

REPORT ON PROCEEDINGS BEFORE

LEGISLATIVE ASSEMBLY COMMITTEE ON COMMUNITY SERVICES

EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

At Macquarie Room, Parliament House, Sydney, on Tuesday 30 April 2024

The Committee met at 9:30.

PRESENT

Mr Clayton Barr (Chair)

Mrs Helen Dalton
Ms Donna Davis
Ms Trish Doyle (Deputy Chair)
Mrs Tanya Thompson
Ms Felicity Wilson

PRESENT VIA VIDEOCONFERENCE

Ms Liza Butler

The CHAIR: Good morning. Before we start, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we are meeting at Parliament. I pay my respects to Elders past and present of the Eora nation and extend that respect to other Aboriginal and Torres Strait Islander people who are present or are watching proceedings online. Welcome to the first hearing of the Legislative Assembly Committee on Community Services inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

My name is Clayton Barr and I am the Chair of the Committee. I am joined by my colleagues Ms Trish Doyle, member for Blue Mountains; Ms Helen Dalton, member for Murray; Ms Donna Davis, member for Parramatta; Ms Tanya Thompson, member for Myall Lakes; and Ms Felicity Wilson, member for North Shore. Ms Liza Butler, member for South Coast, is joining us online today. If the evidence we hear today raises any issues for any person, they can contact Lifeline on 13 11 14, QLife on 1800 184 527 or the Kids Helpline on 1800 043 470. We thank the witnesses who are appearing before us today and stakeholders who have made written submissions. We appreciate your input into this inquiry. We will now begin with our first witnesses.

Mr CRAIG GROSS, Professional Officer, Professional Services, NSW Nurses and Midwives' Association, affirmed and examined

Mr HENRY RAJENDRA, President, Australian Education Union, NSW Teachers Federation Branch, affirmed and examined

Ms MEL SMITH, Acting General Secretary, Australian Education Union, NSW Teachers Federation Branch, affirmed and examined

The CHAIR: I welcome our first witnesses. Thank you very much for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos and videos taken. Do you have any questions about the hearing process?

MEL SMITH: No.

The CHAIR: Would you like to make a short opening statement before we begin questions? I will start with the Teachers Federation.

HENRY RAJENDRA: Yes, thank you, Chair. The NSW Teachers Federation has a responsibility to advocate for the wellbeing of our members, students and their communities across all our New South Wales public schools, TAFE colleges and correctional facilities. We take this responsibility very seriously and take great pride in the union's longstanding advocacy and campaigning traditions in pursuit of social justice for all. In doing so, the federation welcomes and agrees with the overall aim of the Equality Legislation Amendment (LGBTIQA+) Bill. It prioritises equality for all our members and students, regardless of their sexuality and gender identity. I also want to acknowledge my colleague with me, Acting General Secretary Mel Smith, who has led much of our policy work and is widely recognised and respected for her hard work and leadership in this important social justice space. Thank you.

The CHAIR: Mr Gross, would you like to make an opening statement?

CRAIG GROSS: No, thank you.

The CHAIR: We are going to throw to questions. I will move around the table and start with Ms Wilson from the North Shore.

Ms FELICITY WILSON: Thank you very much for appearing today and for your submissions and contributions to the review of this legislation. I'm interested in particular in understanding the effect of these legislative changes and how you would see them being operationalised across the workplaces where your members work and any effects that you think could occur within those, not just for your members but for students, other nurses and patients et cetera.

HENRY RAJENDRA: Is that to either of us?

Ms FELICITY WILSON: Whomever would like to respond.

HENRY RAJENDRA: I will throw to Mel, if the Committee doesn't mind, but I will make some broad statements. The impact of discrimination on our students and teachers has been deeply felt for a very long time. We have been pursuing, either with the government of the day or indeed the Department of Education, improvements in terms of making sure that policies and practices do recognise and celebrate diversity. It hasn't been easy in our system. It is about education, not just for our children but for the adults that are involved. I will

throw to Mel in terms of further detail. We see this as an opportunity to really do some good work in this space, particularly in our conversations and policy developments with the Department of Education in particular, to make sure that the elements of this will feature in a lot of that work.

MEL SMITH: In relation to the equality bill, strengthening some of the definitions around who is included in relation to anti-discrimination is really important. Currently, people who are bisexual and people who are pansexual or non-binary and what not are not necessarily encapsulated in that legislation on a State basis. That means that our members and students who identify in that way don't have an avenue to address those issues under legislation in New South Wales. It means they rely on the Federal jurisdiction in order to pursue it in that way.

Discrimination is a really difficult thing to deal with on a school level. We did a survey—the largest survey of its time, with over a thousand people who responded, which was back in 2019—in relation to discrimination and disadvantage experienced by teachers in school. Almost half the number of teachers recognised that they were facing discrimination in the classroom. What was really alarming was that a lot of the people who said, "No, I don't experience any discrimination", when we had one-on-one conversations with them in the qualitative part of that research, they were experiencing discrimination but they just didn't know it because it had been so normalised in the way that people treated them. That is a real issue and it hasn't changed. I would have to say that, over time, things have got worse.

We know that, particularly in relation to trans people and the report done by the Trans Justice Project, every time there's a furore in the media around people who are trans or conversations around the validity of the identity of being transgender, people experience violence and harassment and discrimination, and that's well reported in that report as well. Having protections for people who identify as LGBTIQ+ is really important, and they need to see that from our State Government to ensure that they have got that recognition.

Ms FELICITY WILSON: Can I ask a question of Mr Gross? You represent members in an area that significantly works with people who are biologically born as women—if you think about midwifery, for instance. One of the specific areas of this legislation is around surrogacy reforms, and we do hear different perspectives on reforms around surrogacy. Obviously, there's no proposal in this legislation to move to a commercial surrogacy model in New South Wales, but do you have any contributions or share any members' views around the way in which surrogacy currently operates in New South Wales and how you see these changes taking effect?

CRAIG GROSS: To be honest, this isn't something that we've received—to the best of my knowledge—any concerns from members regarding surrogacy arrangements. I have midwives that work with me on my team and even from their perspective I would see that this is probably something that's never actually been brought to our attention. Just to address the question you asked earlier about how this would be operationalised across New South Wales in workplaces, as you'd be aware, our members work in facilities, small and large, across the entire State. I've had the privilege of working with people across the entire LGBTIQ+ spectrum as a clinician, both as my patients under my care and also as my colleagues. From our perspective, there are certain elements of the amendment bill that would seek to ensure that people feel safe enough to be able to work in any healthcare workplace across New South Wales, and it wouldn't limit people moving to different areas where currently we do hear from members that they don't feel safe to work in certain communities because they are LGBTIQ+.

