

**Submission
No 66**

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

Organisation: Mental Health Commission of New South Wales

Date Received: 17 April 2024

Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023

Submission by the Mental Health Commission of NSW

April 2024



Acknowledgement of Country

The Mental Health Commission of NSW acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging.

Lived Experience Acknowledgement

The Mental Health Commission of NSW acknowledges people who have lived experience of mental health issues and distress, and the lived experience of their carers, families, and kinship groups. The Commission is committed to amplifying the voices of all those with lived experience. We value and respect their wisdom and expertise, and the bravery it can take to speak up. Together we will work to ensure people's right to live meaningful, healthy lives, free from stigma and discrimination.

In addition the Commission acknowledges the lived experience of Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Asexual, and other diverse identities.

Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 Published by the Mental Health Commission of NSW

nswmentalhealthcommission.com.au

First published: April 2024

Copyright and disclaimer

© State of New South Wales through the Mental Health Commission of NSW 2024. Information contained in this publication is based on knowledge and understanding at the time of writing, April 2024, and is subject to change. For more information, please visit nswmentalhealthcommission.com.au.

Contents

1	Cover Letter	1
2	The Mental Health Commission of NSW	3
2.1	The role of the Commission.....	4
3	Response to Terms of Reference	5
3.1	Terms of Reference Item 1 - The provisions of the Bill.....	6
3.1.1	Amendment of <i>Anti-Discrimination Act 1977</i>	6
3.1.2	Amendment of <i>Births, Deaths and Marriages Registration Act 1995</i>	7
3.1.3	Amendment of <i>Mental Health Act 2007</i>	8
3.1.4	Amendment of <i>Crimes (Sentencing Procedure) Act 1999</i>	8
3.2	Terms of Reference Item 3 - Additional ways of improving the safety and wellbeing of the LGBTIQA+ community.	10

1

Cover Letter

Mr Clayton Barr MP
Chair, Legislative Assembly Committee on Community Services
Inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023
communityservices@parliament.nsw.gov.au

Dear Mr Barr

Thank you for the invitation to make a submission to the Committee. The Mental Health Commission of NSW (the Commission) takes a continuing interest in the mental health and wellbeing of the LGBTIQA+ communities and recognises the impact that discrimination and stigma has on the mental health of these communities. The Commission acknowledges the intent of the proposed legislation, to improve protections for LGBTIQA+ people against discrimination in a range of areas.

LGBTIQA+ people and communities continue to experience discrimination in NSW. The Commission supports the scope of the Inquiry in looking at ways to improve their safety and wellbeing.

The Commission has responded to each of the Terms of Reference of the Inquiry. Due to the very large number of amendments across multiple Acts, the Commission has reserved its comments largely to *Terms of Reference Item – The Provisions of the Bill* to areas where there is a relatively greater intersection with mental health. The Commission has also provided some limited comment on *Terms of Reference 3 – Additional ways of improving the safety and wellbeing of the LGBTIQA+ community*.

Thank you for the opportunity to providing comment. I am available to assist the Committee further with its Inquiry, if required.

Wayne Jones
Acting Commissioner
Mental Health Commission of NSW

2

The Mental Health
Commission of NSW

2.1 The role of the Commission

The Mental Health Commission of New South Wales (The Commission) was established in July 2012. The role of the Commission is to monitor, review and advocate to improve the mental health and wellbeing of people in New South Wales. The Commission's work is being guided by and embeds the voices of people with lived experience of mental health issues and caring, families and kinship groups.

The vision of the Commission is that: *The people of NSW have the best opportunity for good mental health and wellbeing and to live well in the community, on their own terms, having the services and supports they need to live a full life.*

3

Response to Terms of
Reference

3.1 Terms of Reference Item 1 - The provisions of the Bill.

The Commission acknowledges the purpose of the Bill is to improve protections for LGBTIQ+ people against discrimination embedded in law in a range of areas. The Commission believes that LGBTIQ+ people must be recognised, protected in law and allowed to thrive.

