

**Submission  
No 51**

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

**Organisation:** Women's Forum Australia

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## Equality Legislation Amendment (LGBTIQA+) Bill 2023 Submission, April 2024

### EXECUTIVE SUMMARY

- The *Equality Legislation Amendment (LGBTIQA+) Bill 2023* (the Bill) was introduced by Independent MP Alex Greenwich in August 2023 “to modernise laws and advance equality for LGBTIQA+ persons in NSW.”
- While the inquiry is a positive step, its approach to public consultation is flawed.
- The ironically named “Equality” Bill contains some of the most anti-women, anti-children reforms we have seen.
- Among other things, the Bill will introduce sex self-ID, allow children under 16 to consent to medical treatment without their parents’ consent, enable men to demand they are searched by female officers, penalise those who raise concerns about men who identify as women, de-sex NSW laws, further deregulate the prostitution industry, and remove bans on overseas commercial surrogacy.
- Sex self-ID will allow anyone to change their legal sex (with the barest minimum of gatekeeping) and be treated as that sex for all intents and purposes under law. In this regard, the Bill will:
  - effectively eradicate female-only spaces, by allowing men to self-identify as women and access female-only activities, spaces, services and events.
  - remove protections for female-only sports, raising both fairness and safety concerns for female athletes of all levels.
  - enable the falsification of crucial sex-based data collection informing public policy and services in the areas of health, crime, employment and so on.
  - allow children under 16 to change their legal sex, in some cases, without their parents’ knowledge or consent.
  - adversely impact sex-appropriate health care provision.
  - put at risk the freedom of speech and conscience of all NSW residents who refuse to acknowledge a person’s self-identified sex, whether in language or practice.
- Allowing children under 16 to consent to medical treatment without parental consent – particularly ‘gender-affirming’ treatments like puberty blockers, which is the primary intention of this Bill – undermines the parent-child relationship and puts the child at risk.
- Reforms to further deregulate prostitution will remove protections for prostituted persons (the majority of whom are women), as well as for the wider community.
- Removing bans on overseas commercial surrogacy will encourage the exploitation and commodification of vulnerable women – particularly those from poor countries and disadvantaged backgrounds – as wombs for rent and children as products for sale.

## I. INTRODUCTION

1. Women's Forum Australia is an independent think tank established in 2005 that undertakes research, education and public policy advocacy about economic, social and health issues affecting women and girls, with a particular focus on addressing behaviour and practices that are harmful and abusive to them. Such issues include the sexualisation and objectification of women and girls particularly in media and advertising, violence against women, pornography, prostitution and trafficking, child marriage, abortion, surrogacy, and the erasure of sex-based rights and protections.
2. We are a national organisation with supporters from across Australia, including in NSW, [thousands](#) of whom are deeply concerned by the reforms proposed in the *Equality Legislation Amendment (LGBTIQA+) Bill 2023* (the Bill).
3. The Bill was introduced by Independent MP Alex Greenwich in [August](#) last year, and then in [November](#), it was agreed that time would be set aside to debate the Bill in Parliament on 8 February (the first sitting week of 2024) and if necessary, 14 March 2024. After significant public backlash, the Bill was referred to committee for inquiry on 13 March 2024, with a report due by 3 June 2024.
4. Contained in the ironically named "Equality" Bill are some of the most anti-women, anti-children reforms we have seen. Every person deserves respect, equality, and care under our laws, but these harmful and discriminatory reforms are counterproductive to those principles. At best, they elevate the rights of some groups over others. At worst, they are to the detriment of all, including those they are meant to help.
5. We are pleased that the Bill has been referred to an inquiry and that we have been invited to make a submission. However, it is disappointing that the committee is undertaking a closed submission process, whereby only a select list of individuals and groups are permitted to make submissions on the Bill. We are also concerned that the public survey does not provide enough scope for people to outline their concerns with the Bill, as it merely asks people to select 'oppose', 'neutral/undecided', 'support with amendments', 'support', in relation to bulk amendments proposed to multiple pieces of legislation, without any opportunity to explain why. It is regrettable that public consultation on the Bill hasn't been facilitated in a way that will result in more meaningful and genuine consultation.

## II. PROPOSED LAW REFORM

6. The Bill's stated purpose is "to amend various Acts and other legislation to modernise laws and advance equality for LGBTIQA+ persons in NSW."
7. The Bill is 50 pages long and makes a significant number of changes to 20 different pieces of legislation. While we will not be commenting on every amendment, we reject the Bill in its entirety. We have refrained from commenting on proposed amendments to the *Anti-Discrimination Act 1977*, given the comprehensive review currently being undertaken by the NSW Law Reform Commission.
8. In this submission, we will focus on how the Bill will:
  - **Introduce sex self-ID**, which will allow anyone to change their legal sex (including children), enabling males to legally identify as female and access women-only spaces (Schedule 2).
  - **Allow children under 16 to consent to medical treatment**, without their parents'

consent (Schedule 3).

- **Enable men to demand they are searched by female officers**, or a particular female officer (Schedules 5, 7, 15 and 17).
- **Penalise those who raise concerns about men who identify as women** (Schedule 8).
- **De-sex NSW laws** (Schedule 14).
- **Further deregulate the prostitution industry**, which will remove protections for prostituted persons and the broader community, and further entrench the sexual objectification and exploitation of women and girls (Schedule 18).
- **Remove bans on overseas commercial surrogacy**, which will encourage the commodification of vulnerable women as wombs for rent and children as products for sale (Schedule 19).

9. Each of these will be addressed below.

### III. INTRODUCTION OF SEX SELF-ID

10. In his [second reading speech](#) on the Bill, Greenwich explains, that the Bill:

*“would replace [part 5A of the \[Births, Deaths and Marriages Registration Act 1995 No 62\]](#), which currently limits altered records of sex to surgery, with a new part, which would enable alteration with affirming documentation. A person who is 16 or over would be able to alter their record of sex through the registrar with a declaration and a statement from an adult who has known them for at least 12 months.”*

11. This amendment would be made by Schedule 2[5] of the Bill which substitutes a new Part 5A, and would allow anyone to change their legal sex (with the barest minimum of gatekeeping) and be treated as that sex for all intents and purposes under law (s32B).
12. As a result, sex as a legal concept would effectively be abolished with grave social, health, legal and other repercussions.