I'm sorry, I'm not directly answering the question you asked me but, to go back to the earlier question, while I wrote in our submission that we, similarly to the Teachers Federation submission, wouldn't endorse mandating quotas around workplaces—from our perspective, it's that people shouldn't be pushed to reveal. It's always their choice to reveal their LGBTIQ+ status, and they shouldn't be pushed to reveal that to meet a mandatory quota or to say that, yes, we have representation in this workplace. But there should definitely be things in place to ensure people do feel safe regardless of where they choose to work across our State.

Mrs HELEN DALTON: I'm a rural MP and I am just wanting to know what changes would you see in schools if this bill were passed? What would we have to change?

MEL SMITH: I think there's a lot to change now currently, to be honest. It's lacking in schools. Support for students who are LGBTIQ+, particularly those in regional and remote areas, is lacking. The department has no LGBTI policy to support students or teachers in the workplace or in schools, in TAFE, in correctional services facilities. I don't know, really, that a change in legislation is what—perhaps changing the legislation is what's needed to encourage the department to put in place some sort of protective measures or recognition around supporting LGBTIQ+ in schools and colleges, because they don't have it now and that's lacking and that's problematic. I would hope that the legislation would encourage them to do so, though I don't think it forces them to do so.

Mrs HELEN DALTON: We received a lot of submissions from a lot of different groups and one highlighted that there is discrimination in schools and that often some of the teachers ignored that form of

discrimination. Obviously, we would have to put procedures in place and you've just highlighted that. We talk about cultural discrimination but, when it comes to gender diversity or anything like that, some of the teachers just let that go.

MEL SMITH: Absolutely. I think the problem that we experience there is that there is a lack of training and understanding that teachers receive in relation to LGBTIQ+. When people come into a profession, we receive training around how to undertake our work to support students, to look after their wellbeing. We don't get any training in relation to supporting LGBTIQ+ students, certainly not when I went to university, not since then that I know of. There are some universities that have some aspects in the course but nothing specific. The department, despite our attempts to have something like that incorporated into training and endorsed by the department—they've never done it. They refuse to do so.

Teachers don't feel confident addressing this type of behaviour or integrating it into the curriculum as they should be doing, because students really only engage with topics that they see themselves reflected in. They don't have the confidence in doing that because they're not getting the training and the knowledge and understanding and skills around being able to do that effectively. If you don't think you can do it well, then often people don't do it at all. That's reflected in terms of people's practice in relation to cultural inclusivity and understanding Aboriginal perspectives and that sort of stuff as well. That is a great big area of growth that should happen.

Mrs HELEN DALTON: Obviously, teachers, if they're not confident, will sidestep the issue. We have a long way to go. How would these changes impact on staffing arrangements? Given we have a chronic teacher shortage, how on earth do we begin?

HENRY RAJENDRA: In terms of the shortages impacting the work that needs to be done in the department across our schools?

Mrs HELEN DALTON: Right across really, absolutely.

HENRY RAJENDRA: If I can just add to what Mel described in terms of teachers not having the confidence, the training et cetera, what it's then left with is some places do it well and some places just do it poorly and there's that inconsistency right across our system. Regrettably, no two schools are alike. Often, without that training from the centre of the department to put that strong policy, procedural platform out in our schools, it's left to schools to decide what to do or not to do about it. Therefore, our role then comes into, if we're not getting far with the department and we continue to engage with them on this issue, we're then trying to put out spot fires, so to speak, in terms of supporting our schools and our students.

Of course, staffing shortages do impact on this and in a whole range of areas, but I think we're capable, if there is the political will, if there is the professional will, for the tide to lift all boats. We do need to commit. Of course we're going to work on teacher salaries and conditions and so on to address the teacher shortages, but it doesn't give us the permission not to do anything about this. So there is a policy, there are procedures, there is a whole range of factors, but there is a strong values base to this as well. Whether we've got a chronic teacher shortage or we have a surplus of teachers, this goes to a strong sense of values that our system needs to cross that void of inertia, hesitancy and come good. Hopefully this kind of work that we're discussing today can assist that, but we're not there yet. We do need that values-based discussion and commitment from the employer.

MEL SMITH: The other thing is that schools need to be safe places for LGBTIQ+ people to work in. If somebody does not feel that they are safe in that environment, they will not seek employment there. Whether it's the private system, whether it's the public system, they won't seek employment there, or they won't bring their whole selves to work. That, of course, has an impact in terms of—it's well researched that you're more efficient, you're more engaged and you can do your job better when you bring your full self to work. Particularly in rural areas, where people may be new to those places and not know how the community more broadly will accept them, it can be really difficult. And there's nothing for teachers to feel that they can really do that because, when something does go wrong, it's left to the principal to do something about it and they have no support or direction from the department. And then teachers leave. I know cases where that has happened, absolutely, in a teacher shortage.

Ms TRISH DOYLE: Thank you for being here today and for your respective work in the health and education space. Henry and Mel, have any of your members expressed concern—those that work in the public sphere—that there will be any unintended or negative consequences as a result of removing or limiting exceptions under the Anti-Discrimination Act for religious and private educational institutions?

MEL SMITH: There are a couple of things, I suppose, in relation to that. There's been some feedback from people who have previously worked in the private sector who are now our members, and they've been forced out of the private sector because just the level of stress and anxiety that they had to function with every day by

hiding who they were because potentially they would lose their job—they just could not continue that. For their own wellbeing, for their own feelings of safety, they changed the provider or they were forced out. They would see that the changes in legislation to remove any exemption as being nothing but positive.

More broadly, our members who have not worked in private schools—public values to the core—they would see that as a positive thing as well. We've had conversations in terms of LGBTIQ+ meetings that we have in our membership. They're very supportive of removal of exemption, because they see that as a reflection of broader society and what's acceptable, and the public should be acceptable in terms of all institutions within our State. Particularly where organisations are getting public money, they should be held to the same account as other public institutions.

