

**Submission
No 63**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

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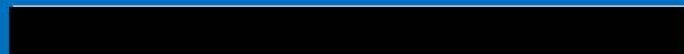
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EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL

COMMITTEE ON COMMUNITY SERVICES

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EXECUTIVE SUMMARY

The proposed NSW Equality Bill (LGBTIQIA+) Legislation Amendment Bill seeks to make sweeping changes across various NSW legislative frameworks, ostensibly to enhance protections and inclusivity for the LGBTIQIA+ community. However, these amendments raise substantial concerns regarding their impact on biological sex recognition, the safeguarding of children, the protection of women's rights, and consent.

The amendments propose significant shifts from established legal norms that prioritise biological sex - a critical component for ensuring fairness, safety, and privacy. By attempting to supplant biological sex with concepts of gender and gender identity—which are inherently subjective and unverifiable—the bill risks eroding the very fabric of legal protections designed to safeguard the most vulnerable members of society. This erosion will manifest not only in the diminution of women's spaces and rights but also in the compromise of child safety and the integrity of the family unit.

Furthermore, the bill's approach, by focusing heavily on self-identification and the internal perception of gender, overlooks the practical, medical, and societal implications of such a policy shift. It neglects the necessary balance that must be maintained in legislation between individual rights and societal needs, potentially leading to unintended consequences that could harm the very groups it purports to protect.

The NSW Equality (LGBTIQIA+) Legislation Amendment Bill presents a paradoxical challenge, wherein it ostensibly aims to enhance protections and inclusivity for the LGBTIQIA+ community but, simultaneously, it risks undermining and eroding the established rights of other historically marginalised groups; women, children and LGB. By advancing the rights of one marginalised class (TIQIA+) at the expense of other marginalised classes, the bill inadvertently enshrines a form of discrimination against women, girls and LGB into NSW law. This contradiction highlights a significant oversight in the bill's approach: while seeking to achieve equality for gender identity minorities, it fails to acknowledge or address the consequent regression in women's rights. Such an outcome not only contradicts the essential principles of fairness and equality enshrined in law but also embeds

systemic discrimination against women, setting back decades of progress in women's rights and equality. This inherent conflict within the bill necessitates a rigorous, common sense review and critical re-evaluation to ensure that advancing the rights of one community does not come at the unjust expense of others.

This submission aims to provide a detailed examination of each schedule, critically evaluating the proposed changes and offering specific recommendations to ensure that any legislative amendments preserve the necessary protections based on biological realities, uphold the rights to privacy and safety, and maintain the integrity of the law in representing and protecting all NSW citizens equitably.

The Committee has an obligation to seriously consider – in good faith - the concerns expressed by all community stakeholders. The Committee has an obligation not to summarily dismiss serious community concerns as mere “moral panic” or an unsubstantiated “culture war”. The emotional blackmail often deployed and weaponised to advance the rights of “gender identity” advocates must stop. **Trans rights are human rights, women’s rights are human rights, children’s rights are human rights, and LGB rights are human rights.**

*** Given the short timeframe in which to draft this submission, references have been omitted, but can be supplied upon request.

OVERVIEW OF SCHEDULES

Schedule 1: Anti-Discrimination Act 1977

Amendments propose removing sex-based protections in sports, allowing self-identified gender identity to dictate participation, compromising fairness and safety in female sports.

Schedule 2: Births, Deaths, and Marriages Registration Act 1995

Simplified self-declaration of legal sex undermines the authenticity of public records and erodes sex-based protections, entrenching discrimination against females and LGB in NSW law.

Schedule 3: Children and Young Persons (Care and Protection) Act 1998

The lowering of medical consent age and reduced parental oversight in gender-affirming procedures for minors risks children's well-being and prevents the exercise of parental duty of care obligations.

Schedule 4: Children's Guardian Act 2019

Focusing on gender identity shifts the primary focus from the best interest of the child in welfare decisions, compromising child safety and well-being.

Schedule 5: Court Security Act 2005

The proposed amendments compromise court security protocols by allowing individuals to choose search officers based on self-identified gender identity, affecting the privacy and safety of both security personnel and the public.

Schedule 6: Crimes Act 1900

Including sex work as a protected category against incitement to violence dilutes the focus on inherent personal characteristics, impacting the effectiveness of legal protections against discrimination.

Schedule 7: Crimes (Administration of Sentences) Act 1999

Redefining search protocols in correctional facilities based on gender identity compromises the safety, the right to refuse consent, and the privacy of officers and inmates, particularly females.

Schedule 8: Crimes (Domestic and Personal Violence) Act 2007

Broadening definitions to include coercive behaviour related to gender identity could be misused, affecting the legal recourse for domestic violence cases and impacting the safety of victims.

Schedule 9: Crimes (Forensic Procedures) Act 2000

The amendments could complicate forensic procedures by allowing suspects to choose examiners based on gender identity, potentially impacting the integrity of forensic examinations.

Schedule 10: Crimes (Sentencing Procedure) Act 1999

Including gender identity as an aggravating factor in sentencing prioritises certain groups over others, impacting judicial fairness and eroding established legal principles.

Schedule 12: Government Sector Employment Act 2013

Mandating quotas based on gender identity introduces reverse discrimination, complicating merit-based employment and diversity balance within public sector employment.

Schedule 13: Government Sector Employment (General) Rules 2014

Specific employment categories for 'intersex' and 'transgender' persons undermines meritocracy and causes administrative challenges and hardship in establishing eligibility.

Schedule 14: Interpretation Act 1987

Alterations to definitions easily lead to legal ambiguities, particularly concerning the distinction between sex and gender identity, complicating the enforcement of laws designed to protect sex-specific rights.

Schedule 15: Law Enforcement (Powers and Responsibilities) Act 2002

Changes to search protocols based on self-identified gender could endanger the safety and dignity of law enforcement personnel and individuals being searched.

Schedule 16: Mental Health Act 2007

The insertion specifying that gender identity cannot be considered indicative of mental illness may limit mental health professionals' ability to perform comprehensive assessments.

Schedule 17: Sheriff Act 2005

Amendments may compromise operational integrity in law enforcement, particularly in contexts requiring clear legal identification based on biological sex.

Schedule 18: Summary Offences Act 1988

Removal of sections related to prostitution will lead to increased exploitation and trafficking, weakening the current protective mechanisms against sexual exploitation.

Schedule 19: Surrogacy Act 2010

The proposed amendments may lead to the commercial exploitation of surrogacy, impacting the rights and welfare of birth mothers and children.

RECOMMENDATIONS: OVERVIEW

- **Every proposed change in each act must be evaluated for its potential impact on sex-based rights and the safety and rights of women, children, and LGB.**

This overarching recommendation aims to ensure that legislation is grounded in biological reality, safeguards the rights of all individuals, and upholds the integrity of law without allowing subjective, unverifiable identities to compromise established legal standards.

RECOMMENDATIONS

Schedule 1: Anti-Discrimination Act 1977

- Reinstatement and maintenance of sex-based definitions and protections in sports to ensure fairness and safety.
- Enforcement of stringent guidelines that prioritise biological sex in sports categories to protect the integrity of women's sports.

Schedule 2: Births, Deaths, and Marriages Registration Act 1995

- Retain sex markers on birth certificates and other official documents to ensure accuracy in identification and statistical data.
- Prohibit changes to legal sex based on self-declaration.
- Maintain record integrity.
- Withdraw the proposed amendments

Schedule 3: Children and Young Persons (Care and Protection) Act 1998

- Uphold rigorous consent processes for minors undergoing medical treatments related to 'gender identity', ensuring parental involvement and psychological assessment.
- Strengthen safeguards to prevent undue influence by external bodies or ideologies on minors making life-altering decisions.

- Withdraw the proposed amendments

Schedule 4: Children’s Guardian Act 2019

- Prioritise biological realities and the child’s best interests over unverifiable, ideological considerations in child welfare decisions.
- Withdraw the proposed amendments.

Schedule 5: Court Security Act 2005

- Implement protocols that prioritise biological sex of individuals during security screenings to preserve the privacy and safety of all involved.
- Require that searches be conducted by officers of the same biological sex.
- Withdraw the proposed amendments.

Schedule 6: Crimes Act 1900

- Maintain a distinction between inherent characteristics and occupational choices in legal protections to ensure focused and effective discrimination protections.
- Exclude occupational statuses such as sex work from categories protected against incitement to violence, focusing on immutable characteristics.
- Withdraw the proposed amendments

Schedule 7: Crimes (Administration of Sentences) Act 1999

- Ensure that search procedures in correctional facilities are based on biological sex, to protect the safety and privacy of inmates and staff.
- Withdraw the proposed amendments

Schedule 8: Crimes (Domestic and Personal Violence) Act 2007

- Withdraw the proposed amendments
- Remove all references to “gender history”, “out a person”, “variation of sex characteristics”, and “sex work”.

Schedule 9: Crimes (Forensic Procedures) Act 2000

- Forensic procedures should be conducted by personnel based on the biological sex of the person being examined to maintain the dignity and privacy of all parties.
- Implement strict guidelines to avoid manipulation of forensic procedures through self-declared gender identity preferences.