#### **Harmful implications for women and girls**

13. Under the Bill, men who ‘identify as women’, can change their legal sex with little more than some paper and a few strokes of a pen. Women as a sex class are effectively erased along with all the corresponding protections and rights afforded to them on the basis of sex (including single-sex exemptions currently in force under the *Anti-Discrimination Act 1977*). The implications for women and girls cannot be understated.<sup>1</sup>

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<sup>1</sup> See for example, evidence provided by Women’s Forum Australia and Sall Grover to the Legal Affairs and Safety Committee regarding the Queensland parliamentary hearing on the *Births, Deaths and Marriages Registration Bill 2022 (QLD)*: <https://documents.parliament.qld.gov.au/com/LASC-C96E/PPROLAB202-EF1C/Taken%20on%20Notice%20and%20Response.%20Womens%20Forum%20Australia.pdf>

### *Threat to women-only activities, spaces, services and events*

14. The importance of female-only spaces has long been recognised around the world. Yet, the Bill will effectively eradicate female-only spaces, by allowing men to self-identify into female-only activities, spaces, services and events, including bathrooms, changing rooms, fitting rooms, rape and domestic violence refuges, hospital wards, schools, accommodation, gyms, swimming pools, prisons, social apps and even lesbian events (like we've seen in Tasmania).<sup>2</sup>
15. But women's relative physical vulnerability and male patterns of criminality do not dissipate simply because of a piece of paper. Indeed, the UN Special Rapporteur on violence against women and girls recently highlighted the potential for sexual predators to abuse such laws.<sup>3</sup>
16. In addition to research showing that 'transwomen' retain male patterns of criminality,<sup>4</sup> examples of women being harmed by them in (what should be) women-only spaces abound. For example, in Victoria, a biological male rapist who self-identifies as a woman is now housed in a female prison.<sup>5</sup> In Canada, the USA and the United Kingdom, there are several cases where self-identifying transgender prisoners were housed in female prisons only to sexually assault and rape female inmates (you can read our [submission](#) to the United Nations Subcommittee on the Prevention of Torture for more information on the harm posed by biological male inmates to female prisoners and prison staff).<sup>6</sup> In Canada, sexual predators have gained entry into female refuges.<sup>7</sup> And in the United Kingdom, a trans-identifying male patient raped a female patient on a single-sex female hospital ward.<sup>8</sup>
17. This last example from the UK is particularly disturbing. The female patient reported her assault to the police, who were told by the hospital that there had been no male there and so therefore the rape could not have happened. It took almost a year for the hospital to admit that yes, there was a trans-identifying male patient on the ward, and that yes, this rape happened. During that year, the woman was utterly distraught and on the verge of a nervous breakdown for being disbelieved. It is unconscionable that this woman was put in a position where this could happen, and even more unconscionable that it was lied about.

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<sup>2</sup> Matthew Denholm, 'Tribunal bans female-only lesbian events', The Australian, 28 November 2022.

<https://amp.theaustralian.com.au/nation/tribunal-bans-femaleonly-lesbian-events/news-story/4aa6295b32c1b628e90be2d217fa9a85>

<sup>3</sup> Mandate of the Special Rapporteur on violence against women and girls, its causes and consequences, Ref.: OL GBR 14/2022, 29 November 2022.

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=27681>

<sup>4</sup> Dhejne, Cecilia et al. 'Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden.' *PLoS one* vol. 6,2 e16885. 22 Feb. 2011, doi:10.1371/journal.pone.0016885

<sup>5</sup> Mark Buttler and Kieran Rooney, 'Women inmates demand removal of trans prisoner guilty of attacking females while a man', Herald Sun, 11 August 2022. [www.heraldsun.com.au/truecrimeaustralia/police-courts-victoria/prisoners-fight-to-remove-transgender-inmate-with-history-of-sex-offences/news-story/f5bff0dc73ae0ce3af945c04eb38d7b7?amp](http://www.heraldsun.com.au/truecrimeaustralia/police-courts-victoria/prisoners-fight-to-remove-transgender-inmate-with-history-of-sex-offences/news-story/f5bff0dc73ae0ce3af945c04eb38d7b7?amp)

<sup>6</sup> Women's Forum Australia, Joint submission to the United Nations Subcommittee on the Prevention of Torture: Housing men in women's prisons is a human rights violation, 2022.

[https://assets.nationbuilder.com/wfa/pages/476/attachments/original/1666011210/Joint\\_submission\\_by\\_Australia\\_n\\_womens\\_advocates\\_to\\_UN\\_SPT\\_2022.pdf?1666011210](https://assets.nationbuilder.com/wfa/pages/476/attachments/original/1666011210/Joint_submission_by_Australia_n_womens_advocates_to_UN_SPT_2022.pdf?1666011210)

<sup>7</sup> Jennifer Sieland, 'Sex offender identifies as woman to access women's shelter, allegedly raped a female resident', Reduxx, 18 October 2022. <https://reduxx.info/male-sex-offender-identified-as-woman-to-access-womens-shelter-allegedly-raped-a-female-resident/>

<sup>8</sup> Baroness Nicholson, UK Parliament debate on single-sex wards, 2022.

[https://www.facebook.com/WomensForumAustralia/posts/pfbid0kUJiefMusBs7YovTjosC691QjqT8UCksinD82pTne2reQW4QC7JngSeaUzWF9XNel?notif\\_id=1673017764928523&notif\\_t=feedback\\_reaction\\_generic&ref=notif](https://www.facebook.com/WomensForumAustralia/posts/pfbid0kUJiefMusBs7YovTjosC691QjqT8UCksinD82pTne2reQW4QC7JngSeaUzWF9XNel?notif_id=1673017764928523&notif_t=feedback_reaction_generic&ref=notif)

18. All of this is *not* to say that all trans-identified males are rapists. They are clearly not. The reality, however, is that males are much more likely to be the perpetrators of sexual violence and females are far more likely to be victims. This does not change because the male perpetrator happens to be transgender. Gender identities do not rape women, male bodies do. This fact, coupled with females' inherent vulnerability when it comes to their smaller size and strength, is one of the key reasons men should not be allowed to identify into women's single-sex spaces and services, and why such spaces must be based on biological sex, not gender.

