the staff member was no longer employed.

Would the provisions under this Act involve Morling College in a legal process, that was not the case before this Bill, and more significantly would it involve MC in not being able to act on its clearly expressed and consented to religious values with respect to marriage. This same question has to be asked of any school appointment and continued employment in any religious institution. Values based education involves not just a belief system but a modelled form of education. If colleges, schools have clearly set out what their value base is, eg, their understanding of marriage, we submit the State should not be in a position to qualify or overrule such values where the parents and tertiary students, together with staff, voluntarily enter into such an education environment. Religious education minus its stated values is no longer such an education.

3. The said Bill potentially restricts the appointments in school, tertiary educational colleges and religious institutions by an exception clause that actually limits the selection or appointment of a person to one who exercises functions to, or otherwise participates in, a religious observance or practice. In other words, the Bill does not protect wholistic education and wrongly assumes that the receptionist, maintenance staff, dining room staff are not essential in the maintaining and expressing of values. Significant interaction of students is engagement with such staff who often play significant roles in the students, and staff, personal and spiritual development. This dualistic understanding of education again evidences the inappropriateness of the State to determine the shape of religious education and religious organisations. There is no understanding of the culture of a community of faith.
4. The Bill also removes the safety net for the employment or continued employment of a person that is transitioning to a sex that differs from their biological sex or has a fluid understanding of their gender identity. It appears that this would apply to all appointments, including Headmaster or Principal and again evidences an intrusion into the religious freedom rights of Christian education institutions. This is not to diminish the continued pastoral support of students who are seeking an understanding of their gender identity.

5. Religious education institutions should not be placed in a position to convince a Judge or other secular authority as to who they can employ and what they can teach particularly with respect to marriage, sexuality or gender. As mentioned this is a direct contravention of human rights conventions.

## Other General Comments:

1. The Bill's requirement for faith based charities to supply fostering services and marriage counselling to same sex couples is again a breach of religious freedom and practicing according to one's values. Such protection has been well protected by case law, eg, NSW Court of Appeal in *OV & OW v Members of the Board of the Wesley Mission Council*, which recognised the right of that religious institution to carry out its ministry according to its values. Of course, the reverse is also true. there are other agencies that offer similar services but with a different value set. It is submitted, that is the nature of democracy.

With this submission, the NSWCC has simply sought to highlight why this Bill, in many ways, is inappropriate and an infringement on basic human rights. We refer again to the Freedom For Faith submission with respect to its broad ranging identification of serious matters of concern.

The Executive Director is willing to testify or give further submissions upon request, especially upon the matters relating to religious rights and/or Christian Tertiary Education. The Executive Director has spent 30 years in leadership of theological and Christian Tertiary Education as well as legal involvement in human rights concerns.

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Principal of Morling College (1996-2023)

(Christian Tertiary Education provider affiliated Australian College of Theology (University/College), University of Divinity, also independent TEQSA approval for a number of post graduate degrees including in the discipline of Teacher Education)  
Founding Chair of Australian Christian Higher Education Alliance.



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