Schedule 10: Crimes (Sentencing Procedure) Act 1999

- Avoid incorporating gender identity as an aggravating factor in sentencing to maintain judicial impartiality and fairness.
- Focus on protecting all individuals equally under the law without giving undue weight to unverifiable personal identities.
- Withdraw the proposed amendments

Schedule 12: Government Sector Employment Act 2013

- Maintain merit-based employment practices without imposing quotas for unverifiable identities, to ensure fairness and equality in government sector employment.
- Withdraw the proposed amendments

Schedule 13: Government Sector Employment (General) Rules 2014

- Avoid specific categories based on gender identity in employment eligibility to prevent reverse discrimination and uphold meritocracy.
- Foster an inclusive workplace environment that respects a diverse range of views and identities without mandating ideological conformity.
- Withdraw the proposed amendments

Schedule 14: Interpretation Act 1987

- Maintain clarity in legal language by upholding distinctions between sex and gender and gender identity, ensuring that laws prioritise and protect sex-based rights over unverifiable identity claims.
- Revise proposed definitions to ensure they do not erase or confuse legal recognition of sex-specific protections and rights.
- Withdraw the proposed amendments

Schedule 15: Law Enforcement (Powers and Responsibilities) Act 2002

- Law enforcement procedures, particularly searches, should respect, recognise and prioritise the biological sex of individuals to safeguard privacy and security.
- Withdraw the proposed amendments

Schedule 16: Mental Health Act 2007

- Ensure that mental health assessments can consider all aspects of an individual's identity and behaviour without legislative restrictions related to gender identity.
- Comprehensive care and accurate diagnoses should not be obscured by gender identity claims.
- Withdraw the proposed amendments

Schedule 17: Sheriff Act 2005

- Implement procedures that prioritise biological sex in operational protocols to ensure the safety and privacy of individuals under sheriff's jurisdiction.
- Provide clear legal definitions that support the prioritisation of biological sex in operational protocols to ensure the safety and privacy of individuals under sheriff's jurisdiction.
- Withdraw the proposed amendments

Schedule 18: Summary Offences Act 1988

- Retain sections that criminalise bad agents who exploit prostitution. Retain sections that protect public and individual welfare against the risks associated with an unregulated prostitution industry.
- Consider models that focus on reducing demand for prostitution rather than decriminalising aspects that could lead to increased exploitation.
- Withdraw the proposed amendments

Schedule 19: Surrogacy Act 2010

- Strengthen protections to prevent exploitation of women and children, ensuring that commercial surrogacy remains as is and regulated, and that the interests of the child and birth mother are prioritised.
- Ensure that legal frameworks around surrogacy uphold ethical standards and protect the rights of all parties involved, particularly the surrogate and the child.
- Withdraw the proposed amendments.

Schedule 1: Anti-Discrimination Act 1977

Alex Greenwich has indicated that the amendments to the *Anti-Discrimination Act 1977* (“ADA”) as laid out in Schedule 1 of the Equality Bill will be withdrawn pending review by the Law Reform Commission. The ADA amendments will therefore not be reviewed in detail in this submission. Notwithstanding, we remain vigilant that any proposed changes to the ADA be subjected to rigorous public scrutiny. The amendments, as proposed, stand to fundamentally shift legal protections in a manner that disproportionately disadvantages women and girls and prioritises gender identity over biological sex. This shift will dismantle decades of progress in women’s rights to equality, safety, dignity, fairness and participation in public life.

Section 38A

The removal of the terms "opposite sex" and the broad inclusion of any "another sex by living" blurs legal distinctions based on biological sex. This change erodes the clarity needed in legal definitions that protect sex-based rights, opening the door for any male to claim access to female-only spaces such as changing rooms, crisis shelters, and sports, based solely on self-identification.

Section 38B

By extending discrimination protections to any "different sex to that which the person identifies," these amendments risk making it unlawful to uphold biological sex-based distinctions even in contexts where they are essential for privacy, safety, and fairness. This has already led to – and will increase – a number of biological males who identify as female, entering competitions, scholarships, or quotas meant to redress historical sex-based disparities faced by women.

Section 38P

The proposed amendments to Section 38P of the ADA seek to adjust the current provisions under which transgender individuals can be excluded from sporting competitions. Specifically, the amendments outline that exclusion is permissible only if it is "reasonable and proportionate" considering the individual’s age (over 12 years), the competitive nature of the sport, and the relevance of strength, stamina, or physique in the competition.

Implications on female sports

The amendments aim to narrow the ability of sporting organisations to exclude individuals from categories that do not align with their biological sex. **This effectively limits the capacity to exclude biological males from female sports categories, despite these individuals retaining the option to compete in male categories.** The inherent physical advantages that biological males possess over females undermines fairness and equality in women's and girls' competitions and effectively renders the female category obsolete.

*Further compounding this issue is the potential passage of amendments to the Births, Deaths and Marriages Registration Act ("BDMR Act"), which would allow self-identification of legal sex. Should the BDMR Act amendments pass, ***any* male may legally identify as female and alter his birth certificate accordingly, rendering the sporting exclusions under the ADA effectively redundant. Once a male is legally recognised as female, sporting organisations will have no grounds to exclude males from the female category under the amended ADA, and females will have no legal recourse to challenge males who transgress women's boundaries and rob them of their opportunities and compromise their safety in sport.***

Systemic Discrimination and Impact on Females

This scenario sets a dangerous precedent, where systemic discrimination against women and girls in sports effectively becomes institutionalised. Females do not compete in male categories under self-identification due to the physical disparities that disadvantage females competitively, as well as safety concerns. Therefore, the amendments do not provide a reciprocal or balanced impact but rather disproportionately affect female athletes.

The resultant environment is likely to deter young girls and women from participating in competitive sports, knowing that the playing field is unbalanced. This not only affects their opportunity to compete but also rolls back decades of progress toward equality in sports. By undermining the very essence of the female sporting category —designed to ensure fair and equitable competition—the amendments threaten to erase the gains made to date in women's sports.

Conclusion

The proposed amendments to the ADA represent a significant and concerning shift towards prioritising subjective gender identity over biological reality. This not only undermines the original intent of the Act to protect against discrimination based on immutable characteristics but also places women and girls at a distinct disadvantage. The potential for abuse and erosion of women's spaces and rights is significant and demands a more thoughtful, balanced approach that recognises the rights and needs of all citizens without sacrificing the hard-won protections for women and girls. This submission strongly urges the Committee, the LRC, and others - to consider these amendments in light of their far-reaching implications, ensuring any future changes protect all individuals' rights without compromising the rights of others.

Schedule 2: Births, Deaths, and Marriages Registration Act 1995

The proposed changes to the *Births, Deaths, and Marriages Registration Act 1995 No 62 (BDMR Act)* allow any individual over the age of 16 to change their legal sex through a simplified administrative process. Under Schedule 2, amendments to sections such as [1] and [5], introduce terms like "recognition certificate" and "sex descriptor," facilitating self-identification of sex. This enables any person, based solely on their self-declared gender identity, to alter their legal sex designation on official documents, provided they submit a statutory declaration from someone who has known them for at least 12 months.

NSW Birth Certificates: Historical approach and changes in law over time

The argument that the proposed amendments to the (BDMR) Act to facilitate changing one's sex descriptor on a birth certificate are merely an extension of practices that have been in place for decades is overly simplistic at best, and misleading and disingenuous at worst. Historically, the process of legally changing 'sex' on birth certificates involved ***very stringent criteria***, including comprehensive mental health assessments, formal medical diagnosis from a strict pool of clinicians, and self-funded, expensive, surgical interventions. These measures ensured that such changes were not made lightly and were backed by rigorous medical and psychological evaluations. ***Moreover, historically, the concept of a "gender identity" was non-existent, and was not a component of current educational curriculums where the concept of an unverifiable "gender identity" is prioritised over biological understandings of sex, nor was the concept of "gender identity" subject***

to the influences of social media and the phenomenon of social contagion. There was no widespread public discourse or activism promoting fluid identity models, and the concept of gender fluidity was not being popularised or celebrated in mainstream culture or media.

*The context has radically changed; the proposal in the current bill removes ALL previous protective barriers, now proposing for *any* individual to alter their legal sex based solely on self-declaration, without *any* requisite changes to their lifestyle, their self, or personal identity verification. This shift occurs amidst a backdrop of a significant rise in claims of a “trans” identity, especially among minors and young adults, with referrals to purpose-built gender clinics - which were previously non-existent in Australia, increasing by 1700% over the last nine years—a statistic that reflects not only changing social attitudes, but also the potential influence of social media and increasing normalisation of gender fluidity as a trend. This surge is occurring in a landscape where gender identity is being promoted in ways that overshadow the foundational role of biological sex, contributing to a broader identity and mental health crisis among young people.*

The proposed amendments ignore these complex dynamics and the potential consequences of such a radical shift in policy. By simplifying the process to a mere administrative act, the amendments risk undermining the gravity and seriousness with which changes to one's legal sex should be treated. This approach not only fails to consider the social, medical, and psychological ramifications but also appears to be a disingenuous representation of the historical practices and the safeguards they entailed. It is imperative that consideration of legislative changes is not emotionally or ideologically driven, and that rigorous standards are maintained to protect societal impacts, ensuring that such profound legal identifications are approached with the utmost caution and responsibility.

Minimal prohibition of Sex Descriptors: Problems in Law

The Part 5A (32A) definitions of "sex descriptor" and "prohibited sex descriptor" are so broad, they allow for a change of legal sex to *any* identity, which – according to the bill’s wide definition – would include cat gender, cloud gender, omni gender, astral gender, and any infinite number of **gender identities**, provided they are not obscene or offensive or too long or contain symbols, (Part 5(A) 32A (a)(b)(i)(ii).

The proposition to amend the official sex marker on birth certificates raises critical issues, despite the consensus among legislators, including Mr. Greenwich, and LGBTQ+ advocates, that biological sex and gender identity are not the same. **In the pursuit of inclusivity, the drafters have neglected to fully consider the practical implications and real-world consequences of such changes**, especially in terms of inclusivity and legal clarity.

By allowing for the alteration of sex markers to broadly defined or subjective terms like "cloud gender," "non-binary," or "genderqueer" without a corresponding record of biological sex, the legislation inadvertently fosters new forms of exclusion. For instance, the lack of a clear sex marker raises complex questions:

- *Which changing rooms are individuals who identify as "cloud gender" permitted to use?*
- *Can someone identifying as "cat gender" apply for a position designated for females only?*
- *Will an "astral gender" individual be allowed to compete in female-only sports leagues?*

Proposed amendments do not achieve purported aim

These examples highlight problems with exclusion embedded within the amendments. While aiming to accommodate and recognise diverse gender identities, the legislation sidelines those it seeks to protect and include, by not fully accounting for the implications of removing concrete sex markers across various legal, social, and competitive domains. The goal of enhancing inclusivity and allowing individuals to "feel better" about their legal identity risks being undermined by not thoroughly considering the real and practical effects these changes have on a broad spectrum of stakeholders, including the individuals seeking to amend their birth certificates.

