Submission No 29

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Catholic Women's League Australia - New South Wales Inc.

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CATHOLIC WOMEN'S LEAGUE AUSTRALIA-
NEW SOUTH WALES INC
A MEMBER ORGANISATION OF CWLA INC

ABN 27 783 418 042

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SUBMISISON BY
THE CATHOLIC WOMEN'S LEAGUE AUSTRALIA- NEW SOUTH WALES INCORPORATED
ON
THE EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023.

Thank you for inviting Catholic Women's League Australia – New South Wales Incorporated (CWLA-NSW) 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.

About the Catholic Women's League in New South Wales:

1. Catholic Women's League Australia – New South Wales Incorporated (CWLA-NSW) has been present in New South Wales (NSW) for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1600 active members in the seven (7) Catholic dioceses in New South Wales. Our organisation fosters the spiritual, cultural, intellectual and social development of women and promotes the role of lay women in the mission of the Church.

2. This submission is made on behalf of CWLA-NSW, a member organisation of the Catholic Women's League Australia Incorporated (CWLA), the national peak body representing the League's six member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

Executive summary:

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.

While we respect the sincerity of those proposing this Bill, we regard the twenty proposed amendments flowing from this Bill as diminishing the fundamental rights and dignity of the human person, and intrusive upon the right and duty of parents to be first educators of their children.

CWLA-NSW has serious concerns about that which intrudes upon the parent-child relationship, permitting access to major medical interventions without parental involvement and therefore in the absence of valid informed consent for pre-teens and other minors. We will also respond to four proposals which demean women: prostitution, surrogacy and sex self-identification.

Therefore, we will proceed to address items 1 and 3 of the Terms of Reference.

Item 1 – The Provisions of the Bill

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

Review of the *Anti-Discrimination Act 1977* has been considered overdue, and as such requiring an extensive re-analysis in the context of modern NSW society.

We reject proposed amendments to the *Anti-Discrimination Act 1977* contained in the Bill. These proposals pre-empt the depth and rigor of the community engagement, consultation and consideration undertaken by the NSW Law Reform Commission, and warranted by the extensive changes proposed to existing legislation. The nature of these changes is significant.

For example:

The Section 1 (12) amendment would discourage the participation of biological women in sport. The effect of doing away with children's single-sex sporting teams and with single-sex non-competitive sporting teams would intimidate biological women from performing comparatively inferiorly with biological men. This would negatively impact the self-confidence of biological women. Withdrawal from such sports and sporting commitments would be further deleterious to other aspects of life such as the development of teamwork skills and general level of fitness in women.

The Section 1 (40) amendment would remove the rights of religious associations -except those which manage the training and employment of those involved in worship. This contravenes international human rights conventions, and places new and severe restrictions on religious communities whose members comprise a significant proportion of society.

The Section 1 (41) amendment removes the ability of a faith-based adoption agency to discriminate on the basis of sexuality or transgender status. This amendment would remove the right of the mother who chooses adoption over abortion for her child as the better option for herself and child, to exert any decision-making concerning the future selection of parents for her child. This mother cares greatly for her child. That care should be respected and acknowledged. Her preference for another couple to rear her child ought similarly to be respected in the context of the sacrifice she has made on behalf of this child's future.

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

CWLA-NSW is opposed to the introduction of a sex self-identification law, which would allow anyone to change their sex on official documents like driver's licences and birth certificates.

These changes will bring about serious consequences because they will allow men into women's only spaces like schools, gyms, and even domestic violence shelters. The government will also be faced with some difficulty in segregating prison populations by sex.

This law will make it difficult for those people who require single-sex gatherings for cultural or religious reasons, or the privacy and safety reasons, to gather in this fashion.

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

CWLA-NSW is very concerned over the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1988.* It believes that the proposed amendments will allow medical practitioners to override the decision of parents in relation to medical treatment provided to a child.

CWLA-NSW is of the view that the entirety of the proposed section 174 A must be rejected.