*Bill incompatible with efforts to end violence against women*

19. According to a report by the Australian Institute of Health and Welfare 2022, 1 in 6 women experience physical or sexual violence, which is a primary reason women and children leave their homes to seek safety elsewhere.<sup>9</sup>
20. In 2022, the NSW Government endorsed the National Plan to End Violence Against Women and Children 2022-2032. And yet, it is clear that self-ID laws and policies, both in Australia and overseas, have resulted in preventable catastrophic outcomes for women and girls by men who exploit them and are utterly incompatible with efforts to end violence against women and children.
21. Incredibly, the Bill would mean an end to dedicated safe spaces for women and children who are victims of violence. It is not difficult to understand why women who have suffered abuse at the hands of men, may need to access a women-only service for their trauma.
22. The high rates of violence against women and children are our national shame. The NSW Government's efforts should focus on tightening loopholes abused by misogynistic opportunists rather than supporting reckless and irresponsible legislation to assist them further.

*Repercussions for women's sport*

23. As with female-only activities, spaces, services and events, the Bill would remove protections for female-only sports, raising both fairness and safety concerns for female athletes of all levels.
24. NSW sporting bodies currently have the right to exclude trans-identifying men and boys from female competitions under [section 38P\(1\) of the Anti-Discrimination Act 1977 No 48](#), which states:

*"Nothing in this Part renders unlawful the exclusion of a transgender person from participation in any sporting activity for members of the sex with which the transgender person identifies."*<sup>10</sup>

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<sup>9</sup> Australian Institute of Health and Welfare, Specialist homelessness services annual report 2021-22, December 2022. <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/clients-who-have-experienced-family-and-domestic-violence>

<sup>10</sup> Schedule 1[12] of the Bill seeks to amend section 38P(1) of the *Anti-Discrimination Act* and dilute the current protections afforded for female sport under section 38P(1) by, for example, introducing a vague clause about how exclusion must be "reasonable and proportionate in all the circumstances". This could be easily manipulated and interpreted in favour of including trans-identifying males where what is seen as "reasonable" by those in positions of authority is to elevate "inclusion" and "diversity" over fair and safe competition for females. However, given the review of the *Anti-Discrimination Act* which is currently underway in NSW, it is difficult to see how s38P(1) could be amended at this stage.

25. Under [section 38A of the \*Anti-Discrimination Act 1977 No 48\*](#), a ‘transgender person’ is defined as a person who “identifies”, or who “has identified as a member of the opposite sex by living as a member of the opposite sex”, or a person “who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex”.
26. While Greenwich seeks to make amendments to the definition of ‘transgender person’ under section 38A of the *Anti-Discrimination Act* by changing phrases like “opposite sex” to “another sex”, the proposed substitution of Part 5A of the *Births, Deaths and Marriages Registration Act* could result in a much more consequential change.
27. Will those who change their legal sex using the Bill’s simple process still be considered “transgender” for the purpose of the *Anti-Discrimination Act* and its section 38P sporting exemption, or will they simply be considered men or women, boys or girls, males or females? (They would arguably no longer be “identifying” as a member of the “opposite sex” or “another sex”, but would legally be considered that sex.) If the latter, the sporting exemption (either in its current or newly drafted form under the Bill) will not apply to males who change their legal sex under the proposed new law, rendering the section 38P sporting exemption meaningless.
28. In practice, men and boys who identify as women and girls are already competing in female sports such as [women’s football](#), with sporting bodies like Football NSW adopting policies that allow a person to play on the team that aligns with their “gender identity”. As a result, women are self-excluding and [reportedly](#) even being injured by, these larger, stronger, faster, and more aggressive males.
29. The upshot of these changes to the *Births, Deaths and Marriages Registration Act* will be that men and boys who identify as female, will be even more emboldened and protected under the law to join female sporting teams and enter female sporting competitions, enabling them to unfairly take places and awards that rightly belong to women and girls.
30. Moreover, the proposed amendments will erode the few remaining legal protections that could have been relied on by female athletes courageous enough to face the wrath of trans activists and insist on female-only competition.
31. In 2022, Women’s Forum Australia released a comprehensive [research report](#) titled, ‘*A Fair Playing Field: Protecting Women’s Single-Sex Sport*’.<sup>11</sup>
32. Our report explains how allowing biological males who identify as women to compete in female sporting events jeopardises the physical safety of women and girls, fairness in competition, and the full range of opportunities afforded by sport (see full report for references to below points).
33. In events where power, stamina and strength are deciding factors, athletes that have passed through male puberty have a life-long advantage that tilts the playing field very significantly in their favour. Research has shown that male athletes are up to 50% stronger, 30% more powerful, 40% heavier, and about 15% faster than female athletes. Testosterone suppression has minimal impact on decreasing these advantages, despite the fact that this is often used as the qualifying standard for males being able to compete in women’s sports. To appreciate the inherent unfairness of allowing males to compete

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<sup>11</sup> Women’s Forum Australia, *A fair playing field: Protecting women’s single-sex sport*, 2022.  
[https://assets.nationbuilder.com/wfa/pages/261/attachments/original/1656632149/A\\_Fair\\_Playing\\_Field.pdf?1656632149](https://assets.nationbuilder.com/wfa/pages/261/attachments/original/1656632149/A_Fair_Playing_Field.pdf?1656632149)



against females, one only has to look to trans-identifying male athletes like Lia Thomas, who catapulted from #462 in men's swimming to #1 in the female ranks, blitzing female swimming competitors, and taking team spots and awards from them.