Given this understanding, ***it becomes essential to question the appropriateness of recording changes in gender identity as alterations in sex.*** The proposed amendments conflate two distinct concepts: the immutable nature of biological sex and the fluidity of gender identity. ***To preserve the accuracy and integrity of legal documentation, it is proposed that birth certificates retain the sex marker*** to avoid practical issues in their application and implementation.

No limitation of frequency of changes to sex descriptor

The absence of restrictions in the proposed amendments to the frequency of changes on a birth certificate, **allows for an individual to alternate between being male today, female tomorrow and cat gender by Christmas. This absurdity of flexibility undermines the serious nature of legal identity records, transforming them into personal expressions subject to change at whim. Such a framework renders official records unreliable – and arguably – entirely redundant,** for crucial functions like medical data collection, law enforcement, statistical analyses, and public policy planning.

No proposal for maintaining records

Under the current BDMR Act, individuals who have undergone a surgical sex affirmation procedure are entitled to receive an amended birth certificate, while the Births, Deaths, and Marriages registry maintains the original document with access to it. **The current scheme does not contemplate preserving any historical sex record, leading to all records being expunged, which raises fundamental questions about the purpose and significance of recording sex on legal documents in the first instance.** Further, it raises questions as to whether other recorded facts on birth certificates should also be expunged or amended, to accord with a person's "lived experience". For example, why should a person's date of birth remain fixed, but not a person's sex? Why is an individual's date of birth not a characteristic considered appropriate for self-declaration?

Implications for Data Collection and Public Policy

The erasure of historical sex data threatens the quality of demographic information available to policymakers and researchers. **Sex-specific data plays a crucial role in identifying health trends, allocating funding and resources for public services, and tailoring education or welfare programs.** Without accurate, biologically based records, it becomes challenging to address sex-specific issues or to monitor the impact of policies over time.

The Presumption of Inclusion and its Real-Life Consequences

The proposed amendments **significantly alter the recognition of sex within the community by creating a 'presumption of inclusion' based on self-identification.** This means that anyone, regardless of their appearance, can claim an identity different from their biological sex without facing discrimination. ***In practical terms, this policy allows any individual who identifies as a woman to access spaces traditionally reserved for females, without question. The implication is that the community must not assume that a male in a female space is there by mistake or with ill intent; instead, it must be accepted that he is in the female-designated space because he is a woman. Currently, a male does not need to produce a birth certificate to enter a female space for verification. The proposed amendments will not change this current practice however, currently it is accepted that a male is not supposed to be, for example, in a women's rape crisis centre, however he identifies.*** The core of the proposed amendments, however, changes the current presumption of exclusion, introducing a new norm which prioritises self-declared gender identity over biological sex in determining access to gender-specific spaces.

No formal birth certificate change will be required to enter a rape crisis centre, nor any other female-designated space. In fact, requesting a person to produce proof of the change may likely be in breach of Anti-Discrimination law. Under the proposed scheme, the community must now presume that if ANY male – no matter how he presents, is within a female-designated space, or utilising a female-designated service, he **is** a female, and within his legal right to be there. This is the reality of the proposed amendments and the reality of self ID.

It opens avenues for exploitation, as seen in cases where males access female-only spaces, not out of genuine identity alignment, but for malicious intent. Examples include the presence of male offenders in female prisons, where they have assaulted women, males claiming a female identity at the sentencing phase, participation of males claiming a female identity in women's and girls' sports, and males claiming a female identity having unfettered access to women's/girls' intimate spaces such as rape crisis centres, changing rooms, and bathrooms. This is unacceptable.

Children under 16

The proposed amendments to the *BDMR* Act, specifically within Schedule 2(5), which introduces a new Part 5A, mark a significant departure from the current legal framework governing the change of sex designation on birth certificates, particularly for minors. These changes raise serious legal, ethical, and social concerns, undermining parental rights, the integrity of public records, and the protection of children.

Parental Consent (Sections 32C, 32D, 32E)

Under the existing framework, the process to amend a sex designation for minors is carefully guarded, requiring comprehensive medical evidence and parental consent. The proposed amendments, however, allow children under 16 to initiate a change in their legal sex on their birth certificate, with minimal oversight – a change that fundamentally alters the role of parental guidance and the exercise of duty of care in critical decision-making processes.

Under the proposed amendments, the ability for a child to apply to the NSW Civil and Administrative Tribunal (NCAT) without parental support, or without even notifying the child's parents (as per the discretion provided in s32CA), introduces a legal anomaly where the state undermines the family unit's autonomy and decision-making capacity regarding significant aspects of a child's welfare.

Undefined Impact of "Adversely Affect" and Unilateral Parental Consent

With regard to NCAT choosing not to notify parents of a child's application to change their legal sex, the lack of a clear definition for what circumstances "could reasonably be expected to adversely affect the young person" (s32CA) opens the door for broad interpretation. This vagueness could lead to arbitrary decisions without consistent legal standards, further complicating the legal landscape around parental rights and child welfare.

Moreover, we contend that the criterion for bypassing parental notification—based on potential "adverse effects" on a child—could be easily met, given unsubstantiated prevailing narratives from activists around the mental health risks of not affirming a child's gender identity. **There is a real risk that NCAT could interpret a child's mere assertion of unsupportive parents as sufficient reason not to notify the parents, to avoid "adverse effects" on the child.** This scenario suggests a legal

environment where requests for legal sex changes for children could be approved with insufficient scrutiny, potentially sidelining both the nuanced evaluation of the child's welfare and parental rights.

Furthermore, permitting one parent to consent to such a significant legal change, even when the other parent objects, erodes the legal principle of joint parental responsibility. This could precipitate internal family conflicts, potentially harming the child's well-being, rather than protecting it.

Legal and Social Implications of Minors Changing Legal Sex

The proposition that minors, specifically those under 16, can legally change their sex designation without sufficient maturity to understand the long-term consequences, is deeply problematic. This concern is compounded by the lack of a requirement for medical or psychological evaluation to accompany such a decision, as traditionally mandated for sex affirmation procedures.

This approach not only disregards the complexity and permanence of such decisions, but also fails to adequately consider the child's best interests, a key component for all actions concerning children under international law, as well as myriad domestic legislation under which the child's best interests are deemed paramount.¹

Moreover, it's crucial for Committee members to recognise that legal sex changes for minors not only facilitates social transition but also often solidifies the path toward medical transition. This progression seems to underpin the intent to establish a sense of permanence in decisions made by minors—decisions for which they lack the necessary maturity and understanding of long-term consequences. The bill's proposed approach neglects the serious implications such decisions have on the child's future and the broader impact on their families and society. In essence, the legislation risks endorsing irreversible life paths for minors without ensuring a rigorous, thoughtful deliberation process that accounts for the myriad complexities of such profound life changes.

¹ United Nations Convention on the Rights of the Child; *Children and Young Persons (Care and Protection) Act 1998*.

Schedule 3: Children and Young Persons (Care and Protection) Act 1998

The proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) poses inherent dangers by potentially lowering the consent threshold for medical treatments related to gender incongruence, diverging from established common law principles, notably the Gillick competence framework and established jurisprudence.²

Current Legal Framework and the Principle of Gillick Competence

In NSW, the care and protection of minors are principally governed by the *Children and Young Persons (Care and Protection) Act 1998*. This Act, in concert with common law, enshrines the best interests of the child as the paramount consideration, a principle further nuanced by the Gillick competence test. This test assesses a minor's capacity to consent to their medical treatment based on their understanding and intelligence to fully grasp the nature and implications of the proposed treatment.

Gillick Competence and Minors Under 16

For minors under 16, the law necessitates an assessment of Gillick competence or parental/guardian consent for medical treatments. This is a critical safeguard, ensuring that children, who might not fully comprehend the long-term implications of their decisions, are provided with adequate protection under the law.

Minors Aged 16-17 and Medical Consent

NSW legislation generally presumes that minors aged 16 and 17 have the capacity to consent to their own medical treatment. This presumption aligns with the broader understanding that individuals in this age group can typically understand and weigh the nature and implications of medical treatments against their current and future well-being.

Legal Framework for Gender Incongruence Treatments

For minors experiencing gender incongruence, the consent process for gender-affirming medical procedures is distinctly regulated. The Family Court of Australia's ruling in *Re Jamie* [2013] FamCAFC

² *Re Imogen* [2020] FamCA 761.

110 elaborates on this by distinguishing between Stage 1 (puberty blockers) and Stage 2 (gender-affirming hormones) treatments, with the latter requiring a higher threshold of court involvement due to the irreversible nature of such interventions.

Overview of Proposed Amendments

The proposed amendments seek to revise the Act to consider the gender identity and variations of sex characteristics of the child explicitly. Notably, for children aged 16 and over, it allows them to make decisions regarding their medical treatment with the same authority as an adult. For children under 16, the amendments suggest that one parent's consent is sufficient for medical treatment or that the child can consent if deemed capable by a medical practitioner. ***This represents a significant departure from the current legal requirements and potentially lowers the threshold of Gillick competence due to the absence of the requirement that the child fully understands the nature and implications of the treatment sought. Informed consent cannot be achieved if a child does not “fully” understand the implications. In any case, we contend that a child can never “fully” understand the implications of lifelong sterility, lack of sexual function, increased risk of cancer, brittle bones, among many other long-term health outcomes associated with “gender affirming care”.***

Implications of Lowering Gillick Competence Standards

The proposed lowering of the Gillick competence threshold is particularly concerning. It risks enabling children under 16 to consent to complex and irreversible medical treatments without a full understanding of the long-term consequences. This shift is at odds with the established common law position as demonstrated in *Re Imogen*, where the court underscored the necessity of a comprehensive understanding and consideration of a minor's best interests, as well as requiring a consensus between *both* parents, child and treating practitioner, for gender-affirming treatments, otherwise court intervention is necessary.