CWLA-NSW believes that the effect of the proposed new section 174 A (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 would permit medical treatment to be administered to a child on the wishes of the child, with or without parental consent, if a medical practitioner is of the view that it is in the best interests of the child and the child is capable of understanding the nature, consequences and risks. However, it is difficult to imagine a pre-pubertal, pre-teen child being able to fully comprehend the effects of puberty blockers. A biological boy may not fully envisage the impact of remaining small and juvenile in appearance while biological male peers gain height and strength. Similarly, a biological girl would become increasingly different from her peers, failing to experience the physical changes of maturation her peers share with each other. This retardation of puberty would render them increasingly distinct from peers and emotionally and psychologically less involved and more detached from their natural cohort as they themselves fail to develop the secondary sexual characteristics normal and very visible milestones of maturation.

The conditions for valid informed consent are that it be voluntary, and free of coercion, informed, specific, and given by a person with capacity. Since puberty blocked changes, which will increasingly separate them out from peers, and the emotional and psychological sequelae which may follow from inherent disconnection, cannot be fully envisaged by pre-teens their 'consent' to puberty blockade cannot be valid informed consent.

This has serious implications, since major pharmaceutical and surgical interventions should not be carried out on any individual without the requirements of valid informed consent having been met.

The National Health and Medical Research Council (NHMRC) states that ethical and informed consent for medical interventions and medical research 'should be a voluntary choice, and should be based on sufficient information and adequate understanding of both the proposed research [or intervention] and the implications of participation'.[1] The Australian Medical Council (AMC) endorses the NHMRC's requirements for informed consent as necessitating 'a voluntary decision about medical care that is made with knowledge and understanding of the benefits and risks involved'[2] adding that 'good medical practice involves 'providing information to patients in a way that they can understand before asking for [and obtaining] their informed consent…or other valid authority before you undertake any examination, investigation or provide treatment (except in an emergency), or before involving patients in teaching or research.' [3]

These codes and statements of the AMC and the NHMRC on the ethics and requirements of voluntary informed consent for medical interventions complement and reinforce the position statements of both the Australian Medical Association (AMA) and the World Medical Association (WMA).[4] [5] [6]

More significantly for CWLA-NSW, the ethics of informed consent are also addressed in Catholic Health Australia's Code of Ethical Standards in which the voluntary nature and the requirement of the provision of relevant information - able to be comprehended by the patient - of informed consent is clearly articulated, reiterating the concepts put forth in the documents previously noted.

The more significant and impactful the decisions being consented to, the higher is the evidentiary standard required for the components of valid informed consent, particularly around capacity. This evidentiary standard should be upheld rather than dismissed since

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[1] General Requirements for Consent, Chapter 2.2: NHMRC: National Statement on Ethical Conduct in human Research.: https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated-2018#download (accessed 27/3/2024)

[2] Informed Consent, Section 3.5: Good Medical Practice: A Code of Conduct for Doctors in Australia. Developed by a working party of the Australian Medical Council on behalf of the medical boards of the Australian states and territories. https://www.amc.org.au/images/Final_Code.pdf (Accessed 27/3/2024)

[3] Ibid., Sections 3.5.1 and 3.5.2

[4] The Doctor and the Patient. Section 2: AMA Code of Ethics. Revised 2016. (Accessed 27/3/2024): https://www.ama.com.au/articles/code-ethics-2004-editorially-revised-2006-revised-2016

[5] *Declaration of Geneva*. World Medical Association (2017): Physician's pledge: "…The health and well-being of my patient will be my first consideration; I will respect the autonomy and dignity of my patient; I will maintain the utmost respect for human life;…I will not use my medical knowledge to violate human rights and civil liberties, even under threat…." www.wma.net/policies-post/wma-declaration-of-geneva/ (Accessed 27/3/2024)

[6] *International Code of Medical Ethics*. World Medical Association (2006), Section 13: "In providing medical care, the physician must respect the dignity, autonomy, and rights of the patient.. www.wma.net/policies-post/wma-international-code-of-medical-ethics/

the minor has the right to be protected from long-lasting effects of childhood medical decisions.