Ms TRISH DOYLE: Excellent. Thanks, Mel. Can I just put that same question to you, Mr Gross, as well? Have any of your members expressed any concern about unintended or negative consequences if we're to remove or limit exceptions under the Anti-Discrimination Act for private health facilities?

CRAIG GROSS: We haven't had any concerns raised by our members. I just want to speak to what you're saying. I have lived experience with this. As a student in a religious school in 1998, when I was halfway through year 11, I had to leave my school because I was becoming aware of who I was as a person. For me, I just find that it's something very difficult to accept that this still occurs and we're 25 years down the track. We don't have the same difficulties in the health sphere because there is anti-discrimination legislation, but there are still certainly some concerns around hospitals and each care facility that is run by religious-based organisations and the services they can and can't choose to provide.

This, to my understanding, won't have a great impact on that. These hospitals and health facilities will still be able to choose to withhold or provide certain services. That has been something that has been raised as a concern, in that, again, public money is being provided to these facilities; significant amounts of public money—Federal system, I'm aware—especially in the aged-care system. Really, it needs to be questioned as to if public money is going to be funding these services and these organisations, then should they not be in line with public providers?

Ms LIZA BUTLER: Thank you, everyone, for attending today and giving up your time. I'd like you to think about schedule 2 and 3 around the amendment of children and young people in regard to amending their birth certificates. As you can imagine, we've had many submissions and lots of people are concerned around children under the age of 18 making these decisions. You're very clear in your submission, and you would also like to raise the importance of section 32G (3) for NCAT to take into account. Can you expand on why this is so important for people under 16 and between 16 and 18?

MEL SMITH: I'm just double-checking what we've actually written. In terms of young people who are—you're talking about children or young people who have transitioned, basically. You are talking about students who are not transitioning or maybe they are but they are living their lives as their identified gender. We would say that if they're not able to update their birth certificates, then that would be problematic in terms of some of the things they're going to start to engage with as young people, 16 to 18—Medicare, opening bank accounts, that sort of stuff.

Their names, their gender, their pronouns could be quite different to what's on their birth certificate, and that's going to be a barrier for them. It could also be different to what's on their school report, the name we're required to put on a school report, versus the name that they've been maybe using after school. That could cause some discrimination, I suppose, from employers, when they're seeking employment for the first time after school. That transition is difficult enough and to add to that is quite problematic. Then, of course, the whole thing about having to undergo gender reassignment surgery in order to change birth certificate, we think, is unnecessary. Those people are living a life in the identified gender that they identify as. Some people don't ever want to get gender reassignment surgery. Why should they have to be forced by the Government to do that in order to change their birth certificate? That's outrageous.

Ms LIZA BUTLER: Craig, do you have anything to add to that?

CRAIG GROSS: Other than supporting that position, no, nothing further to add.

Ms LIZA BUTLER: Thank you. That makes absolute sense, what we've just heard.

Mrs TANYA THOMPSON: Thank you for giving up your time today and for your contribution and your submissions. I have a question, actually, that refers to mental health. Given the gaps that we already have within our mental health system and the extra pressures, I think that this will open up increased pressure on the community, particularly in our schools and on teachers and students across the board—pressure on teachers to

support students; pressure on teachers to work through these reforms and this new legislation. Do you think the Department of Education has the resources to support teachers and students as we navigate through this?

HENRY RAJENDRA: It's a very important question. In addition to what we've said earlier in terms of the training and education that's required, provided centrally by the department and not left to individual schools, to try to devise something but to support our entire workforce—our system is underfunded quite considerably. It's manifesting itself in a whole range of ways, whether it's the teacher shortages we've seen that have not been addressed, despite a really good outcome in terms of salaries last year. We're underfunded in terms of any significant reforms that we can do in terms of staffing levels, in terms of specialist teachers and, of course, in terms of the provision of school counsellors across the State.

We have to remind ourselves that it was Tony Vinson, back in 2002 and 2003 in that groundbreaking assessment of where our system was at, that called for one to 500 students in terms of school counsellors. We are still not there. We've had a number of inquiries. We've had the Gallop report and its findings that have made strong recommendations. Clearly, the current Government's commitment to lift the number of school counsellors is welcome but not far enough. The school counselling service is absolutely critical. When I say the school counselling service, we're talking about the dual-qualified—someone with a teaching qualification and psych as well. That is critically important because to our support our kids, you need to understand them particularly from the frame of being a teacher. We are way short in terms of that provision. Not only does it impact on those individual students, it impacts on our workforce that is screaming out for that kind of support, that kind of referral process.

Beyond that, it's also a difficulty for our school counselling service to access other agencies. That has been a significant issue for our system, whether it's in the mental health space or a range of other therapy services that our students may need. Often our schools are trying to do all we can. I think it was brought up by Professor Ian Hickie during the Gallop inquiry. He warned us as a system: Be careful of how much you want to take that is the responsibility of other agencies, including Health. If we're talking about the mental health space for our students, of course we have to look at the Department of Education, of course we have to look at schools' funding, which is so fundamentally low. This year alone, it's \$1.9 billion. I think I'd have a different answer for you if we had the \$1.9 billion right now. We need to look at whole of government, all agencies, in terms of how do we support our young people.

MEL SMITH: The other thing is it's not changing the number of people who are LGBTIQ+ in schools. The legislation is not changing any of that.

Mrs TANYA THOMPSON: No, but it's the awareness of it.

MEL SMITH: Hopefully, to some degree. It's around the fact that nothing is available in schools. If they did something, that would be an improvement on what's happening now. The department has one diversity, inclusion and belonging strategy for teachers. It's actually more for employees; it's not that fantastic for teachers. It's more appropriate for corporate. If you are a teacher somewhere like Walgett, where are you getting your support from? Where's your principal getting support from in terms of addressing bullying and harassment that they might be getting from parents, teachers or students? There's an obligation already for the department to be doing these things, and they're not. I wouldn't say that the legislation is going to be doing anything terribly new, except for maybe re-emphasising to the department that they're lacking in this area and that they should be doing something about it. I don't think that it will be something new and different to the obligations they already hold in terms of duty of care to both teachers and students currently.

Ms DONNA DAVIS: Thank you very much for attending today. I have two questions, which are both to the federation. The first is around your response to schedule 1 [12], which is that the federation agrees with the proposal that all children under 12 years of age have the right to equal participation in sport. However, you have concerns that the proposed amendments limit access to sporting activities for transgender people over 12 years of age. Could you please expand on your concerns about the decisions being made at a local level and what you consider to be an appropriate alternative to that?