Legal and Ethical Considerations

The amendments pose significant legal and ethical questions about the balance between a minor's autonomy and the need for protective measures. By potentially facilitating easier access to irreversible treatments without rigorous assessment of understanding and without the safeguard of

parental or court oversight, the amendments may compromise the welfare and future well-being of minors.

Current provisions are adequate and reasonable

The current provisions in the *Children and Young Persons (Care and Protection) Act 1998* (NSW) are sufficient. Any efforts to frame the current provisions as a human rights disparity, where children seeking gender-affirming care are subjected to higher standards than children undergoing conventional medical treatments, are disingenuous. Framing the issue as such strategically oversimplifies a complex issue, pushing for expedited approval without due consideration of the established safeguards. Such arguments, while compelling on a surface emotional level, overlook the critical public policy reasons underpinning these safeguards. The distinctions in consent requirements between gender-affirming and other medical treatments are rooted in profound considerations of the long-term welfare and rights of the child, rather than an arbitrary imposition of barriers.

Conclusion

The proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) risk undermining the foundational legal protections designed to safeguard minors, particularly in the context of irreversible medical treatments related to gender incongruence. By potentially lowering the Gillick competence threshold and diminishing the role of parental and court oversight, these amendments lead to decisions that are not in the best long-term interests of the child. It is imperative that the Act maintains a rigorous framework for assessing a minor's capacity to consent to such treatments, one that aligns with established common law principles.

Schedule 4 - Children's Guardian Act 2019

Redirection from Child Welfare to Ideological Alignment

The primary concern with the proposed amendment is that it could shift the focus of child welfare decisions from the paramount principle of the child's best interest to considerations that prioritise ideological conformity regarding gender and sexual characteristics. By mandating organisations to consider "any variations of sex characteristics," there is a risk that decisions will lean towards supporting the views of parents or guardians advocating for transitioning, irrespective of whether it is in the best interest of the child.

Increased Complexity in Decision-Making due to Ambiguous Terms

Introducing this terminology into the Act could complicate the decision-making process for child welfare organisations. These terms are not universally defined and can be interpreted in various ways, potentially leading to inconsistencies in how child welfare decisions are made across different agencies and settings.

Potential Bias in Service Provision

The amendment might inadvertently create a bias in service provision, where agencies could prioritise resources and support towards children based on their gender identity and sex characteristics over other pressing welfare needs. This approach could marginalise children who require assistance based on other aspects of their identity or their specific circumstances.

Conflicts with Parental Rights and Medical Ethics

There is a profound ethical concern regarding the potential for this amendment to conflict with parental rights and medical ethics. It could lead agencies to side disproportionately with the opinion of one parent over another, based solely on the parent's support for the child's gender transitioning. This situation could lead to parental conflicts and might even result in decisions that are not supported by protracted and comprehensive medical, psychological, and social evaluations.

Potential for Misinterpretation and Misapplication

The vague nature of “variations of sex characteristics” could lead to its misinterpretation and misapplication, creating legal uncertainties and challenges for organisations tasked with its implementation. Such ambiguities could result in increased legal challenges against child welfare agencies, potentially diverting attention and resources away from direct child protection efforts.

Intrusiveness on Family Dynamics (Section 8(c))

The focus on specific characteristics like sex variations might lead to more invasive questioning or assumptions about a child's needs based on these characteristics alone, potentially intruding unnecessarily into family dynamics and personal decisions.

Procedural Fairness Concerns (Section 8(d))

Any bias introduced by the amendment could compromise the procedural fairness by predisposing decisions towards a particular outcome regarding gender identity issues, potentially leading to decisions that are not entirely balanced or fair from a legal or ethical standpoint.

Cultural and Family Connection (Section 8(e))

For Aboriginal and Torres Strait Islander children, the emphasis on gender identity and sex characteristics could overshadow cultural considerations and the importance of community and familial connections, which are critical to the wellbeing of these children.

Stability and Security (Section 8(f))

The amendment could complicate the secure and stable environment promised, as organisational biases towards gender identity issues might skew resources or focus away from other critical aspects of care in out-of-home settings.

Schedule 5: Court Security Act 2005

Definitions and References (Amendments to Section 4 and New Section 4A)

Ambiguity and Clinical Imprecision

The definition of an "intersex person" as someone who has an innate variation of primary and secondary sex characteristics that differ from norms for female or male bodies lacks clinical precision. The term "variation" can encompass a broad range of medical conditions, which are not uniform in their expression or implications for individual health and identity. This broad definition could lead to significant confusion and inconsistency in how security procedures are applied, particularly in distinguishing between sex and gender identity.

The definition of a "transgender person" as someone who lives or seeks to live as a person of a different sex than the one registered at birth introduces subjectivity into security protocols. The phrase "lives or seeks to live" is inherently subjective and reliant on personal self-identification without requiring any form of medical, legal, or official documentation. This could potentially allow for the arbitrary assertion of gender identity, complicating enforcement and application of search protocols designed to respect privacy while ensuring security.

Conflation of Gender Identity with Sex-Based Benefits

The amendments proposed by Alex Greenwich appear to conflate gender identity with biological sex to gain access to benefits and rights that are sex-based. This conflation poses significant challenges, particularly in security settings, where such distinctions are critical for maintaining safety and privacy. The push to treat gender identity on par with biological sex for the purposes of searches and other security measures could undermine the integrity of sex-based accommodations and protections that are in place to safeguard individuals, particularly women, in vulnerable settings such as courtrooms.

Legal and Operational Conflicts: Insertion of Subsection 5(3)

The insertion explicitly stating that the Act does not limit the application of the *Anti-Discrimination Act 1977*, particularly in the exercise of functions by security officers, could create conflicts in operational duties. **Security officers are tasked with maintaining a safe and secure environment,**

which involves making quick and effective decisions under potentially stressful conditions. The ambiguity brought about by balancing anti-discrimination concerns with practical security measures could lead to hesitation or inaction, potentially endangering court safety, which ought to be paramount. Security officers tasked with keeping people's lives safe should not be bogged down by unnecessary distractions about a person's self-declaration of an unverifiable identity.

This provision may pressure security officers to prioritise non-discrimination over safety concerns, especially in scenarios involving searches where gender identity plays a role. Officers may feel compelled to act against their better judgment regarding the physical search of individuals whose gender identity does not correspond with their biological sex, for fear of contravening discrimination laws.

Amendments to Section 10: Invasion of Privacy and Consent Issues

Ambiguity in Search Protocols

The proposed amendment to subsection 10(2)(f) allows intersex or transgender individuals to request to be searched by security officers based on the gender with which they identify. This introduces significant ambiguity in search protocols, as gender identity is subjective and self-reported. **This inconsistency undermines the primary security goal of preventing prohibited items from entering court premises.**

Potential Compromise of Privacy

The same amendment to subsection 10(2)(f) enables individuals to choose their searcher based on self-identified gender, which may lead to scenarios where the privacy of both the searcher and the individual being searched is compromised. Particularly, **it creates an environment where males who self-identify as female will request to be searched by female officers, infringing on the personal comfort and privacy expectations of females. It is unconscionable to elevate the wants and desires of *any* male who claims a female identity, over the personal comfort and safety of a female. A male claiming a trans identity does not need to necessarily pose an ostensible threat to a female for a female to feel uncomfortable.** Such scenarios are sensitive and could affect the mental and emotional well-being of security staff, which is crucial for effective operations.

Legal and Ethical Dilemmas

This amendment could **place female officers in positions where they feel obligated to perform searches that contradict their professional judgment or personal comfort**, potentially leading to increased workplace stress, job dissatisfaction, and legal challenges concerning unfair and intrusive working conditions.

Sensitive Nature of Searches Involving Children

The amendment to subsection 10(2)(g) allows children under 12 to be searched by an officer of the gender the child identifies with. This introduces delicate issues, particularly if a male child identifies as female, requiring a female officer to conduct the search, potentially causing discomfort and distress for both the child and the officer.

Potential Impact on Child Welfare

This same amendment necessitates high sensitivity to the physical and emotional states of children during searches. Aligning search protocols with a child's identified gender rather than biological sex could complicate these sensitive procedures, potentially affecting the child's welfare adversely.

Security Concerns

Focusing on accommodating gender identities as mandated by the amendments to subsections 10(2)(f) and (g) introduces variables that could lead to less rigorous searches, thereby heightening the risk of security breaches. The primary purpose of these searches is to ensure that no prohibited or dangerous items are brought into secure areas, not to accommodate or validate a claimed identity.

Increased Training and Policy Development Needs

Implementing these amendments would necessitate significant revisions to training programs and operational policies, requiring extensive training for security personnel to effectively navigate the complex dynamics of gender identity in search protocols. This could lead to additional costs and logistical challenges.

Schedule 6: Crimes Act 1900

Amendments to Part 3A, Division 8, Heading and Section 93Z Heading

Expansion of Protected Categories

The proposed amendments seek to replace the words “or intersex or HIV/AIDS status” with “intersex status, HIV/AIDS or sex work” in the division and section headings. This inclusion broadens the scope of legal protection against incitement of violence to include sex work—an occupation—alongside inherent personal characteristics or health conditions.

Equating Occupational Choice with Inherent Statuses

Including sex work, a chosen occupation, alongside categories like race, raises significant legal and ethical questions. It conflates voluntary professional activity with aspects of identity that individuals cannot change, potentially diluting the focus on protecting historically marginalised and inherently defined groups. Why is Mr Greenwich seeking to amend laws for prostitutes – most of whom are heterosexual women – in a bill purported to be seeking equality for the LGBTIQ+ community?