CWLA-NSW is opposed to section 174 A (2) as it allows medical practitioners to override the decision of parents in relation to medical treatment provided to a child. This section of the Bill radically undermines the relationship between parents and children. It is parents who have the privilege and responsibility of raising and caring for their children. This section of Bill also gives medical professionals an inappropriate amount of authority.

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

CWLA-NSW is opposed to the proposed amendments to the Summary Offences Act 1988.

CWLA-NSW does not believe that solicitation should be allowed near churches, schools, dwellings and hospitals. Nor should prostitution or solicitation be allowed in massage parlours, saunas and steam baths, gyms and photographic studios.

As an organisation that promotes the welfare and rights of women and children, the proposed amendments to the Summary Offences Act 1988, would make it difficult for parents to shield their children from prostitution and solicitation until they were at an appropriate age to learn about these matters.

Also, religious belief and worship would be undermined if solicitation would be allowed outside churches.

Schedule 19 - Proposed amendments to the *Surrogacy Act 2010*.

CWLA-NSW is very concerned about the implications of the proposed amendments to the *Surrogacy Act 2010* and consequently believed that the amendments to it should be rejected. It believes that if the proposed amendments to this Act become law, it will open the door to commercial surrogacy. Commercial surrogacy is not allowed in NSW as well as other States and Territories in Australia. In NSW, this was upheld by the review into the Surrogacy Act conducted by the NSW Department of Justice (now the NSW Department of Communities and Justice) in 2018.

CWLA-NSW is concerned that in seeking to repeal the geographical area for offences, this provision has the effect of allowing a person ordinarily a resident or domiciled in NSW to enter into a commercial surrogacy arrangement outside of NSW. The result of which will involve engaging in commercial surrogacy arrangements with women from overseas.

These arrangements do not uphold the dignity of the human person, particularly the surrogate mother, because it leaves her vulnerable to exploitation. Where commercial surrogacy is allowed, most countries have little or no regulation at all, which results in the possibility of abuse. This is particularly so in countries where poverty rates are high.

As former Chief Justice of the Family Court, John Pascoe, has stated that international surrogacy is "the new frontline in the trafficking and commodification of women and newborn children". This is supported by the European Union which has recognised forced surrogacy as a form of human trafficking.

Item 3 - Additional ways of improving the safety and wellbeing of the LGBTIQA+ community.

1. The human person has an inherent dignity which places them above categorisations. We are all individuals, and each person is unique in their being. Therefore, as Catholic Women respecting the unique personhood and natural dignity of each created individual, we do not support the categorisation of persons according to attributes, proclivities or other characteristics. The categorisation of persons into defined subgroups based on sexuality and expressions of gender is confining and restrictive of the individual. We are much more than the parts of our nature that tend to be drawn by societal definitions. It is not helpful and is demeaning in many ways to use terms and letters to define and describe others. This is particularly of concern when such definitional trends demarcate and delineate groups as separate within society. We cannot be compartmentalised by our sexuality nor categorised by the infinite range of personalities within humankind. We cannot be fully defined by our sexuality.

As many as there are personalities in humanity there are, and will be, different ways of expressing our individualism. Categorisation of persons by definitional terms is demeaning to the fullness of our being and disparaging to our grasp of personal uniqueness and potential. The categorisation of persons into subgroups within society is also naturally divisive to our cohesion and common humanity. The separating and isolating effect of definitional groups reduced to alphabetical lettering such as LGBTIQA+ is itself opposed to inclusivity and restricts the acknowledgment and flourishing of the human potential present in the mind, heart and soul of each individual. The disrespect and fragmentation of persons based on gender boxes signifying their nature is unhelpful to personal wellbeing. It is disrespectful of the whole person and may aggravate feelings of separation, isolation and marginalisation.