34. Allowing biological males to compete against women and girls also elevates the risk to their safety, particularly for contact sports. For example, World Rugby modelling has shown that males competing against women in contact sports can put female athletes at a 20–30% greater risk of being injured. A confronting example of this playing out in reality involves trans MMA fighter Fallon Fox. Fox, who is a biological male, began identifying as a female and started mixed martial arts. He seriously injured his first two opponents, with the first suffering career-ending skull injuries in the course of a fight that only lasted 39 seconds. His second opponent escaped with concussion, seven staples to the head and a broken orbital bone, declaring that she had never felt that kind of strength in a fight or felt so overpowered in her whole life. Neither opponent was made aware that Fox was a biological man. One commentator has aptly noted that in the past, if a man hit a woman so hard that he sent her to the hospital, he'd be in prison. Over the course of an entire professional career, Fox went on to win every competition but one.
35. In addition to fairness and safety issues, allowing male athletes to compete in women's sport limits career progression for young female athletes. Their inclusion means that women and girls who would otherwise have a chance to compete or to excel, miss out, either because a male athlete has taken their spot or their placing. This could put some girls off certain sports entirely, and will lead to lost opportunities when it comes to careers, sponsorship, leadership and more. This can be seen in the US, where in 2019, transgender high school runners Andraya Yearwood and Terry Miller cleaned out the girls' events, between them taking first place in 13 out of 14 girls' events in seven state-level competitions. The same times that would have earned them 1<sup>st</sup> and 2<sup>nd</sup> place in the girls' events would have seen them ranked 120<sup>th</sup> and 195<sup>th</sup> in the boys' events that year.
36. Biological sex differences clearly matter in sport and legislation which ignores them negates the very purpose of establishing a separate female sporting category, namely, to provide a forum in which women and girls enjoy a sporting chance of success.

#### *Impact on data collection*

37. If a man can change his legal sex to a woman and vice versa, this will inevitably impact and effectively falsify crucial data collection informing public policy and services in the areas of health, crime, employment and so on.
38. Accurate, sex-disaggregated data is essential in order to understand differences in the lives of women and men, and in order to combat sexism.<sup>12</sup>

#### **Harmful implications for vulnerable children**

39. In addition to the erosion of sex-based rights for women and girls, the Bill also erodes safeguards for children.
40. As well as allowing any person over 16 to change their legal sex, Schedule 2[5] of the Bill which substitutes a new Part 5A in the *Births, Deaths and Marriages Act 1995 No 62*, would also allow a child under the age of 16 to change their legal sex, either by their own application (s32C) or an application made by their parent(s) or guardian(s) (ss 32D and 32E) to the NSW Civil and Administrative Tribunal (NCAT).

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<sup>12</sup> Fair Play for Women, 'Data on sex is important so it needs to be accurate', 1 May 2021. <https://fairplayforwomen.com/data-on-sex-is-important-so-it-needs-to-be-accurate/>



41. While NCAT must generally give notice to the parent(s) or other person with parental responsibility about a child's application under the new Part 5A, it can choose not to if it determines that "notification could reasonably be expected to adversely affect the young person" (s32CA). The notion "adversely affect" is not defined in the proposed legislation and is easily open to interpretation and indeed manipulation.
42. In addition to pitting children against their parents and allowing them to conceal a change to their legal sex if NCAT determines it is appropriate to do so, the Bill also pits parents against one another by allowing children under 16 to change their registered sex with the permission of one parent only, even if the other objects.
43. Children and adolescents presenting with gender dysphoria often have a history of childhood trauma, family dysfunction, sexual abuse or discomfort with their sexuality, as well as comorbid mental health issues, including anxiety, depression, behaviour disorders and autism.<sup>13</sup> When it comes to women and girls, added to this are the unique pressures they face in the areas of sexual objectification in porn and entertainment, and the more general body image issues resulting from phenomena like social media, eating disorders, and unhealthy interpersonal relationships, which can cause them to hate their bodies and indeed being female.
44. Indeed, we are seeing a huge surge in girls wanting to change their gender. US Journalist Abigail Shrier has written about this in her book *'Irreversible Damage: The Transgender Craze Seducing our Daughters'*, particularly the social contagion aspect, and the influence of social media, youtube, friends, 'gender affirming' health care and so on. Between 2016 and 2017, the number of transgender surgeries for females in the US quadrupled, and in the UK, the number of girls referred for gender reassignment treatment rose by over 4000% percent in the past decade.<sup>14</sup> Similar increases have been observed in Australia as well.
45. Rather than addressing these myriad issues, the legislation will allow vulnerable young people to concretise a transgender identity by legally changing their sex, encouraging them further down a process of 'social transitioning', towards the track of 'medical transitioning', which has been proven to cause serious harm in both the short and long-term.<sup>15</sup>
46. Medical transitioning has not only failed to address the complex social and mental health issues these young people are suffering from, it has often exacerbated them or added new issues. As a result, the number of people (especially young women) who regret their gender reassignment and are seeking to "detransition" is growing.<sup>16</sup> However, the effects of transgender surgery or hormone therapy for many of these detransitioners is tragically irreversible. Women who have had their breasts removed cannot grow them back. Many will be rendered infertile and have to live with atrophied genitals, a loss of sexual function, a permanently changed voice and are at greater risk of osteoporosis and other health conditions.

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<sup>13</sup> See for example: Kasia Kozłowska et al, 'Australian Children and Adolescents with Gender Dysphoria: Clinical Presentations and Challenges Experienced by a Multidisciplinary Team and Gender Service' (2021) 1(1) Human Systems: Therapy, Culture and Attachments, 70.

<sup>14</sup> Abigail Shrier, 'How peer contagion may play into the rise of teen girls transitioning', New York Post, 27 June 2020. <https://nypost.com/2020/06/27/how-peer-contagion-plays-into-the-rise-of-teens-transitioning/>

<sup>15</sup> See for example: Megan Twohey and Christina Jewett, 'Puberty blockers can help transgender youth. Is there a cost?', New York Times, 14 November 2022. <https://www.nytimes.com/2022/11/14/health/puberty-blockers-transgender.html>

<sup>16</sup> See for example female detransitioners: [Keira Bell](#), [Chloe Cole](#), [Jay Langadinos](#), [Helena, Cat, and Grace](#).