Specific Inclusion of Sex Work

The amendment to subsection 93Z(1) replaces the existing provision for HIV or AIDS with a more explicitly defined wording and adds a new category (g) that explicitly names sex workers as a protected group against public acts inciting violence. This represents a significant shift in the legislative approach from protecting against discrimination based largely on inherent personal characteristics or health conditions to including choices related to occupation.

Safeguarding and Practical Implementation Issues

This inclusion raises practical challenges in implementation and enforcement. Defining who qualifies as a sex worker and determining the applicability of this protection in various contexts could lead to ambiguities and potential exploitation of the provision.

Impact on Women and Power Imbalances

Including sex work as a category could have unintended consequences in terms of societal views on occupations predominantly undertaken by women. This might inadvertently reinforce negative stereotypes or contribute to power imbalances, rather than providing meaningful protections.

Conclusion

The proposed amendments to the Crimes Act 1900, specifically the inclusion of sex work within the scope of protections against incitement to violence, represent a well-intentioned but potentially problematic expansion of criminal law protections. This inclusion could dilute the intended protections for inherently defined groups and complicate the legal landscape concerning discrimination and incitement. This submission advocates for maintaining a clear distinction between immutable characteristics and lifestyle or occupational choices within the legal framework to ensure focused and effective legal protections.

Schedule 7: Crimes (Administration of Sentences) Act 1999

The *Crimes (Administration of Sentences) Act 1999* establishes the legal framework governing the administration of custodial and community-based sentences in New South Wales. It sets out the standards and procedures for managing individuals who are either incarcerated or under supervision outside of correctional facilities, including the roles and responsibilities of correctional officers and the rights and treatment of inmates. The Act also delineates the operations of correctional centres, oversight of parole and other forms of early release, and the enforcement of community correction orders, aiming to ensure that sentences are administered effectively, securely, and humanely.

The proposed amendments relating to the conduct of searches and the definitions used within the corrections system, are concerning.

Definitions: Modification of "Non-Invasive Sample" Definition

The redefinition proposed, which differentiates between "female person or other person with breasts" and "transgender male person or other person who is neither exclusively male nor female," raises significant concerns. **By categorising body parts based on gender identity rather**

than biological sex, this amendment could lead to scenarios where biological males who identify as females are searched in a manner inconsistent with their biological sex, compromising the privacy, safety, and personal comfort of the correctional officer, whose personal rights ought to matter as much as the person claiming to have a trans identity.

Definitions of "Intersex Person" and "Transgender Person"

These definitions, while aiming to be inclusive, lead to ambiguities in their application during correctional procedures. This might create situations where the rights and expectations of women (both inmates and staff) are overlooked or compromised, leading to discomfort and potential violations of privacy and trauma.

Conduct of Search (Schedule 7[4], replacing Section 253J(4))

The amendment stipulates that if practicable, searches should be conducted by an officer of the same sex as the person being searched, unless the person is intersex or transgender and expresses a preference for a different officer. This introduces several concerns:

- **Right to Consent Compromised:** Women correctional officers may be compelled to search transgender women (biological males) if requested, potentially against their personal consent and professional comfort. This can create power imbalances and expose female officers to situations that may feel unsafe or inappropriate.
- **Vulnerability of Female Inmates:** Female inmates might be searched by males who claim to have a trans/female identity, leading to feelings ranging from discomfort and vulnerability, to feelings of abject violation and trauma, particularly for victims of sexual abuse or assault.
- **Ambiguity in Effective Search Conduct:** Allowing inmates to choose their searcher based on subjective gender identity could compromise the effectiveness and thoroughness of searches, impacting overall facility safety.

Potential Conflict with Anti-Discrimination Act 1977

While ensuring compliance with anti-discrimination laws is essential, **this amendment may force correctional officers to prioritise gender identity considerations over security protocols. This could result in a dilution of strict search protocols necessary for maintaining safety and order within correctional facilities.**

Conclusion

The proposed amendments pose significant challenges related to the rights, safety, and comfort of women—both inmates and correctional staff. These changes may lead to power imbalances, compromise the right to consent, and create environments that will **endanger the well-being of vulnerable individuals within the correctional system, whose human rights should not be discarded in favour of people claiming a trans identity.**

Schedule 8: Amendment of Crimes (Domestic and Personal Violence) Act 2007

Section 3 – Definitions: ‘Gender History’ and ‘Out a Person’ Definitions

This amendment proposes adding definitions that **obscure clarity and weaponise personal identity traits**. By defining "gender history" as the sex recorded at birth being different from the sex the person identifies with, and "out a person" to mean disclosing someone’s sexual orientation or gender history without consent, **the amendments introduce a mechanism ripe for misuse**. For instance, **in a custody dispute, revealing a parent's gender identity history relevant to a child's environment or well-being could become a punishable offence**. This stifles free speech and complicates the protection of children’s best interests, effectively handing over a tool for men to legally silence women who voice concerns about family dynamics influenced by gender identity issues.

Amendment to Section 6A – Meaning of ‘Domestic Abuse’ and Section 35 Amendment *Adding an example of coercive behaviour as threatening to 'out' someone, fundamentally alters the dynamics of what can be considered abusive in domestic settings. This could easily be weaponised by individuals, typically men, to claim coercion in situations where a partner may be legitimately seeking help or advice about the partner’s recent decision to claim a gender identity.*

This provision silences legitimate support avenues for spouses, children and families, further embedding male-dominated power structures within families by prioritising the protection of an individual’s gender identity over the collective safety and psychological well-being of the family.

The proposed amendment means that a wife and mother, whose husband of 30 years suddenly announces to the family that he identifies as a woman, or non-binary, or a cat, is effectively forced

into silence over her husband's newfound declaration. It must be acknowledged and appreciated how serious a shift in one's life and reality such a situation presents, particularly where drastic changes in and out of the family home, are required.

Women and children should not be silenced by the proposed amendment, never to speak of the John's recent declaration that he is now Janine. This is both unrealistic and a gross incursion on the civil liberties of individuals.

When a loved one declares an identity, it requires a monumental shift in the family and family dynamics, and it is usually a highly traumatising experience for spouses, partners, children and family members. Loved ones should not be forced into silence to deal with their grief and pain, with the threat of a domestic violence order being made against them if they speak about it – to anyone.

*The Committee, Mr Greenwich and Equality Australia *must* begin to acknowledge that laws affect *everyone*, not just those purported to be protected. It is unacceptable for TQI+ advocates and activists to continue to disingenuously misrepresent that laws contained in this bill do not affect other stakeholders, such as females. This amendment cannot be allowed to stand, and the rights of others *must* be properly considered. It is unconscionable to continue to ignore or dismiss the rights of ALL stakeholders involved, whose mental and physical well-being is equally as important as ANY person claiming an identity.*

Amendments to Sections 16 and 19 – Apprehended Violence Orders

Allowing AVOs to be issued for threats to disclose someone's gender history will enable manipulative behaviour in interpersonal disputes. Women expressing concerns about a partner's gender identity impacting their children could find themselves silenced by the threat of an AVO, used by their partner to maintain control and potentially coerce. This could severely undermine women's autonomy and their ability to protect their children from potentially harmful family dynamics.

Amendment to Section 21 – Mediation Referrals

Considering outing someone's gender history as harassment could lead to more frequent bypassing of mediation, potentially depriving parties of a less confrontational resolution method. This adjustment disproportionately affects women, who may be less financially capable of enduring

prolonged legal battles, thus tipping the scales further in favour of men who can manipulate these definitions to their advantage.

Amendment to Section 53 – Issuing Process in AVO Matters

Expanding harassment definitions to include outing related to gender history could facilitate the misuse of AVO processes to exert control. Men could use the threat of legal repercussions to silence their partners, especially in custody or divorce proceedings, creating significant regressions in women's rights and enabling further abuses of power.

Conclusion

The proposed amendments under Schedule 8 pose significant concerns by exacerbating power imbalances, primarily to the detriment of women and children. Promoting the amendments under the guise of addressing inequalities and protecting diverse identities is disingenuous. These amendments prioritise the interests of men, thereby exacerbating the existing power imbalances between the sexes. By broadening the definitions and protections in ways that can shield individuals from legitimate scrutiny and discussion of their behaviour—especially behaviours that may impact the well-being of children and partners—**these amendments risk making women the likely losers in a system that should protect them.**

Women, historically the primary victims of domestic violence, may find themselves increasingly vulnerable to manipulation by partners exploiting these new legal definitions. These partners might use claims of discrimination or identity persecution to deflect from their own problematic behaviours or mental health issues. In essence, these amendments serve not just to protect identity but to simultaneously weaponise it, allowing identity claims to be used as tools against women in both domestic and legal spheres.

These amendments should be withdrawn. To allow them to stand undermines the very principles of equality and protection they seek to uphold, entrenching existing disparities in the law under the progressive veneer of protecting identity.

Schedule 9: Crimes (Forensic Procedures) Act 2000

The *Crimes (Forensic Procedures) Act 2000* primarily regulates the collection, use, storage and disposal of forensic material related to individuals involved in the criminal justice system.

Amendments to Definitions

The proposed redefinition of 'private parts' to include 'private upper body parts' in section 3 and the introduction of 'intersex person' in section 3(6) create ambiguities that could lead to discomfort and ethical dilemmas during forensic examinations. This may result in invasive procedures being performed by individuals who may not be the same biological sex as the person being examined, thus compromising privacy and safety, particularly of women. For example, a female forensic officer may be required to examine the chest area of a biological male who identifies as female, leading to potential distress and an incursion on individual liberty and a person's right to refuse consent.

Amendments to who may carry out forensic procedures

Changes in handling of forensic procedures in sections 44, 50, and 51, suggest a shift from 'opposite sex' to 'different sex' in terms of who can conduct forensic procedures. This broadening, particularly in sections 50 and 51, where intimate procedures are involved, allows individuals to choose examiners based on subjective gender identity rather than biological sex. Such a practice could lead to situations where, for instance, biological males could be examined by female practitioners against the practitioner's comfort or judgment, thus compromising both the procedural integrity and the female practitioner's comfort.