Recommendation One to the Third Term of Reference:

Catholic Women's League recommend persons not be described and socially defined by an aspect of their nature into letterised distinctions nor viewed through the lens of such as 'LGBTQITA+'. Such trends fail to respect the uniqueness and wholeness of each individual.

2. Children questioning their identity have been managed in Gender Clinics and paediatric facilities with the Gender Affirmation model of care. This model of care has been proposed to have legislative protections and exemptions from the general requirements of other therapeutic care, for example in not requiring adherences to components of valid informed consent or parental in decision-making of minors. Principles of informed consent have been developed over time in response to medical abuses and are a protection for all, especially for children.

Regarding that which is designated 'transgender' (by the 'T' in the proposed legislative term LGBTIQA+), minors questioning their gender or experiencing gender dysphoria deserve a high standard of care that is safe and effective, and which meets their individual needs.

The most comprehensive investigation and report ever undertaken into care of these young persons has just been released.[7] It 'commissioned the University of York to conduct a series of independent systematic reviews of existing evidence and new qualitative and quantitative research to build on the evidence base'.[8] Over a three-year period it focussed on the ways in which we can improve the wellbeing of young people who seek assistance in this domain. It considered:

a) the rapid and recent growth in referrals for young persons with gender distress;
b) the change in case-mix from natal male sex persons to natal female sex persons presenting and
c) the clinical approach and care model that would best assist young persons experiencing gender incongruence/dysphoria/distress.

Contrary to frequently heard media descriptions of gender dysphoria and incongruence as a feature of variance from one's 'sex assigned at birth' and 'being in the wrong body', this comprehensive review of world research findings included[8]:

1. The increase in the number of young people with a trans or gender diverse identity is the result of a complex interplay between biological, psychological and social factors of varying balance in different individuals;
2. Systematic reviews of research demonstrated poor quality of published studies and absence of a reliable evidence base for clinical decision-making, or for children and families to make informed choices;
3. The rationale for early puberty suppression remains unclear, with weak evidence regarding the impact on gender dysphoria, mental or psychological health. The effect on cognitive and psychosexual development remains unknown;
4. The use of masculinising and feminising hormones in those under 18 years presents many unknowns. The lack of long-term follow-up data means we have inadequate information on those commencing treatment at an earlier age and
5. For most young people, a medical pathway will not be the best way to manage their gender-related distress.

Accordingly, Cass's Independent Review recommendations included:

1. Standard evidence-based psychological and psychopharmacological treatment approaches should be used to support distress including support for parents;

[7] Hilary Cass Independent Review of Gender Identity Service s for Children and Young People. April 10th 2024 commissioned by National Health Service England
https://cass.independent-review.uk/home/publications/final-report/
cass.review@nhs.net

[8] Response to Cass Report from The Royal College of Paediatrics and Child Health April 11th 2024
https://www.rcpch.ac.uk/news-events/news/rcpch-responds-publication-final-report-cass-review

2. Children and young persons should receive a holistic assessment of their needs and include an individualised care plan incorporating screening for neurodevelopmental conditions and autism spectrum disorder, and mental health assessment;
3. A separate care pathway to support pre-pubertal children and their families and be seen as early as possible by a professional with relevant experience;
4. Medical care provision for people considering de-transition who may not wish to re-engage with original prescribers.

CWLA-NSW is aware that many nations leading in health care around the world, including many European countries, have banned the use of pharmaceutical puberty blockade. Use has been banned in the United Kingdom (UK) outside of strict, registered, clinical trials. Those who have undergone puberty blockade and transitioned to another sex report:

> *'I look back with a lot of sadness. There was nothing wrong with my body, I was just lost and without proper support'*[9]

Indeed, in Australia, Westmead Children's Hospital have produced peer reviewed research that is not dissimilar to that of the UK.