MEL SMITH: In terms of local-level decisions, that basically just means that schools will do what schools will do. Every school is a little bit different. We're within the policy of "everybody should play sport", but we've got this document that says that if you're over 12 and you're transgender, if it's competitive, then you can't play. This is also within the context of childhood obesity and coronial inquests that have happened saying that children should participate in sport, yet we're providing a barrier here, perhaps, for transgender students who are 12 to 18 who are at school. They're encouraged to participate in sport but are told, "Actually, you can't. You've got to sit on the sidelines because this one is competitive." How do you choose what's competitive or not? You've got things like school gala days, which could be a school swimming carnival, athletics carnival or cross country.

That's competitive; it's a race. Who wins? That's a competition. Do we exclude transgender students from that? It's a whole-school activity, but you have to go and sit on the sidelines over there.

In inter-school sport, one school might play another school for sport on a Friday afternoon—or whatever day they have sport—and travel to other schools to play against each other. That's competition because we're counting the goals or the number of whatever it is, whether it's netball, soccer or whatever. Does that mean that transgender students who are in high school can't participate in that as well? Maybe it's just an in-school game. If you've got a parent who comes up and says, "I don't want that kid to play. I don't agree that they should be in the girls team. This is competition. They shouldn't be playing." That pushes it back on the teacher or the principal—it's going to be the teacher in the first instance—to have a response that they're not equipped to have. It also means that that poor teenager is in a position where they're feeling humiliated, they're feeling isolated and they don't necessarily have the ability to advocate for themselves. We need to keep that in mind in terms of looking after that young person. That's what I would say in terms of scenarios.

Ms DONNA DAVIS: I thought it was really interesting that you mentioned the exemptions for microbusinesses, especially given that is where so many of our youth start their employment career or working. Could you please expand on the amendments that you propose regarding exemptions for microbusinesses? It's the last paragraph of your submission.

HENRY RAJENDRA: Before I go to Mel, your point is quite right: That's where our kids are. We've got to do what we can, as we've said from the get-go, about supporting all of our students, not just some. Like you've pointed out there, our kids are employed in these areas, and we've got to make sure that those places are not places of discrimination and that those kids feel safe and valued in going to those particular workplaces. We don't see any value in drawing a divide between different types of businesses, particularly where our young people work.

The CHAIR: Specifically, that's with regard to businesses that identify as five or less employees that won't fall under these legislative changes. Mr Gross, I have a question for you. I specifically want to go to the point that your submission makes around the proposed changes to the Government Sector Employment Act around targets, or measuring diversity in the workplace. Could you extrapolate, for the sake of the record, what you mean by that, what your concern is and an example of where we might find that at its worst?

CRAIG GROSS: I anticipated that this would be a question. This was in discussion with one of our legal officers that has looked quite extensively around this legislation and the proposed amendments. Similarly to what was put forward in the Teachers Federation's submission, our concern around the idea of mandating quotas is that we have many facilities across the State, large and small, where our members work. If we were to say that every single local health district and every single facility must have a mandated quota of staff that are LGBTIQA, how do you actually reach that measure? Do people feel under duress to have to reveal who they are, whether they want to or not? It should always be that person's choice. There are times when people don't feel safe or may not feel it's appropriate for themselves to come out of the closet, so to speak.

Many people who identify as LGBTIQA, it's not just this concept of coming out of the closet once. It should always be that individual's personal choice as to whether they choose to come out of the closet or not. If there was a mandated quota, obviously employers are going to have to meet that mandate somehow. That was the concern that was raised with the wording of this part of the amendment. In saying that, from reading Alex Greenwich's second reading speech in *Hansard*, we can see the spirit of what his intention is behind it. The intention is good. It has got a very good intention that there should be encouragement for people identifying as LGBTIQA to be working everywhere across our State and there be no barriers to that. As a community, we've got a lot of value to add into our workplaces and into our hospitals.

The other part of it is that, regardless of where you are in New South Wales, ultimately, exposure to a diversity of people will help reduce discrimination. We have this idea that small hospitals out at Walgett—to pick on Walgett again—wouldn't be welcoming to somebody who is transgender working there or that people who identify as gay or lesbian might not feel comfortable working in that facility for whatever reason. We should be reducing every barrier that we possibly can to ensure that people do feel comfortable to work in any workplace. I think that, over time, you would probably not require a quota because people would be willing to work where they are needed.

The CHAIR: Based on the reading, there's mixed language around the sex of a person versus the gender of a person. On a typical employment form, we now have the opportunity to potentially put male/female/non-binary, but that then doesn't necessarily go to the gender question, which is your concern here. Is that right? How else is the data going to be captured unless somebody somewhere in an employment form identifies or outs? Is that the concern? Typically, when we're trying to measure diversity, over the past 50 or 100 years, it has been male or female and then male/female/disability and now what's proposed in this bill is

male/female/disability/LGBTIQ+. How does that potentially work in practice? The point that you're making is that someone would have to verbally declare themselves to be LGBTIQ+.

CRAIG GROSS: Possibly. If there was going to be a mandated quota for employment in government agencies of LGBTIQ+ people, then you would have to declare that you are and that you fit into that group of people.

The CHAIR: Would there be something similar happening in the space of disability? Some disabilities are clear and obvious and others are far less clear and obvious. Do you think there is a chance that some people with disabilities would declare or prefer not to declare as well?

CRAIG GROSS: Possibly, but that's not something I could speak to. It's not something I have experience with. I think that, for the purposes of these amendments, if they are filling out a form for employment, they should be given every opportunity to identify, "Yes, I do identify as LGBTIQ+." But there shouldn't be any mandate that one must identify that or somebody feels pressure to identify that. I don't think that having that information as demographic information on a form would pressure somebody.

It's important to ensure that we have an idea of who is in our workforce and who is in our community and our society. As we've seen as an example, questions in the Census change over time to identify who we have in Australian society and how we can best cater to their needs. There's still a way to go, but this would be the same. If you're collecting demographic information, obviously, over time, as you have said, it used to be that binary male/female and we've had other demographic information added over time. This would be something that would be added to data collection. The idea of mandated quotas for us, from our perspective, we don't see how that could work in every single facility or local health district across the State.

The CHAIR: Just for clarity and in wrapping up, to the NSW Nurses and Midwives' Association, is there an independent equivalent for those who work in private or religious-based health sectors?