Data obtained for the development of the *NSW LGBTIQ+ Health Strategy 2022-2027* identified significantly poor health and wellbeing outcomes for LGBTIQ+ people in NSW due to chronic exposure to discrimination and stigma. Discrimination remains a challenge for all LGBTIQ+ communities, and the health strategy identified its toll on health, mental health and wellbeing. The Strategy reported that most LGBTIQ people in the State face high levels of distress, with two-thirds experiencing a mental health condition, one-quarter having had suicidal thoughts and almost one in 10 self-harming at some stage in their lives. Over half of LGBTIQ+ high school students felt unsafe at school due to their sexuality or gender identity.

The Commission supports advancing equality as it is associated with reduction of discrimination. We know that not feeling equal and included causes psychological distress to LGBTIQ+ people¹.

3.1.1 Amendment of *Anti-Discrimination Act 1977*

The Bill proposes to change what can be described as problematic, exclusive and hurtful language in multiple places including in this Act. This can lead to more supportive policies and practices across various sectors of society. For example, changes to terms such as omitting the definition of 'homosexual' and inserting the definition of 'sexuality', which encompasses a broader range of identities and experiences beyond just homosexuality. It acknowledges the diversity within the LGBTQIA+ community.

Whilst it is recognised that the term 'homosexual' is acceptable to some LGBTQIA+ people the term 'homosexual' has also historically been associated with pathologising attitudes towards same-sex attraction including in mental health diagnosis. Using inclusive language and providing options that acknowledge diversity and self-definition helps individuals feel seen and validated, fostering a sense of belonging and acceptance that is essential for mental well-being. Use of the more encompassing term 'sexuality' is a more empowering and self-affirming as it allows individuals to define and express their identities on their own terms. It can send a message of acceptance and validation to transgender individuals and contributes to a more inclusive and supportive social environment. Having one's identity autonomously recognised are key components of mental well-being.

The change that a transgender person will be described as 'a person who lives as a member of another sex' clarifies and modernises language including acknowledging non-binary identity. There is significant public discourse about gender diversity and the Commission notes the importance of including provision for non-binary in legal definitions to help support greater awareness and acceptance.

3.1.1.1 Amendment of *Births, Deaths and Marriages Registration Act 1995*

The amendment allowing people to nominate a gender descriptor that *best reflects* their gender identity acknowledges that gender identity is diverse and individual, encompassing a wide range of identities. This more inclusive approach will better respect and validate individual experiences and will help support gender diverse people to express themselves. This is important in relation to mental health which is closely linked to how individuals perceive themselves and are perceived by others.

The Commission also welcomes the proposed changes to multiple Acts removing stigmatising and outdated language about HIV and AIDS like 'infected' or 'suffering from'. The use of language plays

¹ Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University, pp. 46-47

a significant role in shaping perceptions and attitudes particularly in health care. By removing terms that carry negative connotations and imply blame or weakness, the amendments can help reduce the stigma and discrimination faced by people living with HIV and AIDS.

The change to no longer require a transgender person to alter their sex to be considered a recognised transgender person also eliminates an example of structural stigma. By removing the necessity for transgender individuals to undergo legal changes to be recognised in their affirmed gender, this legislative change could alleviate some of the pressures and mental health strains experienced by trans people and by simplifying the process of legal recognition, it ensures that more people can benefit from legal protections against discrimination.

3.1.1.2 Discrimination against intersex

The Bill proposes to expressly confirm that discrimination against people with variation of sex characteristics is unlawful. The Commission acknowledges that people who have variations in sex characteristics, or who are intersex can experience from various sectors, including healthcare, education, and employment. Australian people with intersex variations are a vulnerable group in terms of mental health. In an Australian intersex survey 42 per cent of participants had thought about, and 26 per cent had engaged in, self-harm because of issues related to having an intersex variation. Sixty per cent had thought about suicide and 19 per cent had attempted suicide².