Forensic Procedures Carried Out by Preferred Personnel: Section 51 and Section 56

These clauses introduce the potential for suspects to request specific examiners based on an unverifiable identity, rather than their biological sex. This could lead to manipulations in how forensic examinations are carried out, potentially compromising the objectivity and thoroughness required in forensic contexts. This is particularly concerning in cases involving vulnerable groups, such as children, where the choice of examiner should be carefully controlled to protect their best interests.

Broad Societal and Legal Implications

Implications for Women's Rights and Safeguarding Children: Section 3(7A)

By allowing more flexibility in the choice of examiner based on a gender identity, there is a risk of eroding women's spaces and rights to privacy.

Potential Abuse of Power and Erosion of Procedural Integrity

The flexibility in choosing examiners based on gender identity could be exploited, leading to choices that may favour less stringent examinations or compromise the safety and comfort of both the examiner and the person being examined. This can be seen as an abuse of the provisions intended to accommodate gender diversity, potentially leading to an erosion of the rigorous standards necessary for forensic procedures.

Schedule 10: Crimes (Sentencing Procedure) Act 1999

Section 21A deals with the factors a court must consider when determining the appropriate sentence for an offence.

The amendments proposed aim to include "gender identity" and "particular variations of sex characteristics" within the list of aggravating factors under subsection (2)(h). This means that crimes perceived to be motivated by prejudice against these groups would be treated as more serious, potentially leading to harsher sentences. These amendments could undermine women's rights, compromise child safeguarding, erode civil liberties, and deepen existing power imbalances within the legal system.

Amendment to Section 21A(2)(h)

Proposed Change:

- Insert "gender identity" after "language"
- Insert "particular variations of sex characteristics or" after "or having"

Potential Issues:

Erosion of Women's Rights

Adding "gender identity" and "variations of sex characteristics" as aggravating factors could potentially prioritise the protection of certain groups over the biological realities and rights of women. For example, in scenarios involving sex-based rights conflicts, such as those involving access to women-only spaces (e.g., changing rooms, shelters), the amendment could be used to argue that denying access based on gender identity, even when aimed at protecting the privacy and safety of women, is an aggravating factor in a criminal sentencing context. This could put women at a disadvantage, forcing them to accommodate men or face legal repercussions, thus eroding established protections based on sex.

Child Safeguarding

Including these identity categories in legal statutes concerning criminal sentencing could complicate efforts to safeguard children. For instance, in custody battles or cases involving the welfare of the child, arguing that a parent's refusal to recognize a child's asserted gender identity is an aggravating factor could overshadow other welfare considerations. This focus might compromise the child's broader emotional and psychological needs by placing undue emphasis on gender identity.

Impact on Freedom of Speech

The amendments could restrict speech related to gender identity debates. If expressing scepticism or criticism about gender identity ideologies is potentially seen as an aggravating factor in criminal acts, it could stifle legitimate public and private discussions. This poses a significant threat to academic freedom, journalistic inquiry, and personal expression, all of which are essential for a democratic society.

Power Imbalances

Incorporating these identity categories into the sentencing framework may inadvertently empower individuals to weaponise these provisions against others, particularly in interpersonal conflicts or where false accusations are made. Such scenarios could lead to misuse of the legal system, where

claims related to gender identity could be used to aggravate sentences unjustly, thus manipulating legal outcomes.

Legal and Practical Complications

The amendments might lead to significant complexities in the legal interpretation and application of these new categories. Defining and proving "gender identity" and "variations of sex characteristics" in legal terms could lead to inconsistent rulings and confusion, complicating the judiciary's task and potentially leading to uneven applications of justice.

Conclusion

While the intent behind the inclusion of "gender identity" and "variations of sex characteristics" in the Crimes (Sentencing Procedure) Act may be to offer greater protection to vulnerable groups, the potential for unintended consequences, particularly in the erosion of women's rights, child safeguarding, and freedom of speech, is significant. These amendments could also lead to new forms of discrimination and power imbalances that exploit the legal system.

Schedule 12: Government Sector Employment Act 2013

The amendments relate specifically to Section 63, which concerns workforce diversity. The implications of these amendments have the potential for inequitable treatment of government sector employees, pose practicality issues in implementing these standards, and have broad societal and resource implications.

Amendment to Section 63(1) – Definition of Workforce Diversity

Proposed Change:

- Omit "and people with a disability"
- Insert instead "people with a disability, sexual orientation and variations of sex characteristics"

Erosion of Clear Definitions

The introduction of "variations of sex characteristics" and "sexual orientation" into the definition of workforce diversity could complicate legal and administrative processes. The term "variations of sex

characteristics" is broad and may encompass a wide range of biological conditions, which could lead to challenges in enforcement and measurement of compliance.

Priority Displacement

By explicitly including these new categories, there is a risk that other critical diversity factors, such as socio-economic background or age, which are equally important in a truly diverse workforce, might be sidelined or receive less attention, elevating an individual's choice of sexual preference, (which should remain personal and not be a relevant factor in an employment context), and "variations of sex characteristics" as "diverse" categories in need of protection and promotion. Why?

Replacement of Section 63(3) with Provisions for a Diversity and Inclusion Standard

Introduction of a diversity and inclusion standard, potentially including provisions for gender-affirming care leave and specific targets and quotas for workforce diversity.

Concerns:

Imposition of Quotas

Setting specific quotas for workforce diversity based on sexual orientation and gender identity could lead to reverse discrimination, where hiring or promotion is based more on meeting these quotas than on merit or qualifications. This could foster resentment and reduce workplace cohesion.

Financial and Administrative Burden

The inclusion of mandatory leave for gender-affirming care could impose significant financial and administrative burdens on government sector agencies. This may divert resources from other essential public services or lead to increased staffing costs to cover long-term absences. Additionally, what other unverifiable "condition" or "innate" state of being entitles staff members to paid leave? Women fought hard for decades to be recognised in the workplace and yet **still** remain disadvantaged as a result of their biology, with no recourse to "opt out" or "identify" out of. Such policies leave workplaces ripe for abuse and are an affront to women being recognised as equal in an employment context.

Compulsion and Compliance

Mandating compliance with these standards places undue pressure on agencies to prioritise gender identity issues over other pressing organisational needs or diversity considerations. This could potentially stifle dissenting views or discomfort with these policies among employees, leading to a workplace environment where not all employees feel equally respected or represented. The wants and personal beliefs of a minority should not impinge on the rights and biological reality of the remaining workforce population.

Conclusion

The specific focus on sexual orientation and variations of sex characteristics, coupled with the introduction of binding quotas and standards, risks creating a workplace environment that prioritises unverifiable gender identity at the apex of workplace policy. These amendments impose obvious practical challenges in implementation, potential reverse discrimination, and divert focus and resources from other vital diversity and inclusion efforts. Why is someone's choice of sexual partner and their "variation of sex characteristics" "diverse" categories needing promotion in the workplace? Why is a person's sexual orientation or "variation to sex characteristics" required to be known in the workplace or for hiring purposes? What kind of "inclusion" is Mr Greenwich hoping to achieve here?

Schedule 13: Government Sector Employment (General) Rules 2014

The amendments relate specifically to Rule 26, which concerns the employment of eligible persons in government sector agencies.

1. Amendment to Rule 26 – Definition of Eligible Person

Proposed Changes:

Insertion of new categories for "eligible persons":

- (c2) an intersex person,
- (c3) a transgender person.

Concerns:

- Complicating Employment Equity: Introducing specific categories such as "intersex person" and "transgender person" into the eligibility criteria could complicate the merit-based assessment processes. While intended to enhance diversity, this may inadvertently create hierarchies within diversity categories, leading to potential biases and reverse discrimination where individuals might be hired based on these characteristics rather than suitability or merit.
- Potential Overemphasis on Gender Identity: By specifying intersex and transgender individuals as separate categories for employment prioritisation, there is a risk that other equally important diversity aspects (like socio-economic background or age) are overshadowed. This overemphasis can dilute the focus from broader diversity goals that benefit all disadvantaged groups.
- Practical Implementation Challenges: Defining what constitutes sufficient proof of someone being "intersex" or "transgender" poses practical challenges for HR departments and may lead to invasive privacy issues or bureaucratically cumbersome processes to verify such statuses.
- Impact on Other Protected Groups: The inclusion of these specific groups without clear guidance on balancing all aspects of diversity might inadvertently push other historically marginalised groups, such as people with disabilities or indigenous populations, further down the priority list in recruitment processes.

Schedule 14: Interpretation Act 1987

The proposed amendments may have ramifications for legislative clarity, safeguarding women's rights, protecting children, and the broader societal impacts of redefining the concepts of sex and gender within legal frameworks.

Amendment to Section 8 - Number

Proposed Changes:

The amendment proposes to remove the current heading "Gender and Number" and replace it with "Number", while completely omitting paragraphs (a), (d), and (e). These paragraphs currently ensure

that language related to gender is inclusively interpreted to reflect all sexes, and that singular terms include plural interpretations and vice versa.

Concerns:

- Misuse of the Term 'Gender': The proposed removal of specific references that ensure inclusive interpretation across all sexes under the guise of 'gender' could lead to a significant shift in understanding. By removing these clarifications, the legislation shifts from a biologically based understanding of sex to an ideologically driven interpretation of 'gender' that may encompass a broad spectrum of self-identified gender identities. This shift not only introduces ambiguity but also potentially erases the legal recognition of the biological differences between sexes which are relevant in many areas of law, including those concerning privacy, safety, and fairness in sex-specific spaces.
- Potential for Increased Legal Ambiguity and Conflict: Removing the explicit requirement for gender-inclusive interpretation risks legal interpretations that fail to recognise the distinctions and protections necessary for biological sexes. This can lead to legal conflicts, particularly in areas where sex-specific rights and protections are crucial, such as in provisions related to women's shelters, sports, and public restrooms. The ambiguity may also complicate the enforcement of laws designed to protect against sex-based discrimination.
- Erosion of Sex-Based Legal Clarity: The changes could undermine laws crafted with the intent to protect specific sex-based rights. By blurring the lines between sex and 'gender identity', these amendments could dilute the effectiveness of legal protections intended to address and remedy sex-based inequalities and harms.