47. Internationally, there is a shift from a 'gender affirmation' approach in treating children with gender dysphoria to psychotherapeutic interventions.<sup>17</sup> Allowing children to concretise a transgender identity in law, is at odds with developing approaches that recognise that gender dysphoria is often both transient and the result of underlying social and mental health issues.

#### **Harmful implications for health care**

48. One significant risk that arises from allowing people to change their legal sex to correspond with a gender identity is in the area of health care.
49. Women and men have different health care needs and risks based on their sex, due to for example, hormonal differences, anatomy, and risk factors for certain diseases. For example, only women can get breast or cervical cancer, menstruate, become pregnant, or go through menopause, and thus only women require screening or treatment for such things. Similarly, only men can get prostate or testicular cancer, and so only they need screening or treatment for such conditions.
50. If a transgender person is legally registered as a sex that is not their biological sex, this could impede them from receiving appropriate health care.
51. Similarly, if the result of allowing anyone to legally change their sex means that language used in health care must be de-sexed and made 'gender neutral', this could adversely impact female specific health care like maternity services.

#### **Harmful implications for all NSW residents**

52. As well as the harms posed to women and children, the legislation puts at risk the freedom of speech and conscience of all NSW residents who, for example, may not be comfortable calling a man a woman and treating him as such.
53. The freedom to openly discuss important issues is critical if we are going to ascertain truth, make progress and take into consideration the needs and voices of all those concerned. However, all around the world, people – and especially women – are being harassed and silenced for voicing their concerns about the harmful impact of gender ideology driven laws, policies and practices on women's sex-based rights and the welfare of children. This comes in the form of abuse and ostracisation from peers, online vilification and media pile-ons, loss of employment, censorship, discrimination claims and accusations of hate crimes.
54. What legal and social repercussions will ordinary NSW residents face, if they decide to choose reality, and refuse to acknowledge a person's 'self-identified sex', whether in language or practice?

#### **IV. ALLOWING CHILDREN UNDER 16 TO CONSENT TO MEDICAL TREATMENT WITHOUT PARENTAL CONSENT**

55. Concerns regarding social and medical transitioning of children noted above are further compounded by Schedule 3[2] of the Bill which seeks to amend the *Children and Young Persons (Care and Protection) Act 1998 No 157* to allow a child under 16 to consent to medical treatment without parental consent if a medical practitioner is of the opinion that

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<sup>17</sup> See for example: Society for Evidence Based Gender Medicine, 2022 Year-end summary, 1 January 2023. <https://segm.org/gender-medicine-developments-2022-summary>

“the child is capable of understanding the nature, consequences and risks of the treatment, and the treatment is in the best interests of the child’s health and well-being.”

56. Greenwich makes it clear in his second reading speech that this is to expediate and remove legal barriers to children’s access to “gender-affirming care” like puberty blockers and hormones.
57. In light of what is rapidly unfolding on the international stage, where the UK and other jurisdictions are shifting away from the ‘gender affirmation model’ of care,<sup>18</sup> it is critical that more protections are implemented for gender-confused children, rather than taking away the few that that currently exist.

## **V. COMPELLING FEMALE OFFICERS TO SEARCH MEN**

58. Schedules 5, 7, 15 and 17 of the Bill contain amendments to various Acts dealing with searches to be carried out by security officers, correctional officers, police officers and sheriff’s officers, respectively.
59. Each amendment provides that “a search conducted by [an officer] of any intersex person or transgender person under [the relevant Act], if the person expresses a preference for a particular [officer] or [an officer] of a particular class, the search must be conducted by the particular [officer] or [an officer] of the particular class, if reasonably available” (or “if practicable” in Schedule 7).
60. The upshot of this, is that a trans-identified male (i.e. a man who identifies as a woman) could request that a female officer undertakes his search, and possibly even a particular female officer.
61. First, female officers should not be forced to undertake searches of men. To force them to do so could constitute a form of workplace sexual harassment. Second, it is not difficult to see how such a provision could be open to abuse in terms of men who want to intimidate women (even a particular woman) or make them feel uncomfortable.

## **VI. PENALISING THOSE WHO SPEAK OUT ABOUT MEN WHO IDENTIFY AS WOMEN**

62. Schedule 8 of the Bill amends the *Crimes (Domestic and Personal Violence) Act 2007* to include disclosing a person’s gender history as domestic abuse. It allows an apprehended domestic violence order or apprehended personal violence order (AVO) to be issued to prevent the disclosure of a person’s gender history.
63. It is a crime in NSW to disobey an AVO, with the penalty being two years imprisonment and/or a \$5,500 fine.
64. The proposed amendments in Schedule 8 could result in women who raise concerns about trans-identified males in female-only sports, spaces and services, being issued an AVO, and imprisoned and/or fined if they don’t comply. It could also have a chilling effect on women speaking about their sex-based needs and rights.

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<sup>18</sup> For example, in the past month alone: The NHS recently made the [landmark decision to ban puberty blockers](#) for children at gender clinics in the UK because “there is not enough evidence to support [their] safety or clinical effectiveness”. We witnessed the [bombshell leak of the WPATH files](#), which contain highly disturbing messages among doctors from a supposed leading authority on transgender health privately acknowledging the harmful impact of ‘gender affirming’ practices on children, including sterilisation, loss of sexual function, and cancer. And the landmark NHS [Cass Review](#) was released, showing there is no good evidence for medically transitioning gender-confused children.

## VII. DE-SEXING NSW LAWS

65. Schedule 14 of the Bill amends the *Interpretation Act 1987* to make all references to sex-based language in NSW laws, gender neutral.
66. We are concerned that a broad-brush approach to de-sexing all NSW laws has not been properly thought out in terms of its possible ramifications.