Protection under the *Anti-Discrimination Act* provides greater safety for intersex people. This should positively affect their sense of belonging and social support, which are critical factors in mental health resilience.

3.1.1.3 Discrimination against sex workers

Despite being legal, regulated, legitimate work, sex workers often face significant societal stigma and discrimination, which can come from various sectors including healthcare, and social services. Australian sex workers identified that the stigma surrounding their profession had a significant impact on their mental health.³

Legal protections affirm the rights and dignity of sex workers, contributing to a sense of empowerment and improved self-esteem. Legal protection can help foster an environment where sex workers are recognised and accepted, reducing the social isolation and public misunderstanding that contribute to mental health struggles.

3.1.1.4 Discrimination by private educational authorities

Similarly, the Commission recognises the proposal to remove exceptions for private educational authorities to discriminate against an employees and students on the grounds of marital or domestic status, and disability and sexuality and age. The Commission has an ongoing function to highlight and address stigma due to the effect it has on mental health. The Commission is aware that stigma exists for each of these attributes. In Australia, 80% of homophobic bullying occurs at school⁴. The Commission believes that not only should educational institutes operative inclusively and with acceptance in relation to employees and students, but also play an important role in educating and role modelling to younger people about inclusivity.

3.1.2 Amendment of *Births, Deaths and Marriages Registration Act 1995*

The Commission acknowledges the proposed amendments to remove unnecessary barriers, including gender affirming surgery requirements, to trans people updating their legal gender.

2 Jones, T., Hart, B., Carpenter, M., Ansara, G., Leonard, W., & Lucke, J. (2016). *Intersex: Stories and Statistics*. Cambridge: Open Book Publishers, Unpublished.

3 Treloar, C., Stardust, Z., Cama, E., & Kim, J. (2020). Rethinking the relationship between sex work, mental health and stigma: a qualitative study of sex workers in Australia. *Social Science & Medicine*, 113468.

Requiring gender affirming surgery as a criterion for gender change creates an unnecessary barrier to achieving a congruent legal identity. All transgender people, regardless of their choices or circumstances regarding surgery, should be able to have their identities legally recognised, which is vital for their mental health. The process of getting gender-affirming surgery can be long, costly, and difficult. It might not be the desired path for every transgender person. By removing gender-affirming surgery as a requisite for transgender people to change their legal gender respects individual autonomy and reduces unnecessary mental health burdens.

For transgender individuals, having mismatched identification that does not align with their gender risks outing trans people and putting them at risk of harassment and violence when they must prove their identity. Additionally having official documents that do not reflect their true gender identity can cause psychological distress. This distress can come from the constant reminder of a discrepancy between their identity and their official documents. Conversely, legal gender marker and name change is associated with lower negative emotional response to gender-based mistreatment and improved mental health outcomes among trans populations.⁵

3.1.3 Amendment of *Mental Health Act 2007*

The Commission recognises the proposed amendments to the *Mental Health Act 2007* to acknowledge that a person is not a mentally ill or mentally disordered if they express, refuse or fail to express a particular gender identity or gender expression. Despite gender based discrimination being a high risk factor to mental ill-health, not all people who have variances in gender or gender expression experience mental illness, and mental illness is not limited to experiences related to gender based stigma, discrimination and/or trauma. By explicitly stating that a particular gender identity or expression does not constitute a mental disorder, the proposed amendment will reinforce a non-discriminatory approach to mental health care.

When gender diversity is not pathologised, individuals are more likely to seek and receive appropriate medical and psychological support without fear of being misdiagnosed or stigmatised. This is crucial for the well-being of transgender and gender-diverse individuals, who may require support for a range of mental health matters including gender dysphoria or transition-related healthcare.