New Definitions Related and Clarifications of Person References (Sections 8A and 8B)

Proposed Changes:

- **Section 8A** introduces broad definitions that expand the interpretation of terms related to sex to include a wide array of self-identified gender identities.
- **Section 8B** clarifies that the term 'person' includes both corporations and individuals, irrespective of the context that might suggest a more specific reference.

Concerns:

- Broad and Unclear Definitions: The proposed definitions in Section 8A could significantly disrupt the legal clarity needed in settings such as single-sex services, where biological distinctions are crucial for safety and privacy.
- Implications for Women's Single-Sex Spaces: Mandating that all references to sex be interpreted to include any self-identified gender could legally require single-sex spaces to accommodate individuals based on their gender identity rather than their biological sex, potentially compromising safety and privacy.
- Undermining Statistical and Medical Accuracy: The broadening of definitions could impede the collection of accurate statistical data and the provision of medical services that are specifically tailored to biological realities.

Conclusion

The proposed amendments under Schedule 14 represent a shift from biologically grounded legal definitions to those based on gender identity. This approach risks eroding clarity and effectiveness in legislation, particularly in laws designed to protect specific groups based on biological sex. The amendments erode the rights of women, and complicate legal recognition of familial and biological relationships. It is crucial to uphold a clear distinction between biological sex and gender identity within legislative texts to protect the rights and well-being of *all* individuals.

Schedule 15: Law Enforcement (Powers and Responsibilities) Act 2002

Overall Concerns: Undermining the rights and safety of women and children, the erosion of consent, and the movement toward replacing biological sex with gender identity in law—an unverifiable and ideologically driven change.

Redefinition of "Transgender" and Introduction of "Intersex" Section 3(1)

Proposed Changes:

Redefinition of "transgender person" and introduction of "intersex person" definitions in Section 3(1).

Concerns:

- Misrepresentation of Biological Realities: The term "intersex" is medically inaccurate in this context as it misrepresents Differences of Sex Development (DSDs), which are specific medical conditions, not evidence of a third sex. These amendments could lead to confusion in situations where biological sex is a relevant factor in safety and privacy.
- Erosion of Women's Rights: The broad and vague definitions could lead to situations where the rights of women to single-sex spaces and services, based on biological sex, are compromised. For instance, allowing male-bodied individuals to be searched by female officers simply because they identify as female erodes the consent and dignity of both the officers and other women involved.

Modification of Language Regarding Sex - Section 3(2A)(a)**Proposed Changes:**

Language changes from "the opposite sex of" to "a different sex to" in Section 3(2A)(a).

Concerns:

Dilution of Legal Clarity: This change introduces a lack of clarity and could potentially allow for the erasure of the recognition of biological sex in law enforcement practices. This is a clear step towards replacing factual and biological definitions with subjective identifications, undermining legal standards and protections specifically designed around sex-based differences.

Compliance with Anti-Discrimination Norms - Section 5(4)**Proposed Changes:**

Ensuring the Act does not limit the application of the Anti-Discrimination Act 1977 in Section 5(4).

Concerns:

Legal Conflicts and Overreach: This could lead to the subordination of practical law enforcement needs to ideological positions on gender identity, compromising the primary functions of police work under the guise of non-discrimination.

Changes to Search Procedures - Section 32(6), (7), (7A)

Proposed Changes:

Revised search procedures concerning the privacy and dignity of individuals being searched, detailed in Section 32, particularly in subsections (6), (7), and (7A).

Concerns:

- Safety and Privacy of Women: The proposed changes, especially allowing individuals to be searched by persons based on gender identity rather than biological sex, directly threaten the safety, dignity, and consent of women—both as officers and as individuals being searched. These amendments force women to accept close physical proximity with biological males in situations where they are most vulnerable, under the coercive power of state authority.
- Risk to Children: Modifying search protocols without stringent safeguards based on biological realities exposes children to potential harm and confusion, particularly in sensitive situations involving searches.

Rules for Conduct of Strip Searches - Section 33(1)(b), (2), and (7)

Proposed Changes:

Changes to the guidelines for conducting strip searches to accommodate gender identity preferences, specified in Section 33, particularly in subsections (1)(b), (2), and (7).

Concerns:

Erosion of Consent and Privacy: Allowing strip searches based on the gender identity of the individual rather than their biological sex poses severe risks to personal privacy and violates the principle of

consent, particularly affecting women and children who may be searched by or need to search someone of the opposite biological sex.

Section 44

The proposed amendment to Section 44(3) regarding the search of individuals for safety reasons introduces significant concerns. The amendment allows individuals to be searched by a person of the same sex, or, in cases involving individuals identifying as intersex or transgender, by a person of a sex class they prefer, if available. This change, while ostensibly inclusive, undermines the clear and necessary distinctions based on biological sex that are essential in maintaining the safety, privacy, and dignity of both the search subjects and law enforcement personnel. Such a policy shift could compromise operational integrity, as it imposes an ideological stance on gender identity over practical law enforcement needs and established safety protocols. It potentially places female officers in vulnerable positions, having to perform intimate searches on biological males who identify as female, and vice versa, thereby increasing discomfort and risking the safety of all parties involved. This amendment appears to prioritise subjective identity perceptions over biological realities, which could lead to practical challenges in enforcement and unwanted invasions of personal privacy.

Conclusion

The proposed amendments represent a significant shift, moving away from a biologically grounded framework towards a wholly self-identified model without sufficient consideration of the broader implications. This shift risks eroding protections specifically designed for women, complicating legal interpretations, and placing undue burdens on service providers and legal systems designed to protect and support individuals based on their biological sex. These amendments could also stifle free speech by legally mandating acceptance of a subjective understanding of gender over observable biological reality.

Schedule 16: Mental Health Act 2007 (NSW)

Overall Concern

The primary concern is the potential implications these amendments may have on the clarity and effectiveness of mental health assessments, particularly concerning the inclusion of "gender identity or gender expression" within the statutory framework that determines what may not indicate mental illness or disorder.

Proposed Changes

The amendment proposes the insertion of a new point (d1) into Section 16(1) of the *Mental Health Act 2007*, stating that "the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular gender identity or gender expression" cannot be considered as indicative of mental illness or disorder.

Vagueness and Subjectivity

The terms "gender identity" and "gender expression" are inherently subjective and lack a universally accepted definition, other than an "innate sense of self", which can lead to confusion and inconsistency in mental health assessments. This ambiguity undermines the objective criteria needed for mental health evaluations, potentially leading to challenges in diagnosing and treating individuals who may require intervention for genuine psychological issues unrelated to their gender identity or expression. **Example:** A teenager experiencing significant distress and anxiety related to their gender identity might also exhibit signs of depression or anxiety disorders. The specific exclusion of gender expression from indicators of mental illness could lead practitioners to overlook other mental health conditions.

Potential for Misdiagnosis

By explicitly stating that gender identity and expression are not indicators of mental illness, there is a risk of overlooking or dismissing potential underlying mental health conditions. Mental health professionals should have the flexibility to explore all aspects of an individual's identity and behaviour in their assessments without legislative restrictions that could lead to oversight or misdiagnosis. **Example:** If a patient exhibits obsessive-compulsive traits centred around gender expression, the

prohibition against considering these expressions could prevent a deeper understanding and treatment of their obsessive-compulsive disorder.

Erosion of Professional Discretion

This amendment could restrict the clinical judgment of psychiatrists and other mental health professionals by legislatively defining what can or cannot be considered in the assessment of mental health. This is particularly concerning in complex cases where gender dysphoria may accompany other psychological issues. **Example:** Clinicians facing patients who present with dissociative identity disorders where some identities exhibit distinct stereotypical gender-roles might find themselves legally constrained from exploring how these aspects influence the patient's overall mental health.

Impact on Safeguarding and Treatment

The inclusion of this amendment may complicate the safeguarding processes designed to protect vulnerable individuals, especially minors, by limiting the considerations mental health professionals can take into account when assessing patients. This could lead to situations where individuals do not receive appropriate care or intervention that could beneficially address their needs. **Example:** In cases where minors declare a sudden change in gender identity potentially influenced by social media, professionals might hesitate to evaluate the influence of external pressures due to the legal limitations imposed by this amendment.

Legal and Social Implications

Embedding specific ideologies about gender into mental health legislation can have broad legal and social implications. It risks politicising mental health care and could place mental health practitioners in difficult ethical and professional predicaments, especially when dealing with cases involving complex gender-related issues. **Example:** Legislation that specifies what cannot be considered a mental illness explicitly tied to gender expression may lead to a situation where health care providers might avoid necessary treatment discussions for fear of legal repercussions, even when such discussions are in the patient's best interest.

Conclusion

Inserting specific references to "gender identity or gender expression" introduces significant risks and complications. It may prevent mental health professionals from performing thorough, unbiased

assessments and could lead to both underdiagnosis and misdiagnosis of mental health conditions. This amendment appears to prioritise ideological considerations over medical and psychological science. Mental health legislation must remain grounded in observable evidence, without being swayed by societal or political influences.

Schedule 17: Sheriff Act 2005

Overall Concerns

The proposed amendments have far reaching legal, practical, and societal implications, particularly in terms of the erosion of women's rights, practical enforcement challenges, and the dilution of the biological basis of sex in NSW law.

Amendment to Section 3 – Definitions

Proposed Changes: The amendment seeks to redefine "intersex person" and "transgender person" with specific descriptions that could complicate legal interpretations and enforcement protocols within the Sheriff's operations.

