

**Submission
No 34**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Plunkett Centre for Ethics

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Plunkett Centre for Ethics

A centre of Australian Catholic University

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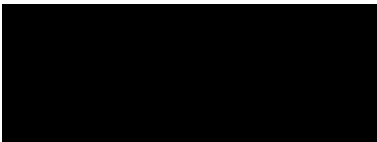
The Committee on Community Services
NSW Parliament
Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill
communityservices@parliament.nsw.gov.au

Dear Secretary

Please find below a submission on behalf of the Plunkett Centre for Ethics.

The goal of the Centre is to promote the values of compassion and fellowship, intellectual and professional excellence, and fairness and justice. Its primary focus is on the realisation of these values in the provision and allocation of health care. The Centre expresses this commitment through research, teaching and community engagement, as these are informed by the Catholic tradition.

With best wishes



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1. General remarks

- 1.1. Any proposal in this Bill (to amend an existing Act) which has the effect of conflating sex (a matter of biology) with gender (understood as how an individual thinks about ('identifies') himself or herself) should be rejected. See for example the proposed amendments to the *Interpretation Act 1987*.
- 1.2. Any proposal in this Bill which would amend the *Anti-Discrimination Act 1977* prior to the completion of two current reviews (see below) should be rejected.
- 1.3. Any proposal in the Bill which would have the effect of limiting or weakening parental authority to accept or reject medical treatment *deemed by a medical practitioner* to be potentially beneficial for a child or young person should be rejected.
- 1.4. Any proposal in the Bill which would have the effect of widening the scope of lawful surrogacy arrangements should be rejected.

2. Proposed Amendments to the *Anti-Discrimination Act 1977*:

- 2.1. There are two inquiries currently being undertaken by the NSW Law Reform Commission: the Anti-Discrimination Act Review and the review of Section 93Z of the Crimes Act re serious racial and religious vilification. It would be unreasonable, inappropriate and undemocratic if this Bill were to be considered by Parliament in advance of its careful consideration of the findings and recommendations emanating out of these two inquiries. The proposed amendments to this Act should be rejected in its entirety on those grounds.

3. Proposed Amendments to the *Births, Deaths and Marriages Registration Act 1995*:

- 3.1. These provisions conflate (and so confuse) biological sex (a matter which can be objectively determined) with gender (understood as referring to an individual's own sense of his or her identity (which can change)).¹
- 3.2. In some contexts it matters little how individual men and women choose to identify themselves. In other contexts, it matters greatly. So, for example, biological men, however they identify, should not be housed in women's prisons, nor free to use 'women only' toilets, nor free to participate in women-only sports. That is to say; there are spaces and activities which should be available as single-sex only. In addition, biological sex is an important variable in much of healthcare. It is known that

¹ 'Gender' is a noun which is used in at least the following three senses; (a) interchangeably with biological sex, (b) as referring to one's own individual sense of one's identity (which can change); (c) as referring to the social or cultural norms or stereotypes about men and women in a particular society at a particular time. It follows from sense (b) that a man can 'identify' as a woman, a woman as a man, or either man or woman can identify as something other than a man or a woman.

there are treatment-related sex differences in the nervous system, the immune system, the cardiovascular system.

- 3.3. Were this amendment to be adopted, it would not be possible for there to be single-sex places and activities, nor for healthcare to reflect differences in biological sex when that is important for diagnostic, prognostic and treatment purposes. (If desired, an optional extra could be included in registration certificates to indicate the person's chosen 'gender identity'.)
- 3.4. The proposal to change provisions in Schedule 2, [1], [4] and [5] should therefore be entirely rejected.
- 3.5. Proposed changes to Schedule 2, to extend the time for registering the birth of a child whose sex is difficult to determine, [2]and [3] seem reasonable.

4. Proposed changes to the *Children and Young Persons (Care and Protection) Act 1998*:

4.1. Re Schedule 3.[1]:

- 4.1.1. When decisions are being made about a child's medical care, it is appropriate that, if the child has an 'intersex condition', doctors be required to take that into consideration in their decisions.
- 4.1.2. When decisions are being made about a child's medical care, it is not appropriate that an Act requires doctors to take into consideration a child's 'gender identity'. Of course, a good doctor will be sensitive to all relevant aspects of a child's psychology (including their sense of their own identity). But requiring doctors to take 'gender identity' into account is likely to be (mis)understood as a prompt towards normalizing so-called 'gender affirmation' treatment. No research shows such treatment to be beneficial for children.

4.2. Re Schedule 3.[2]:

- 4.2.1. The new section 174A (1) should be rejected, particularly in the light of the revelations that the effects of even puberty blockers turn out not to be reversible.
- 4.2.2. The new section 174A(2) should be rejected. Parents have responsibility for the healthcare received by children and young people. Doctors should not be free to assess a young person's comprehension of a treatment, its likely effects and risks, and thus prescribe and deliver treatment without parental consent.

5. Proposed changes to the *Surrogacy Act 2010*:

- 5.1. In 2018, a Departmental Review into the law on surrogacy recommended that the law not be changed to permit commercial surrogacy. As the amendments proposed seem designed to go some way towards facilitating the legalization of that practice, they should be rejected. Surrogacy is an injustice to the to-be-born child (who is entitled (as far as is possible) to be born to and cared for by his or her biological parents) and it exploits less affluent women in order to benefit more affluent women.