The Commission sees this change as being supportive of principles of gender affirming healthcare. Additionally, it is supportive of a 'person-centred care' approach which is generally considered to result in better treatment outcomes. Person centred care supports the person, at the 'centre of the service', to be involved in making decisions about their life and takes into account each person's life experience, gender, beliefs and identity.

3.1.4 Amendment of *Crimes (Sentencing Procedure) Act 1999*

A 2023 survey of transgender and gender diverse Australians found one in two trans Australians have experienced some form of hate and one in 10 experienced violence⁶. Hate crimes can have significant mental health impacts on affected individuals and communities. Entire communities can feel the impacts of victimisation. Members of the targeted community may also experience vicarious trauma symptoms resulting from witnessing others being victimised. Experiencing or even witnessing hate crimes can lead to post-traumatic stress disorder (PTSD), anxiety, and other stress-related disorders.

The Commission recognises the imperative that when sentencing, crimes motivated by hatred or prejudice towards transgender and intersex people are treated the same way as crimes motivated by hatred or prejudice towards people of a particular religion, racial or ethnic origin, language, sexual orientation, or disability. This recognises that offences committed against someone because

⁶ <https://www.theguardian.com/society/2023/aug/29/our-lives-are-under-attack-one-in-two-trans-australians-have-experienced-hate-report-reveals>

they are transgender or intersex can leave more than just physical or economic scars but can affect their feelings of safety, communal belonging and acceptance by society.

The Commission also notes the significant amount of online hatred towards transgender people and the impact that has on their mental health. The eSafety Commission's research shows that the LGBTIQ+ community experiences online hate at more than double the national average in Australia. The research found that the pervasive nature of digital platforms such as social media can mean LGBTIQ+ people experience significant harassment and negativity without the buffer of physical distance or anonymity. For the same reasons, some people feel more emboldened to express more extreme views and vilifying opinions and content online, where they might not otherwise do so in person. This can exacerbate feelings of isolation, helplessness, and stigmatisation. People belonging to sexual minorities who are victims of cyberbullying were more likely to feel depressed and to experience suicidal thinking, among other symptoms.⁷

⁷ Cooper, Robyn M., and Warren J. Blumenfeld. "Responses to cyberbullying: A descriptive analysis of the frequency of and impact on LGBT and allied youth." *Journal of LGBT Youth* 9.2 (2012): 153-177.

3.2 Terms of Reference Item 3 - Additional ways of improving the safety and wellbeing of the LGBTIQ+ community.

3.2.1.1 Applicable principles

The Commission agrees that members of LGBTIQ+ communities continue to experience discrimination and welcomes that the Committee will also look at other ways to improve their safety and wellbeing.

The *NSW LGBTIQ+ Health Strategy 2022-2027* has the goal of improving access to safe and inclusive mental health and suicide prevention services for LGBTIQ+ communities. The Commission supports continued efforts in funding, practice improvement, and system change along the lines of each of the Guiding Principles of the Strategy to be applied to mental health service delivery. This includes:

- Human rights - LGBTIQ+ people will feel welcome and safe in the NSW Health system.
- Person centred care - listening to LGBTIQ+ people's experiences of healthcare, identifying what matters to them.
- Access and equity - providing care that does not vary in quality because of sexuality, gender, intersex variation, and other social determinants.
- Gender affirming care – affirming a person's unique sense of gender and provides support to identify and facilitate gender healthcare goals.
- Partnerships - NSW Health delivered and funded services, LGBTIQ+ organisations, and researchers working together.

3.2.1.2 Awareness, education, and stigma reduction

In Australia's largest national survey of the health and wellbeing of LGBTIQ+ people, *Private Lives 3* (2020), a significant majority of participants reported that they had been treated unfairly because of their sexual orientation, and had experienced social exclusion, verbal abuse, harassment, sexual assault and / or been physically attacked due to their sexual orientation or gender identity. These findings are consistent with the more recent study *Pride in the Pandemic* (2022) that continued to highlight ongoing challenges faced by the LGBTQ community in Australia including poor mental health outcomes, systemic discrimination, and barriers to equitable and affirming healthcare, with the COVID pandemic making an already challenging situation worse with ramifications long-lasting.