Concerns: The term "intersex," as defined, erroneously suggests that such individuals represent a distinct sex, rather than correctly acknowledging the medical nature of Diverse Sex Development (DSD). These conditions do not create a new sex but involve health conditions that should be sensitively and appropriately handled without misclassifying them as a separate category. The introduction of "gender identity" as a criterion for legal recognition further complicates the enforcement of laws, as it relies on self-identification rather than objective, biological criteria, leading to potential challenges in safeguarding spaces designated for women.

New Sections 3A and 3B – Clarifications on Sex References

Proposed Changes: These sections aim to redefine interactions based on the gender identity of individuals rather than their biological sex.

Concerns: This shift prioritises subjective identity over biological reality, potentially compromising the safety and privacy rights of individuals, particularly women, within the sheriff's jurisdiction. It introduces ambiguity into legal processes that are traditionally grounded in the biological distinctions between sexes, especially in contexts where sex-segregation is necessary for safety and privacy, such as searches.

Amendment to Section 7B – Powers When Executing Certain Arrest Warrants

The proposed amendments modify the requirements for personal searches to allow individuals to choose the sex of the officer conducting the search based on their self-expressed gender identity.

Concerns

This amendment undermines the privacy and safety of both the individuals being searched and the officers conducting searches. It allows for potential exploitation where males choose to be searched by female officers, placing undue stress and safety risks on the officers and other individuals in custody. This not only erodes the rights and protections traditionally afforded to women but also complicates the operational duties of law enforcement.

Legal and Practical Implications:

Erosion of Women's Rights: By allowing gender identity to dictate the sex of officers conducting personal searches, the amendments risk violating the privacy and safety of women, potentially exposing them to situations where their bodily autonomy and their right to refuse consent is compromised.

Operational Challenges: The subjective nature of gender identity may lead to inconsistencies in the application of the law, complicating the enforcement of norms and standards in sheriff operations, and may lead to legal challenges based on perceived discrimination or inadequate accommodation of gender identity.

Safeguarding Risks: The amendments could lead to situations where the safeguarding of vulnerable individuals, especially children and women, within the legal system is compromised due to the fluidity of gender identity definitions.

Conclusion

The proposed amendments to the *Sheriff Act 2005* introduce significant changes that may not only challenge the practical enforcement of the law but also compromise the safety, privacy, and rights of individuals, particularly women, within the legal system. The shift from biological to self-identified definitions of sex and gender could have far-reaching consequences, undermining the clarity and effectiveness of law enforcement. The Act must protect **all** individuals equitably, maintain operational integrity, and uphold biological realities in the application of the law.

Schedule 18: Summary Offences Act 1988

Schedule 18 proposes to remove Part 3 – Prostitution - from the *Summary Offences Act 1988*. The omission of this part raises significant concerns about the weakening of legal protections that currently safeguard vulnerable populations, particularly women and young girls, against exploitation in the prostitution industry. The proposed amendments, as well as Alex Greenwich's ancillary remarks regarding Schedule 18, creates a general misconception that regulating prostitution is a punitive measure rather than a protective measure.

Removal of Specific Legal Safeguards (Current Sections 15, 16, 17)

Concerns: The existing provisions, such as Section 15 which criminalises living on the earnings of prostitution and Section 17 which prevents premises from being used for prostitution, are crucial in combating exploitation and trafficking. Eliminating these sections will lead to an unregulated market where exploiters operate with increased impunity, as seen in countries where deregulation led to the proliferation of large-scale prostitution rings under the guise of legitimate businesses.

In Germany for example, prostitution was legalised in 2002 with the aim of improving the safety and working conditions for prostitutes. However, this led to the expansion of "mega-brothels" and increased the involvement of organised crime in the prostitution industry. This has been particularly noted in cities like Berlin and Frankfurt, where large brothels operate almost like normal businesses but have been criticised for exacerbating trafficking and exploitation.

The Netherlands is often cited for its liberal stance on prostitution, particularly in Amsterdam's Red Light District. The reality has seen an increase in human trafficking and an influx of organised crime

groups taking advantage of the legality of the trade. The Dutch government has found it challenging to ensure that all sex work is consensual and not a result of coercion or human trafficking, leading to ongoing debates about the effectiveness of their framework.³

These examples underscore the complexity of dealing with prostitution through decriminalisation or legalisation without robust regulatory and enforcement mechanisms to prevent exploitation and abuse. They highlight the risk of inadvertently facilitating the expansion of exploitation opportunities for organised crime, thereby countering the very objectives of protection and safety that decriminalisation of prostitution aims to achieve.

Impact on Women's Safeguarding (Current Sections 16 and 19)

Concerns: Decriminalising solicitation as currently regulated under Section 19, which imposes penalties for soliciting in public places near schools and hospitals, removes critical barriers protecting public and individual welfare. It could lead to *increased visibility of prostitution activities in family-centred communities, with young children exposed to the visibility of prostitution outside their schools, public places and hospitals. This is unacceptable and has occurred in urban areas of New Zealand, where the decriminalisation of prostitution has resulted in public solicitation activities that disrupt community activities and create public safety issues.*

Pimping and Exploitation Risks (Current Section 15)

By criminalising the financial exploitation of another person's prostitution, Section 15 acts as a deterrent against pimping. **Without such legal provisions, those who exploit sex workers will be free to do so without legal repercussions, intensifying the risk of systemic abuse and trafficking of women and girls,** as has occurred in Germany where relaxed laws have allowed exploitation to flourish under legally ambiguous conditions. *Why is Mr Greenwich seeking to amend laws which will facilitate pimping of women and girls?*

Potential for Increased Human Trafficking

The removal of structured regulations around prostitution might inadvertently **make the state a more attractive destination for human traffickers, increasing local and international trafficking activities, which often masquerade as voluntary prostitution.** Removing structured regulations

³ Dutch National Rapporteur on Trafficking in Human Beings

around prostitution might replicate the scenario seen in the Netherlands, where deregulation initially intended to protect sex workers led instead to an increase in trafficking as criminal elements exploited the reduced legal scrutiny. **Why is Mr Greenwich seeking to amend laws that facilitate sex trafficking of women and girls?**

The Nordic Model: A Superior Alternative

The Nordic Model, successfully implemented in countries like Sweden and Norway, targets the demand for prostitution ***by criminalising the purchase of sex. This model aligns with protecting sex workers from exploitation and reducing prostitution and trafficking, contrary to removing penalties for buyers of sex, as suggested by the amendments.*** Implementing the Nordic Model could emulate the success seen in Norway, where demand for prostitution has significantly decreased, reducing the incidence of sex trafficking, thereby improving public safety and community standards. ***Why is Mr Greenwich not seeking to implement the Nordic Model which seeks to protect the welfare of women working as prostitutes?***

Conclusion

The proposed removal of Part 3 from the *Summary Offences Act 1988* significantly risks the safety, dignity, and rights of vulnerable individuals, particularly women and girls, by fostering an environment more conducive to exploitation and trafficking. This amendment erodes the protective barriers currently provided by the law, exposing individuals and communities to increased risks associated with an unregulated prostitution industry. This submission urges the committee to reconsider the proposed amendments in light of their detrimental impact on societal welfare and community safety. Adoption of the Nordic Model is recommended as a proven, more effective approach to addressing the complexities and dangers associated with the prostitution industry, prioritising the protection of those most at risk of exploitation.

Schedule 19: Surrogacy Act 2010

The proposed amendments, while potentially well-intentioned, raise substantial concerns regarding the exploitation of women and children, the integrity of parentage orders, and the potential erosion of existing legal safeguards designed to protect the most vulnerable parties involved in surrogacy arrangements.

Rights of Birth Mother to Manage Pregnancy and Birth (New Section 6A)

The amendment affirms the birth mother's autonomy during pregnancy and childbirth, aligning with general medical ethics and legal standards. However, by emphasising this in the context of surrogacy, where emotional and physical stakes are significantly complicated, it fails to address the potential pressures and exploitation risks from commissioning parents. This could lead to situations where the birth mother's ability to make autonomous decisions is compromised by contractual expectations or coercion.

Removal of Geographical Nexus for Offences (Amendment to Section 11)

The proposal to omit Section 11, which establishes a geographical nexus for offences, could reduce the jurisdictional clarity needed to prosecute offences related to surrogacy. This change may lead to a legal vacuum where foreign elements involved in surrogacy can evade NSW law, potentially increasing cross-border surrogacy exploitation without adequate legal recourse.

Changes to Conditions for Making Parentage Orders (Amendment to Section 18(2)(b))

The amendment shifts the focus from meeting specific preconditions to a broader consideration of what is in the "best interests of the child." This opens the door to subjective interpretations, which could be manipulated to favour the intended parents over the birth mother's or the child's welfare. This change might result in the granting of parentage orders in situations where not all procedural safeguards are met, undermining the child's welfare and the birth mother's rights.

Removal of Non-commercialisation of Surrogacy

Eliminating the specific prohibition against commercial surrogacy (section 23(2)) may lead to the commercial exploitation of vulnerable women, particularly those in financially disadvantaged situations. This could transform surrogacy into a market-driven industry in NSW, increasing risks such as coercion and exploitation of women who may view surrogacy as a financial necessity or opportunity.

Modification of Age and Wishes of Child Considerations

While the amendment retains the mandatory nature of considering a child's wishes, the removal of certain procedural details concerning how these wishes are considered (section 26(3)) could weaken the framework designed to ensure that a child's voice is adequately heard and factored into the decision-making process. This is particularly critical in cases where older children may have significant feelings about their parentage and potential life changes post-order.

The proposed amendments to the *Surrogacy Act 2010* risk eroding critical protections for both birth mothers and children by facilitating the commercialisation of surrogacy and diluting the rigorous standards currently required to obtain a parentage order. Furthermore, the amendments may create opportunities for exploitation and reduce the effectiveness of legal oversight over surrogacy arrangements both domestically and internationally.