The Westmead research team published another paper in February 2023. It looked at the pathways, decisions and clinical outcomes of 79 patients who presented at the hospital and reported increasing rates of rapid-onset gender dysphoria. This was particularly noted in adolescent girls who often had no characteristic prior childhood history. They reported:

"The absence of prior history raised questions that this particular group of adolescents were being drawn to the construct of gender dysphoria because of some evolving social process."

Recommendation Two to the Third Term of Reference:

Considering the concerns expressed in this report, and internationally, about these drugs' effects on neurocognitive development, bone density (potential osteoporosis), stunted height, issues around fertility and future sexual function, CWLA-NSW supports the close consideration of the findings of this comprehensive report within NSW health care. We recommend that these concerns and caveats be reflected within NSW healthcare protocols and respected rather than opposed by legislation.

3. The health of our children and grandchildren is entitled to the very best care we can offer. This care must be based on the gold standard of evidence-based health care rather than on ideologies or a niche level of consensus. Since the aetiological drivers of gender identity dysphoria/incongruence are not fully known and vary in balance between individuals, more research is required to understand and prevent pharmaceutical intervention on the developing body and brain of our children. Since its impact is not known, and research into artificial off-label hormone use effectiveness is not considered adequate, we are concerned that our children are subject to an experimental model of care not adequately backed by the medical evidence.

[9] Keira Bell quoted Thursday The Australian April 11 2024

While questioning and inquiry is a normal part of childhood development, we also hold concerns that anxiety and confusion may be medicalising the normal questioning process of maturing development. This may be encouraged by the absence of reliable knowledge. The precautionary principle of considering the known, the possible and the unknown direct effects and outcomes of a treatment model lacking good evidence of effectiveness bears our immediate attention.

Recommendation Three to the Third Term of Reference:

Due to the recent findings of the most comprehensive analysis of systematic reviews by York University as reported in the final UK Cass Report, [8] CWLA-NSW would recommend and welcome the increased care and precautions advised by currently known research and knowledge of management outcomes. We would consider it negligent for health care protocols to be unprotected by valid informed consent, and for this protection to be removed or reduced by proposed legislation. The objection that a niche group of Australian medical practitioners have adhered to protocols they themselves developed without an evidence base is inadequate.

Discussion

While we respect the sincerity of those proposing the Equality Bill, we regard the general thrust of the proposed amendments to twenty separate pieces of legislation as diminishing the fundamental rights and dignity of the human person, and intrusive upon the right and duty of parents to be first educators of their children. It does this by introducing a competing theory of sex, gender and sexuality into our laws and elevating them to legally protected attributes. Whilst this may appear to achieve 'equality' it does not. For the state to be truly neutral, it must allow those with an alternative theory of these attributes to exist without forming the conclusion that they are violating the rights of others and causing them harm.

The attributes which seek to be legally recognised and protected in this bill relate to conduct. That conduct and the general question of how to live a good life have been the subject of sustained theological discussion for thousands of years by various faith traditions. The teachings of these traditions regarding how their adherents ought to behave is not incidental to them; rather it is at the core of their framework. Accordingly, at the end of the day, the Equality bill in its present form poses a threat to freedom of religion. This is something that is deserving of a proper, thoughtful enquiry before action is taken to radically alter the law.

Conclusion

CWLA-NSW is opposed to this Bill being enacted into legislation. We have based our opposition to this Bill on the implications that this Bill will have on religious freedom, sex self-identification, prostitution, and surrogacy. CWLA-NSW has also presented its concerns that it believes this Bill undermines the parent-child relationship when it comes to medical treatment and consent.

In our submission CWLA-NSW has also put forth its arguments for additional ways of improving the safety and wellbeing of the LGBTIQA+ community.

CWLA-NSW would like to stress that we also support the views put forth by the Catholic Archdiocese of Sydney in their submission.

CWLA-NSW is grateful for the opportunity to provide this submission for your consideration.

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