CRAIG GROSS: No.

The CHAIR: Whereas, in education, there are essentially the public teachers—the Teachers Federation—but then there is also the Independent Education Union.

MEL SMITH: Yes.

Mrs HELEN DALTON: Mr Gross, have you faced any discrimination in the last four years in your workplace?

CRAIG GROSS: In my current workplace, no. I've been with the association now for three years. Can I ask why four years?

Mrs HELEN DALTON: I guess from COVID.

CRAIG GROSS: Right.

Mrs HELEN DALTON: I think you would be very welcome in Walgett, to be honest, because we are so short of teachers and nurses. We would welcome you with open arms. I think there are shortages in the city too, but how chronic they are I don't know. I know a lot of my friends are gay and they are very much welcomed into our communities. I think the world has been turned upside down since COVID, particularly. I think we're changing and we discriminate less now. It's a step change.

MEL SMITH: Can I just speak to that as well? The issue for people going to country areas is that they don't know what they're walking into and they don't know what the community is like. To pack up your life and go out there without a safety net is quite intimidating. Also, even in the city, after WorldPride we saw gay bashings on Oxford Street again. It's not safe. It doesn't matter where we are. It's not safe for people who identify as LGBTIQ+. Those people who are non-binary and those people who are transgender experience more violence and harassment and discrimination than those who are same-sex attracted. It's really about safety for people who are LGBTIQ+. It's about putting themselves in a position where they don't know if they're going to be safe.

If there was the capacity to expose people to communities that are welcoming, then that would be great for people to know that. But that's not something that we have available to us in terms of the large government departmental services that we're working for, except for beginning teachers beyond the line. It really comes back to safety, and that's a really significant thing. It's also underlying what we're looking at here in terms of anti-discrimination because it comes back to, "Am I going to be safe walking out the door in my workplace, when I go to school or university," or wherever it happens to be. That is paramount for everything else.

CRAIG GROSS: Thank you for your question. From my perspective, for most of my career I have worked in regional areas. I probably wouldn't say that I've been discriminated against directly in recent times, but

I can definitely say that there are times when I go to work—I still work clinically casually—when I feel that I need to mask. You get the good old question of, "Are you married?", and these kinds of questions and my answer is often, "No, just haven't found the right one yet ha ha ha." But there are reasons why I answer the questions in that way, because I don't at times feel that it's safe to divulge who I am or that it's safe to divulge that my partner is male.

I think, for me, I've got the good fortune to be able to do that, whereas I would probably say, for my colleagues that are transgendered especially, they do face greater discrimination and they have a much more difficult time in being accepted, I would say, in some communities. I'm very happy to hear that Walgett would be a very accepting place and I think that there are a lot of communities across New South Wales that are. I've got a cousin and friends that live in Broken Hill. My cousin is same-sex attracted and they live a very good life out there, notwithstanding there are also places and spaces in our State that aren't that safe, including right here in the middle of Sydney, sadly.

The CHAIR: Thank you for appearing before us today. I echo the thoughts of everyone in the Committee. Thank you for all the work that you do and have done and continue to do in our public spaces. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today, which there weren't, and any supplementary questions which might come from the Committee over the coming days. They will be emailed across to you. We ask that you turn those around within one week, if that's possible. The Committee will now take a short break and return at 10.30 a.m.

(The witnesses withdrew.)

(Short adjournment)

Ms ANNA BROWN, OAM, CEO, Equality Australia, affirmed and examined

Mr GHASSAN KASSISIEH, Legal Director, Equality Australia, affirmed and examined

Mr NICOLAS PARKHILL, AM, CEO, ACON, affirmed and examined

Mr BRENT MACKIE, Director Policy, Strategy and Research, ACON, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let Committee staff know if you object to having your photo or video taken. Before we start, do you have any questions about the hearing process?

ANNA BROWN: No.

GHASSAN KASSISIEH: No.

NICOLAS PARKHILL: No.

BRENT MACKIE: No.

The CHAIR: We have representatives in front of us from Equality Australia and ACON. I might go to Equality Australia first. Would you like to make an opening statement before we begin the questions?

ANNA BROWN: Yes, thank you, Chair. In 2011, year 10 student James Elliot-Watson was denied the chance to be prefect, suspended and outed to his parents. Thirteen years on, Caroline's eight-year-old daughter—not Caroline's real name—has so far been denied enrolment at no less than four schools on the northern beaches. Four years ago Karen Pack was fired after becoming engaged to her partner. And just last week Equality Australia supported a teacher who was stood down after updating her relationship status on Facebook. These are just some of the stories of people who've been denied, demeaned or dismissed at religious educational institutions in New South Wales because they are gay or trans. And you will be taking evidence later today from the man who fired Karen Pack, defending, again, laws that make all of these instances of discrimination perfectly legal.

Meanwhile, in the past two weeks we conducted a survey of over 1,300 trans and gender-diverse people across Australia. Only 8 per cent of trans people born in New South Wales have amended their gender marker on their birth certificate, with 51 per cent, or one in two, saying that they were unable to because they could not meet the requirements in New South Wales. New South Wales is the last place in Australia to require surgery on a person's reproductive organs in order to update a gender marker on a birth certificate. This means that many trans

and gender-diverse people are unable to access ID that matches their identity, leaving them vulnerable to harassment or even violence when they apply to work, study or even open a bank account.

Children should not be discriminated against because of the circumstances of their conception, particularly in areas like inheritance or superannuation. LGBTIQ+ people continue to experience shocking rates of violence and harassment. More than one in 10 are also at risk of family violence. It is no exaggeration that this bill will improve the lives of LGBTIQ+ people across New South Wales no matter where they live, work or study. In 2022 we reviewed and identified over 500 laws that could discriminate or disadvantage LGBTIQ+ people. Under this bill, which addresses those inadequacies in the law, they will be better protected if they experience violence, discrimination or harassment, will have their gender and families better recognised by the law, and will be treated equally under many laws for the first time.