The Commission suggests that public awareness and education continues to be in need to shift attitudes and to help the community understand the complexities. To counteract negative stereotypes, campaigns and programs that specifically address and debunk common myths and stereotypes about LGBTIQ+ people and humanise LGBTIQ+ experiences should be developed and promulgated. Visibility campaigns can highlight the diversity within the LGBTIQ+ community, promote positive stories, and educate the public on the harm caused by stigma.

In consultations undertaken by the Commission in 2023 in relation to stigma in rural areas, LGBTIQ+ youth participants spoke of challenges in the rural context, where privacy is more difficult and where attitudes were more resistant. Rural communities identified that one of the most effective ways they addressed stigma was through safe, social connection points. There is a need to strengthen and promote access to LGBTIQ+ support groups and communities where individuals can find acceptance, understanding, and solidarity. The Commission also heard the strong message from communities that to address stigma and discrimination, there is a need to build skills and knowledge on empathy, respect for diversity, and anti-bullying in educational programs to build a foundation of understanding and acceptance from a young age.

The *Private Lives* survey found that LGBTIQ+ people more frequently accessed mainstream health services than those that are LGBTIQ+ specialised. This is possibly due to availability. However, of a range of health services, mainstream medical clinics had the lowest proportion of participants who felt that their sexual orientation or gender identity was very or extremely respected. This means

there is an imperative to ensure that services that LGBTIQ+ people access for their mental health services ensure that mental health professionals are trained in providing affirmative care to LGBTIQ+ individuals, respecting their identities and experiences. And that their operating systems and procedures are supportive of inclusive practices and sensitive to the unique needs of LGBTIQ+ consumers.

3.2.1.3 Elevate the peer workforce

The Commission has coordinated piloting and evaluation of peer workforce initiatives in a range of mental health settings. Results from that found that peer workers embedded within services improved:

- Referral pathways and service navigation. Consumers were more likely to engage with services with a peer worker walking alongside them and both consumers and staff improved their ability to navigate the system.
- Mental health and recovery outcomes, a reduction in distress and willingness to seek help.
- Trust in the service system.
- Staff practice and knowledge.

Expansion and promotion of the role and value of the LGBTIQ+ peer workforce with a range of lived experiences and identities will add real value. This includes both in the design and delivery of NSW mental health services. This can help ensure services are better designed in accordance with need, and delivered in a way that is inclusive and accessible.

3.2.1.4 Early intervention and prevention services

The Commission believes that an emphasis on early intervention is important in mental health service delivery to help mitigate the severity of conditions and improve long-term outcomes.

Greater access to affordable, trauma-informed and LGBTIQ+ inclusive mental health services will provide important support. This is in addition to building the capacity of mainstream services to be more inclusive. Therapeutic group programs within community mental health services can provide cost-effective and evidence-based support.

3.2.1.5 Safe spaces

Crisis services that are accessible and do not have significant barriers to entry (or exit) are also very helpful. For example, the Safe Havens model for suicide prevention provides provide immediate, personalised, and compassionate care in a non-judgemental space to connect with a peer-support workers or be connected to a mental health professional without necessarily escalation into the emergency department. Increasing services that are LGBTIQ+ focussed that offer a range of mental health supports and that can act as safe spaces for individuals to find community and support should be considered.

Where possible, governments should be looking to augment LGBTIQ+ community-designed models. Community-designed initiatives tailored to meet the specific needs and cultural sensitivities of the community and location/s and can be much more relevant to those who need them, potentially increasing their effectiveness.

**Mental Health
Commission
of New South Wales**

PO Box 5434
Sydney, NSW 2001

E: mhc@mhc.nsw.gov.au
W: nswmentalhealthcommission.com.au
