

**Submission
No 57**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: NSW Nurses and Midwives' Association

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Submission to the Legislative Assembly Committee on Community Services Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023

APRIL 2024



NSW NURSES AND MIDWIVES' ASSOCIATION

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Foreword

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes: registered nurses; enrolled nurses and midwives at all levels including management and education, assistants in nursing and midwifery and care workers.

The NSWNMA has over 77 000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

NSWNMA strives to be innovative in our advocacy to promote a world class, well-funded, integrated health system by being a professional advocate for the health system and our members. We are committed to improving standards of patient care and the quality of services of all health and aged care services whilst protecting and advancing the interests of nurses and midwives and their professions.

As we have a strong established position on issues of social justice, we welcome the opportunity to provide a submission to this Inquiry.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

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The New South Wales Nurses and Midwives' Association (NSWNMA) actively pursues our members' rights and supports member empowerment to influence decision makers for a fair and just society, holding advocacy as one of our central tenets. The union movement continues to actively support measures to eliminate discrimination, inclusive of supporting and promoting any legislation with this aim.¹ It is the policy of the NSWNMA to advocate for workplaces that are free from direct and indirect discrimination and harassment.

Nurses and midwives in NSW exercise their right to a voice on professional and industrial issues through the NSWNMA. It is through the collective voice of our members that we develop policies and positions that have guided our response to the below terms of reference to this inquiry.

1. The provisions of the Bill.

The Equality Legislation Amendment (LGBTIQA+) Bill 2023 (the Bill) seeks to extend existing protections and limit current exemptions on religious grounds against discrimination for people who identify as sexuality, sex and gender diverse (SSGD). The provisions of the Bill are supported by the NSWNMA and are consistent with our Policy on Discrimination in Employment² and the Australian Nursing and Midwifery Federation's [position statement on people identifying as SSGD](#).

People who identify as SSGD continue to face discrimination in health settings, have higher rates of suicidality, mental illness, substance use disorders, are more likely to face homelessness and experience higher rates of physical and non-physical abuse in comparison to non-SSGD people.³ Adverse health and social outcomes experienced by LGBTIQ+ and sex and gender diverse people are directly related to stigma, prejudice, discrimination and abuse experienced by this community.

Currently, LGBTIQ+ people may be lawfully discriminated against by some faith-based employers based on their sexual orientation, gender identity and intersex status. Equally, LGBTIQ+ people accessing services may face discrimination from services provided by faith-based organisations or individuals.⁴ This impact is more acutely felt by the approximately 30% of LGBTIQ+ people who reside outside of major metropolitan areas and may not have a diverse choice of local service providers near to where they reside.⁵ This has impacts on the health, wellbeing, and economic prosperity at all stages of life for LGBTIQA+ people. Increasing

¹ NSWNMA 2022. Policy on Discrimination in Employment <https://www.nswnma.asn.au/wp-content/uploads/2023/08/Policy-on-Discrimination-in-Employment.pdf>

² Ibid.

³ Australian Human Rights Commission 2014. Face the Facts: Lesbian, gay, bisexual, trans and intersex people. https://humanrights.gov.au/sites/default/files/7_FTF_2014_LGBTI.pdf

⁴ LGBTIQ+ Health Australia, Australian College of Applied Psychology, 2021 National Palliative Care Survey.

⁵ Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. 2020. Private Lives 3: The health and wellbeing of LGBTIQ people in Australia. ARCSHS monograph series number 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University



protections against discrimination for LGBTIQ+ people will result in greater equity in employment and economic opportunity, and safer access to health and care services.