## VIII. FURTHER DEREGULATED PROSTITUTION

67. NSW already has some of the most liberalised prostitution laws in Australia.
68. Decriminalisation of prostitution in NSW began in 1979 when criminal offences involving doing street-based prostitution were repealed. In 1995 most types of prostitution were decriminalised. However, the *Summary Offences Act* and the *Crimes Act 1900* still contain some offences relating to prostitution.
69. In his second reading speech on the Bill, Greenwich notes:

*“there remain in the Summary Offences Act outdated offences that still criminalise some sex workers, add to stigma and discrimination, and are unnecessary...Maintaining offences is inconsistent with the decriminalised framework. Decriminalisation keeps sex workers and the community safe, preventing STI transmission and ensuring good relationships between sex workers and police. My bill will repeal all summary offences.”*

70. Schedule 18 of the Bill removes [‘Part 3 Prostitution’ in the Summary Offences Act 1988](#), removing the bulk of remaining offences/restrictions, and for all intents and purposes, fully deregulating the prostitution industry, and removing protections for prostituted persons (the majority of whom are women), as well as for the wider community.
71. For example, under the Bill, it will no longer be an offence to:
  - Live on the earnings of prostitution of another person (this does not include brothel owners/managers/employees who are already exempt from this provision) (s15, Summary Offences Act 1988). This removes protections against family members (i.e. abusive partners, fathers or sons) pimping out their wives, girlfriends, daughters or mothers.
  - Use coercive conduct or undue influence to induce or cause a person to engage in prostitution or to surrender any proceeds from prostitution (s15A, Summary Offences Act 1988). The removal of this provision is particularly concerning given the coercion and violence inherent in the prostitution industry.
  - Engage in prostitution or solicit for prostitution (or as an owner/occupier/manager allow this to happen) in premises represented as available for specific purposes, such as massage, sauna baths, steam baths, facilities for physical exercise, photography, or related services (ss 16 and 17, Summary Offences Act 1988).
  - Advertise for prostitution i.e. advertise that employment for a prostitute is available (s18A, Summary Offences Act 1988).
  - Buy or sell sex (solicit another person for the purpose of prostitution as a prostitute or a client) near or in schools, churches, and hospitals (ss 19 and 19A, Summary Offences Act 1988).
72. The only offences not removed by the Bill are found in the *Crimes Act 1900*, and relate to those outside the industry ([‘Division 14A Procuring for prostitution’](#)) and those unable to legally consent to working in the industry ([‘Division 15 Child Prostitution’](#)).

73. Given how grossly under-regulated the prostitution industry currently is in NSW,<sup>19</sup> coupled with the sex trafficking and organised crime that is rife within the industry, Greenwich's proposal to further deregulate the industry shows a reckless disregard for vulnerable women.

### **Prostitution is inherently unsafe and exploitative**

74. Greenwich's move to further decriminalise/deregulate the prostitution industry also ignores the inherently harmful, degrading, exploitative nature of prostitution itself.
75. Prostitution is the commodification of (mostly) women's bodies by (mostly) men. In addition to the lived experience of prostitutes, this is confirmed by the sex buyers themselves: "Being with a prostitute is like having a cup of coffee – once you're done with it, you throw it out"; "If I am satisfied with what I am buying, then why should I be violent? I will be violent when I am cheated, when I am offered a substandard service"; prostitution is "renting an organ for ten minutes".<sup>20</sup>
76. Many of these prostituted women come from vulnerable backgrounds and enter prostitution as a result of childhood abuse, poverty, grooming or coercion rather than as a free choice.
77. Once inside the industry, they are subject to all manner of violence and indignities by both the men who purchase them and the men who sell them, often turning to drugs and alcohol in order to endure it.
78. A study of prostitution and trafficking in nine countries found that "for the vast majority of the world's prostituted women, prostitution and trafficking are experiences of being hunted down, dominated, sexually harassed and assaulted." A Canadian woman told the researchers, "What rape is to others, is normal to us."<sup>21</sup>
79. The same study found that prostitution was multi-traumatic: 71 per cent were physically assaulted in prostitution; 63 per cent were raped; 89 per cent of these respondents wanted to escape prostitution, but did not have other options for survival. A total of 75 per cent had been homeless at some point in their lives; 68 per cent met criteria for PTSD.
80. Women in prostitution have the highest rates of rape and homicide of any group of women ever studied. According to one study, prostituted women are 18 times more likely to be murdered than other women.<sup>22</sup>
81. Greenwich's approach to prostitution is predicated on the flawed notion that prostitution is just "like any other job" and that removing all legal restrictions on the practice will somehow make it "safe". The reality however, is that prostitution is nothing "like any

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<sup>19</sup> Legislative Assembly of NSW, Select Committee on the Regulation of Brothels, 'Inquiry into the Regulation of Brothels', November 2015, <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>

<sup>20</sup> Rachael Wong, Coronavirus and the double danger to sex workers, <https://www.spectator.com.au/2020/04/coronavirus-and-the-double-danger-to-sex-workers/>. Many worse quotes can be found here: Collective Shout, Men who buy sex: in their own words, [https://www.collectiveshout.org/in\\_their\\_own\\_words](https://www.collectiveshout.org/in_their_own_words).

<sup>21</sup> Melissa Farley et al, Prostitution and Trafficking in Nine Countries, [https://www.tandfonline.com/doi/pdf/10.1300/J189v02n03\\_03?casa\\_token=9ZWxi\\_FMrV8AAAAA:ohq7W91yDdlL6iOXqywFMwV2bL9lnW3tHNUJ-vd8sP0kTxFa\\_n6yGAof93wztfzFC8eGOM4hRnl\\_g](https://www.tandfonline.com/doi/pdf/10.1300/J189v02n03_03?casa_token=9ZWxi_FMrV8AAAAA:ohq7W91yDdlL6iOXqywFMwV2bL9lnW3tHNUJ-vd8sP0kTxFa_n6yGAof93wztfzFC8eGOM4hRnl_g).