New South Wales has some of the worst laws in Australia for LGBTIQ+ people. That is why 80 organisations from across the women's, faith, community, legal and health sectors have joined with LGBTIQ+ organisations to support these reforms in an open letter to the Premier, and why we are asking this Committee to recommend that this bill be passed. That letter was sent to the Premier and released today. With the Chair's permission, we'd like to table a copy of the letter for the Committee. By way of background, I'm here with my colleague Ghassan Kassisieh, our legal director—myself as CEO—representing Equality Australia. We're an organisation built from the successful campaign for marriage equality, with support from the Human Rights Law Centre, and we combine thousands of supporters—that is, LGBTI people, their families and allies—along with legal and media expertise, to ensure that LGBTI people are treated with dignity and respect. Thank you.

The CHAIR: Do our representatives from ACON want to make an opening statement?

NICOLAS PARKHILL: Thank you, Chair. Thank you for having us here today for the important opportunity to provide input into this inquiry. We believe that this bill represents a landmark legislative initiative aimed at rectifying existing gaps in anti-discrimination legislation and advancing the rights of LGBTIQ+ individuals in New South Wales across various domains. ACON is Australia's largest community-based LGBTQ health organisation, recognised by researchers, clinicians, governments and community members for our work of almost 40 years in community health, inclusion and HIV responses. Everyone deserves legal recognition for their true identity and everyone should have access to the necessary health care and access to other services without discrimination.

As outlined in our submission, stigma and discrimination present significant barriers to health care and other services, with just 43 per cent of LGBTIQ adults feeling accepted in accessing a health or a social service. We know from Australia's largest survey of LGBTIQ people, *Private Lives*, conducted by La Trobe University, that over 57 per cent of respondents reported high or very high psychological distress, compared with 13 per cent of the general population. Trans people are especially experiencing distress. Seventy-five per cent of trans men, 66 per cent of trans women and 75 per cent of non-binary people reported high or very high levels of psychological distress. In the same study almost 40 per cent had been diagnosed or treated for depression, 33 per cent for anxiety and 11 per cent for post-traumatic stress disorder, and these figures are even higher among trans participants.

LGBT people are attempting suicide and experience suicidal ideation at shocking rates. Suicidal ideation in the last 12 months is 20 times higher among LGBTIQ+ people than the general population and suicide attempts in the last 12 months are 10 times higher. Fifty-three per cent of trans men, 46 per cent of trans women and 40 per cent of non-binary people have attempted suicide in their lifetime. Almost 90 per cent of trans people have experienced suicidal ideation and 38 per cent have attempted suicide. In 2022 we surveyed 189 trans people regarding the need for legislative change. Seventy-six per cent of trans people responded that they had not updated their gender on State documentation such as birth certificates. Sixty-one per cent of those who hadn't updated their documentation indicated that they had to use a birth certificate in a way that forced them to disclose incorrect personal information such as a former name or the gender recorded for them at birth. Seventy-five per cent stated that they would update their documentation if the process was simplified.

ACON supports the various amendments contained within the equality bill. These amendments will strengthen protections for LGBTIQ+ people and sex workers in New South Wales and are desperately needed. These reforms follow best practice in other Australian jurisdictions and are an unprecedented opportunity to create a more inclusive, respectful and safe society for our communities. For all of these reasons, we recommend passing the bill in full.

Ms DONNA DAVIS: Thank you very much for attending today. This question is open to all of you. Opponents of self-ID amendments argue that it could confuse sex and gender identity. What is your position on that, and are you concerned that sex and gender will be conflated?

GHASSAN KASSISIEH: The short answer to it is since 1996 transgender people have been entitled to recognition as who they are under our anti-discrimination laws, regardless of their legal sex. The bill doesn't change that position. It simply allows trans and gender-diverse people to get a birth certificate that accords with how they present in the world to make it easier to get a job, apply for a bank account or study without the risk of being humiliated, embarrassed or, worse, at risk of violence or harassment.

As a matter of law, sex and gender is already conflated. Our laws generally don't care what gender you are. They certainly don't care in most cases what parts of the body you have. Where those cases are spelt out in law, this bill actually ensures that those laws can be read equally, depending on the circumstances of the case. For example, if you are being searched, it ensures that you're afforded the same dignity and respect as anyone else, regardless of your gender and your body configuration.

I think there's an issue around conflation of sex and gender as a social question, but, as a matter of legal questions, our law shouldn't be concerned or certainly impose invasive requirements on people who, for the most part, don't need to be asked and should be able to get through the world without those sorts of intrusive requirements on their bodies being part of their daily experience of getting a job or studying or making their way through public life.

ANNA BROWN: Yes.

NICOLAS PARKHILL: Yes, I agree.

Ms DONNA DAVIS: On the issue of search, can you elaborate a little bit from what you have stated in your submissions about your concerns around the current model, what is being proposed in the bill and what your thoughts are on that proposal?

GHASSAN KASSISIEH: I've actually trained police officers in their search powers. To be honest, the thing about our current law is it's confusing and it doesn't reflect what the actual practice is, which is, generally speaking, someone is searched by someone of the same gender as they identify. There's a reasonably practicable element to it, which is a person might be able to specify someone that they feel more comfortable with if their gender doesn't necessarily match people's expectations of their bodies. What this bill does is simply allow trans and gender-diverse people to have that same experience of dignity when they are searched against their will. We're talking about people being forced to be searched by someone in a position of power and affording to them the same right that anyone else would have, generally—unless they prefer otherwise—to be searched by someone of the same gender as themselves.

Mrs TANYA THOMPSON: Organisations that oppose the bill argue that amendments to the Anti-Discrimination Act unreasonably interfere with religious freedom and expression. What is your position on how to strike the right balance in relation to religious exemptions in the Act?

ANNA BROWN: In our view, this bill simply prohibits discrimination on the basis of sexuality or gender identity. Faith-based organisations and schools will still be able to preference people of their own faith as New South Wales doesn't have any laws prohibiting discrimination based on religious beliefs—only ethnoreligious identity. Religious organisations will also enjoy some special exceptions regarding religious leadership and religious practice. We go into detail on that in our legal explainer. As you heard in my opening statement, it is very clear that the current gaps in the law have real-world impacts on LGBTIQ+ people, including LGBTIQ+ people of faith. Karen Pack, for instance, is a devout Christian and she would like to teach at a Christian school. Instead of being subjected to the traumatic experience of losing her job because of her sexuality, she should be able to teach and obviously be part of a religious community in that way.