The 'Legislation Review Digest Summary of Conclusions' notes that the Bill seeks to narrow exemptions available to religious bodies and questions '...whether this is beyond the extent that is 'necessary to protect public safety, order, health, or morals'' and that it may '... interfere with the rights of parents or guardians to determine the religious or moral education of their children.'⁶ There is no legitimate basis for this concern. Appropriate legal protections exist to preserve the right of freedom of association and to exercise religious freedom. While acknowledging this concern, it must be noted that there are many prominent examples throughout history where discrimination against people has been endorsed based on religious belief and interpretations of religious texts. When these discriminatory practises have been disproven or eliminated it has not resulted in infringing on the right of people to practise their religion or hold their personal beliefs.

Legislative protection from discrimination for LGBTQIA+ people in all types of employment is a fundamental step towards informing and shifting community attitudes towards LGBTQIA+ people in a way that will reduce harm arising from discrimination. It further allows for community and social expectations and mores to be established and strengthened to build respectful relationships between the broad diversity of people in contemporary Australian society.

2. Operational issues for government agencies raised by the Bill.

The presence of a diversity and inclusion standard in the Bill has the intent of strengthening the representation of LGBTIQ+ people within government workplaces. Ultimately this is a matter that would need to be considered by and spoken to by government agencies themselves. It is noted that the 'Legislation Review Digest Summary of Conclusions' that as the wording in the Bill stands, it would

'... create mandatory requirements for all public sector agencies, regardless of their size or structure, and it is unclear whether agencies can seek exemptions or flexible application of this Standard.'⁷

This interpretation by the Legislation Review Committee suggests a lack of clarity around the proposed amendment to Section 63 of the Government Sector Employment Act 2013. While supportive of improving representation and participation of all LGBTIQ+ people in the government workforce, it is necessary to highlight that it may not be achievable to implement in publicly operated health and care facilities across NSW.

It is evident that the Bill has good intent regarding reducing barriers to workforce participation of LGBTIQ+ people and increasing diversity⁸. This proposed amendment may present unintended consequences. For example, it is always the right of the individual to disclose or not disclose their SSGD status. It is important that any standard created under the proposed section does

⁶ Parliament of New South Wales 2023. Legislation Review Digest No. 3/58 pp.14-18

⁷ Ibid.

⁸ Parliament of New South Wales 2024. Equality Legislation Amendment (LGBTIQ+) Bill 2023 and the Conversion Practices Prohibition Bill 2023 Second Reading Speech <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-134163'>

not give any implied authority for an employer to seek to collect information about a person's sexuality, sex characteristics or gender identity.

It is necessary to be cognisant of the fact that people who identify as LGBTIQ+ have the right to live and work where they feel supported and safe. This may require additional supports for LGBTIQ+ people to safely live and work in communities and workplaces where there are identified increased risks of discrimination and limited targeted services.

3. Additional ways of improving the safety and wellbeing of the LGBTIQ+ community.

The proposed legislative amendments and any other legislative actions that strengthen legal protections for people identifying as LGBTIQ+ are paramount in improving the safety and wellbeing of the LGBTIQ+ community. Legislation that seeks to narrow or eliminate the ability of organisations or individuals to discriminate against any LGBTIQ+ person will lead to genuine reductions in disadvantage and will build trust and understanding amongst all members of society. Secondary to this legislation, research-evidence based actions can be taken to de-stigmatise and normalise people who identify as LGBTIQ+ in all aspects of society.

With the passing of these legislative amendments, some additional ways of improving safety and wellbeing of the LGBTIQ+ community may include:

- Modernising language in government documents, policies and legislation to replace gendered language with inclusive and de-stigmatised language.
- The use of positive imagery in all aspects of government services, materials and marketing that depicts people who are sexuality, sex and gender diverse. This serves the dual purpose of normalising the presence of SSGD people and relationships within communities and providing SSGD people with a sense of belonging and safety when interacting with government and publicly funded services.
- Education and public awareness around the legislation to make clear, in plain language, what does and does not constitute discrimination and how to act if discrimination occurs. This should be created to target diverse communities to ensure that all people are provided with the knowledge to eliminate, act on and protect against discrimination against people identifying as LGBTIQ+.



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