<sup>22</sup> Stewart Cunningham et al, Sex Work and Occupational Homicide: Analysis of a U.K. Murder Database, [https://researchonline.lshtm.ac.uk/id/eprint/4647626/1/Sex%20Work\\_GOLD%20VoR.pdf](https://researchonline.lshtm.ac.uk/id/eprint/4647626/1/Sex%20Work_GOLD%20VoR.pdf).

other job". It is an inherently exploitative, violent, dehumanising industry, that by its very nature can never be made "safe".

### **Decriminalisation/deregulation has not improved things for women**

82. Greenwich's proposed further deregulation of the industry is also taking place in a context where it has been shown that [decriminalisation/deregulation harms, rather than helps, prostituted women](#).
83. It is clear from jurisdictions that have decriminalised prostitution, that doing so does very little to improve the working conditions of women caught up in the industry, including reducing stigma, harm and violence associated with the trade.<sup>23</sup>
84. As Tegan Larin, public officer for the Coalition Against Trafficking in Women Australia, explains:<sup>24</sup>

*"Exploitation and violence persist despite full decriminalisation because prostitution is inherently harmful, violent and exploitative.*

*Full decriminalisation is not only inadequate in minimising harms, it exacerbates them. Legitimising sex buying through decriminalisation bolsters the idea that men are entitled to sexual access at all times and that a group of women should always be able to provide it.*

*Proponents of full decriminalisation frame prostitution as an issue of women's choice, however, this is a red herring – women enter the industry out of lack of options to survive economically – what we should be scrutinising is men's choice to buy sex from women who they know would not otherwise consent to sex with them."*

85. An inquiry to find whether decriminalisation of prostitution in New South Wales had had the intended effect of reducing crime found that the opposite was true.<sup>25</sup> One police officer investigating legal Sydney brothels linked to sex trafficking and organised crime noted that because of decriminalisation "police were cut out of the equation and crime infiltrated the brothel and massage parlour industry" while "pimps and brother operators were empowered and enriched."<sup>26</sup>
86. A 2019 report on the experiences of migrant women involved in the sex trade in New South Wales found that, despite the fact prostitution is regulated like any other work in the state:<sup>27</sup>

*"One in four workers said they are never able to choose their clients, while 42 per cent reported having encountered violent or difficult clients.*

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<sup>23</sup> See our [submission to the QLRC](#) for information from other jurisdictions that have followed the decriminalised model of prostitution.

<sup>24</sup> Tegan Larin, Decriminalising sex work fails, it's time for an alternative approach, <https://www.theage.com.au/national/victoria/decriminalising-sex-work-fails-it-s-time-for-an-alternative-approach-20210630-p585hc.html>.

<sup>25</sup> "Inquiry into the Regulation of Brothels Report", Select Committee on the Regulation of Brothels, Report 1/56, November 2015, Legislative Assembly of New South Wales, <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>.

<sup>26</sup> Ibid.

<sup>27</sup> BaptistCare, Women's Services Research Report: Working with Migrant Sex Workers in Sydney's Lower End Brothels, <https://baptistcare.org.au/womens-services-research-report>.



*“At the same time, 50 per cent of the women said they sometimes felt safe at work; 36 per cent of sex workers surveyed always felt safe.*

*“About one in four workers were provided condoms by employers, despite it being a WorkCover requirement, while only two thirds used condoms with clients all the time.”*

87. As Larin argues:<sup>28</sup>

*“Examples of the recent alleged rape of a sex worker by a NSW member of Parliament (who has not been charged), as well as the horrific murder of Sydney-based sex worker Michaela Dunn in 2019, demonstrate that unacceptable levels of violence persist in NSW, where decriminalisation has been in place since 1995.”*

*“Full decriminalisation legitimises, normalises and expands the sex trade, increasing profits for pimps and traffickers. Unfortunately for workers, more than 25 years of decriminalisation in NSW has failed to rid the industry of labour and sexual exploitation.”*

88. Ultimately the decriminalisation/deregulation of prostitution has been unable to protect women and girls or reduce the abuses associated with prohibition because of the harmful and exploitative nature of prostitution itself.

### **The Nordic Model or Abolitionist Model**

89. We agree that prostituted persons need to be better protected and supported, but further decriminalisation/deregulation is not the answer. In fact, progressive countries are trying to combat, rather than foster, this abhorrent form of sexual exploitation and violent commodification of women’s bodies.

90. Indeed, [South Australia](#) has recently introduced a truly progressive, pro-woman prostitution law reform bill based on the highly effective Nordic Model, which recognises the inherently exploitative and violent nature of prostitution and seeks to help women trapped in the industry.

91. Acknowledging that most buyers are men and the majority of prostituted persons are women, the Nordic Model recognises that the existence of prostitution is rooted in inequality, that it violently commodifies women and that by its very nature, can never be made “safe”. It is also called the Abolitionist Model because unlike the decriminalisation approach, it doesn’t accept that the sexual exploitation of women through prostitution is inevitable. Prioritising equality over the commercial interests of the sex industry, liberal countries such as Sweden, Denmark, France and Canada have embraced this model.

92. Pioneered in Sweden in 1999, the Nordic model presents a practical, holistic, women-centred approach to prostitution. Its two key goals are to reduce the demand for prostitution and promote equality between women and men. The model addresses the demand for prostitution by penalising the buyers and pimps who exploit women, while decriminalising prostituted persons. It works to reduce the size of the industry and to minimise the harms suffered by its victims, to contradict the damaging messages it sends to women and girls, to fund exit services to help people to leave the industry, and to retrain police officers so they understand that prostituted women are victims, not criminals. In the decade and a half after it was first implemented, the level of street

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<sup>28</sup> Larin, Decriminalising sex work fails, it’s time for an alternative approach.



prostitution was halved in Sweden<sup>29</sup> and trafficking declined dramatically.<sup>30</sup> In addition to reducing the numbers of women in prostitution, the model also “challenges the culture of acceptability when it comes to men paying for sex”.<sup>31</sup> Indeed, Bindel notes that in Sweden, “a whole generation has grown up recognising that prostitution is a human rights violation, and no man has the right to pay for sex”.<sup>32</sup>