GHASSAN KASSISIEH: I would add to that that 16 of the 26 personal stories in our national report on religious discrimination are New South Wales-based. They are the students that have been denied opportunities in leadership. They are the teachers who have been fired simply for being in a same-sex relationship. They are the trans kids that have been denied enrolment in their local area. New South Wales has the worst laws in Australia on this issue, alongside the Commonwealth and Western Australia. Every other State and Territory has better laws, and a number of States and Territories have laws that basically say where it's a matter of your sexuality or gender identity, it shouldn't matter whether you can teach or whether you are enrolled at that school.

Where it's a matter of faith, we accept there are important places where religious belief might be relevant to a role—for example, if you're a religious teacher. But, as we say, New South Wales doesn't even have those protections, so there is no need for exceptions. That issue, broadly, I think, is going to be looked at by the New South Wales Law Reform Commission as part of their review. But New South Wales is the only State that entirely excludes private educational institutions from protections, meaning there's not even a question asked as to how they have decided to fire someone or refused a student an enrolment or leadership position. There's an opportunity now to at least bring New South Wales up to the lowest standard across Australia, even before we

start talking about where the line should be on the extent to which religious schools should be able to preference people of faith.

Ms LIZA BUTLER: Thank you for your time today and for coming in. I'm sorry I could not be there in person. What do you see as the most important reforms to protect LGBTIQ+ persons from discrimination and disadvantage?

ANNA BROWN: This bill in its entirety obviously addresses the issues that were identified in the audit. We would argue strongly in support of every aspect of the bill that removes discrimination and disadvantage. As an organisation, we have a focus on the impact of discrimination in religious contexts and the impact of those religious exemptions. Because we've undertaken so much research in this area, we have such a strong depth of evidence that supports the harm that's caused in religious schools and, indeed, religious service provision and employment context more broadly. That is an area of acute concern for us. Equally, the gender identity provisions, it's such long-overdue reform. It's impacting every day on the experiences and lives of trans and gender-diverse people in a State that holds itself out in other respects to be a leader in LGBTIQ+ arts festivals and celebrations. A trans person can't walk into Service NSW and know that they'll be treated in a way that guarantees their safety and dignity. Like I said, the entire bill is important, but I would single out those two specific areas.

NICOLAS PARKHILL: I might just add to that, if I may. I think the bill in its entirety is so critical in terms of lifting New South Wales to the point it needs to be, particularly in comparison to other Australian jurisdictions. I think we've seen a great investment and movement across governments—certainly the current New South Wales Government but also the former New South Wales Government—with the investment in the LGBTI health strategy.

There is good progress being made that aligns to the State of New South Wales being the State with the largest LGBTQ population in Australia: investments in a new healthcare centre and the strategy itself. Where there is a gap, though, is the legislative settings not aligning to that progress that we're seeing being made at the policy level here and in other States. That is why an omnibus like this bill was needed to address all of those in one approach, rather than a piecemeal approach. Certainly, if we needed to prioritise where things sat, I would absolutely say that gender identity is critical. We are seeing trans health in a crisis in this State, and it will not go away. We cannot turn a blind eye or think that trans people will not keep demanding the rights that they deserve. This is something that is a relatively easy fix that affords them such a great amount of human dignity.

BRENT MACKIE: If I could also add to that in support of the comments from Nicolas and Anna, obviously we support all aspects of the bill. But those aspects that speak to discrimination and stigma that cause mental health issues, as a mental health organisation, are incredibly important to us. As Nicolas has pointed out, the impact of accessing ID for trans and gender-diverse people has an incredibly significant impact on those people. Nicolas mentioned some of the statistics and there is more in our submission. Really looking at those components of the bill that are designed to reduce the stigma and discrimination that has been experienced by trans and gender-diverse people within our communities is incredibly important for us to move forward with.

Ms LIZA BUTLER: When you talk about gender identity, can you explain why it's so important that a person is able to register their sex with a term that may also be a description of their gender?

ANNA BROWN: Can you explain that question a little more, Ms Butler?

Ms LIZA BUTLER: The argument made by some organisations about proposed amendment to 5A of the Births, Deaths and Marriages Registration Act that allows a person to order their registered sex—they can use a term rather than gender. They can use a description rather than sex.

GHASSAN KASSISIEH: I can probably come to that. There are two reasons for it. The first is around recognition and the importance of seeing people for who they are. That's one aspect of it—the importance of being recognised for who you are. The second is the practical implications that it has for people. If you present as male or female and your documents say otherwise, then when you try to access employment, you have to out yourself in ways that you don't want to to people who you don't know how they will respond to that. It's the same when you enrol. We've seen a number of examples of schools requiring a birth certificate at enrolment to prove the identity and the parents of the child. They're not that interested in what your sex or gender is, but in so doing they effectively require a child to out themselves in ways they may not yet be comfortable or wish to do so to strangers—or when opening a bank account.

The Commonwealth has also amended all of its requirements so that if someone wants to update their passport, they can do so. What happens is that if your passport says one thing and your birth certificate says something else, you might have an issue of mismatching identities, so that again opens up questions about whether you're being truthful about your identity. Put that in the perspective of trans and gender-diverse people experiencing harassment and violence at the rates that they are, and the amount of debate about their identities.

Put that in every context where you're seeking to enrol, apply for a job or seek medical treatment—all of those places where you have to prove who you are—and having that mismatching identity is extremely humiliating and distressing for people. Sometimes it's easier not to than to be put in that position of having to disclose that part of yourself to people who you don't know how they will react.

Ms TRISH DOYLE: Can I begin by thanking you all for the efforts that you've made in articulating some very powerful, personal stories, which highlight some of what has been put forward in this bill for us all to consider. For that deep compassion and your work that drives representing your community, I wanted to acknowledge that. On behalf of Pink Mountains in my community, thank you for appearing today. Can any of you explain the importance of peer workforces in health and community services and why it's really important for these particular programs to support LGBTIQ communities?

NICOLAS PARKHILL: I'm very happy to take that on board, if that's okay. As a community organisation that is now close to 40 years old and very much based on that notion of "peer"—it runs in our bones, in our lifeblood—we have absolutely seen the importance of peer networks in building capacity, health literature, literacy and resilience, if you like, in communities. I think that has been demonstrated multiple times through the response to the HIV crisis. Governments at the time recognised that health departments and local health districts were unable to reach the populations that they needed to reach to provide that health education, so they invested in peers and community organisations to mobilise those peer networks so that they could reach into those communities to provide that education. At the time, there were legislative barriers that existed to access injecting drug users, sex workers and even gay men, so governments were very innovative in Australia and said, "We need community to be doing this work that we can't do." They did that, and they did it to great effect.