93. As well as helping women directly involved in the sex industry, the Nordic model has the desirable effect of contradicting the toxic message promoted in both pornography and prostitution that the sexual objectification of women and girls is either normal or acceptable. Recent revelations about sexual harassment endured by women and girls in mainstream culture have put sex-based inequality squarely in the spotlight of the national conversation. Those who have studied these issues fully recognise that these changes in culture are driven in large part by the proliferation of pornography, which enjoys a symbiotic relationship with prostitution; pornography broadcasts the degrading messages of prostitution to a mainstream audience.<sup>33</sup>
94. While women directly involved in the sex industry bear the brunt of the harms caused, the indirect effects of an industry that glamorises abusive behaviours and the sexual subordination of women are felt by women and girls everywhere. Promoting prostitution as acceptable for some women sends a terrible message to all women that the government does not consider sexual exploitation of women and girls to be an outrage. It is counterproductive to the message that men should respect women and don't have a right to women's bodies. Women will never be treated equally while also treated as commodities to be bought and sold by men. Continuing to perpetuate the narrative that women's bodies are for sale, that they are fair game for all kinds of unspeakable violence and abuse, and that prostitution is just a job like any other, feeds the degradation and objectification of women as a whole.
95. If there is to be any reform of the prostitution industry in NSW, it should be the introduction of the Nordic Model.

## **IX. OVERSEAS COMMERCIAL SURROGACY**

96. In NSW, commercial surrogacy arrangements are currently prohibited under the *Surrogacy Act 2010 No 102*. The Bill intends to remove bans on overseas commercial surrogacy.
97. Schedule 19[2] of the Bill removes [section 11 'Geographical nexus for offences'](#) of the *Surrogacy Act 2010 No 102*, which as explained on page 10 of the [Explanatory Note to the Bill](#), means that “a person who is ordinarily a resident or domiciled in New South Wales does not commit an offence if the commercial surrogacy arrangement occurs outside New South Wales.”

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<sup>29</sup> “Selected extracts of the Swedish Government Report SOU 2010:49: The Ban Against the Purchase of Sexual Services. An Evaluation 1999-2008”, Swedish Institute, November 2010, p. 20, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the\\_ban\\_against\\_the\\_purchase\\_of\\_sexual\\_services\\_an\\_evaluation\\_1999-2008\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_ban_against_the_purchase_of_sexual_services_an_evaluation_1999-2008_1.pdf).

<sup>30</sup> Von André Anwar, Prostitution Ban Huge Success in Sweden, <https://www.spiegel.de/international/europe/criminalizing-the-customers-prostitution-ban-huge-success-in-sweden-a-516030.html>.

<sup>31</sup> Julie Bindel, Don't believe what the lobbyists say – prostitution can – and will – be abolished, <https://www.independent.co.uk/voices/prostitution-abolition-nordic-model-pimps-punters-sex-trade-survivors-a7937786.html>.

<sup>32</sup> Julie Bindel, The pimps next door, <https://thecritic.co.uk/the-pimps-next-door/>.

<sup>33</sup> Melissa Farley et al, Comparing Sex Buyers with Men Who Don't Buy Sex, <http://www.prostitutionresearch.com/pdfs/Farleyetal2011ComparingSexBuyers.pdf>.

98. Schedule 19[4] of the Bill further removes the requirement under [section 23\(2\)](#) of the *Surrogacy Act 2010 No 102*, that a surrogacy arrangement must be altruistic as a precondition for a parentage order.
99. The combined result of these two amendments is that the Bill removes bans on commercial surrogacy arrangements if they take place outside NSW, which will legalise commercial surrogacy undertaken by NSW residents overseas, encouraging the exploitation and commodification of vulnerable women – particularly those from poor countries and disadvantaged backgrounds – as wombs for rent and children as products for sale (this is explained on the landing page for our petition which our social media content is linked to).
100. The Bill attempts to circumvent the federal ban on commercial surrogacy within Australia, and the [Federal Parliament's finding](#) that “even with the best of regulatory intentions, there is still significant potential for the exploitation of surrogates and children to occur.”<sup>34</sup>
101. This modern-day form of human trafficking is condemned globally by women’s, children’s, and human rights defenders, as an affront to the human rights and dignity of women and children.<sup>35</sup> The [recent scandal](#) concerning a leading surrogacy clinic in Greece, from which numerous Australians have commissioned babies, and which was raided over allegations of human trafficking and fraud, provides a tragic and timely reminder of this.

## **X. CONCLUSION**

102. The “Equality” Bill has been introduced under the guise of “equality” and child welfare. However, these regressive reforms endanger, discriminate against, and/or commodify and exploit women and children, and in some cases, put at risk the rights and freedoms of NSW citizens. They are out of step with community expectations, as well as evolving research and developments taking place overseas.
103. For the reasons noted above, we are strongly opposed to this Bill and submit that it should be rejected in its entirety. NSW women, children and the broader community deserve better than these dystopian reforms.

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<sup>34</sup> Read more about the harms of surrogacy to women and children:

<https://www.womensforaustralia.org/tags/Surrogacy>

<sup>35</sup> Stephanie Bastiaan, ‘The shameful trade of women and children: Why there’s no place for Alex Greenwich’s regressive surrogacy reforms in NSW’, *The Spectator*, 6 February 2024,

<https://www.spectator.com.au/2024/02/the-shameful-trade-of-women-and-children-why-theres-no-place-for-alex-greenwichs-regressive-surrogacy-reforms-in-nsw/>; Renate Klein, ‘Allowing NSW residents to buy babies overseas will exploit the most vulnerable’, *Daily Telegraph*, 8 February 2024, [https://www.womensforaustralia.org/allowing\\_nsw\\_residents\\_to\\_buy\\_babies\\_overseas\\_will\\_exploit\\_the\\_most\\_vulnerable](https://www.womensforaustralia.org/allowing_nsw_residents_to_buy_babies_overseas_will_exploit_the_most_vulnerable)