We have seen that now replicated in other health areas—drug and alcohol, and mental health. Other areas are recognising the importance of connecting with the communities affected so that they can have some agency in delivering the health care within their own and existing networks. It also reduces government costs, but it really means that those people who are affected by a health issue—whether that's HIV, gender-affirming health care or drug and alcohol—can speak with someone with a similar lived experience who knows how to navigate the system and can provide that emotional and social support as well as the health information. Those principles around co-design and investment from government in those peer networks, while it's in our bones and we think this is the way, it's still quite unusual in some other States, and particularly in other countries, to do this kind of health work. But it has been demonstrated over and over again how successful it is.

BRENT MACKIE: If I could add to that as a gay man who lived through the 1980s and 1990s and was, surprisingly, working at ACON at that time as a peer officer—I used to be a worker—it's incredibly powerful. This ability to get out education messages and prevention messages and provide testing services had the effect of significantly contributing to the uptake of condoms and the reduction of the HIV epidemic before the advent of the new treatments and PrEP that we have now. It's an incredibly powerful tool in the health and mental health sector in terms of addressing health disparities. As Nicolas said, it is used widely across other areas. In drug and alcohol, peers are used quite a great deal. In mental health, it's an extremely common adjunct to the mental health system. It is incredibly powerful for the people who receive that work.

Ms TRISH DOYLE: Did Equality Australia want to add to that? No.

Mrs HELEN DALTON: Do you agree that a birth certificate is a legal document?

ANNA BROWN: Yes.

Mrs HELEN DALTON: All of you think that?

BRENT MACKIE: Yes.

Mrs HELEN DALTON: This bill will really allow people to alter their gender on their birth certificate?

ANNA BROWN: Yes.

Mrs HELEN DALTON: Do you agree that that is fair and reasonable?

ANNA BROWN: Absolutely, as all other jurisdictions do, and New South Wales currently does, but with really onerous requirements.

Mrs HELEN DALTON: What is your view on the argument made by some organisations that the proposed amendment to part 5A of the Births, Deaths and Marriages Registration Act allowing a person to alter their registered sex could undermine equality for gay men and lesbians? Have you got a comment on that?

ANNA BROWN: I just don't see how that holds as an argument. We are an organisation that represents gay men, lesbians, bisexual people, queer people, trans people and gender-diverse people, and we stand in strong

support and advocate for these changes that will benefit the lives of trans and gender-diverse people in New South Wales.

GHASSAN KASSISIEH: Absolutely. I would just add that trans people were with us in 1978 when we were criminalised, and we are standing with them today because the recognition of who you are and who you love is so central to who we are as people that no government should have the right to deny someone a document simply for the purposes of proving who they are in a way that's not truthful. What trans and gender-diverse people tell us is that they want documents that reflect who they are, not documents that lie to people or force them to be outed in ways that they would find both distressing and potentially at risk of harm.

NICOLAS PARKHILL: I might just add to that too, and just to reiterate what Anna said, that I think the LGBTIQ+ community is broad and very diverse. We often will not have homogenous positions and come from different perspectives. Within that framing, you may get a small group who may not agree, but I would proposition that, by and large, the gay and lesbian community, and certainly those community organisations that are longstanding and have the architecture, the boards and the volunteers to represent our communities, all stand in strong solidarity with trans and gender-diverse people.

ANNA BROWN: I would just add, finally, that I'm conscious that we don't have a trans person on this panel, and hopefully you will hear from some trans people in the course of the hearings, but we work with and for trans and gender-diverse people very closely. We have trans and gender-diverse staff members, board members and many members and supporters of our organisations.

Mrs HELEN DALTON: This bill is very complex. I think there are 20 pieces of legislation that will have to change if this bill goes through. Do you think the bill, if passed, will lead to the commercialisation of surrogacy, and what will be the impact of that?

GHASSAN KASSISIEH: I can respond to that. It doesn't decriminalise commercial surrogacy in New South Wales. What it does is remove what they call an extraterritorial provision, which is that if it's lawful elsewhere, the New South Wales laws don't apply to the laws of other countries, effectively. But all it does in terms of surrogacy is give the Supreme Court discretion to be able to recognise a child who has been born to an arrangement so that that child is not disadvantaged in terms of their economic or emotional security as to how you recognise their parents, because the principle is that a child doesn't decide how they are brought into the world, so they shouldn't be punished for the way that they have been brought into the world. But in terms of the commercial surrogacy aspect, it leaves in place the prohibitions on commercial surrogacy in New South Wales, but it opens up that ability for a child to be recognised.

Mrs HELEN DALTON: There have been 27 murders of women this year across Australia by their partner or husband. Have you got the same statistics for the LGBTIQ+ communities? What are the stats for that?

ANNA BROWN: I think Nick will probably speak to this as well, but we did include in our submission a family violence report that we prepared a number of years ago—and Ghassan can chip in too. It's fair to say that, particularly for trans women—and we are in a moment of national attention and crisis around violence, murder and all forms of discrimination, and gendered violence. The irony is that a lot of the groups opposing this bill would seek to position trans women as somehow a threat to women. As a woman, I would say that we absolutely need to stand and support trans women who face, acutely and disproportionately, high levels of violence in the hands of men.

In 2019 Mhelody Bruno, a trans woman, was tragically murdered by her male partner. That's just one example of the gendered violence that trans women face in Australia today. In fact, trans people, according to our research, are 2.7 times more likely than LGBTI people to experience family violence. The violence is sadly all too real for our communities.

NICOLAS PARKHILL: I would agree with what Anna said. Absolutely, we are in a crisis in this country in relation to violence and murder perpetrated against women. We do see similar data in our communities, or the issues playing out, but the issues can be somewhat different. But, absolutely, it is a critical point for trans people, and particularly trans women. An inclusive approach from DFV services and across DFV policy settings needs to take that approach and, indeed, does identify those significant and unique risks for our communities. We've seen some great leadership in this space from many DFV services over recent years, but it's not enough.

Mrs HELEN DALTON: So you haven't got the up-to-date statistics for this year?

NICOLAS PARKHILL: No, but we can take that on notice and provide you with that.

BRENT MACKIE: Can I also just add to that, if I may? The Rainbow Realities report, which was commissioned by the Australian Government and produced by La Trobe University at the Australian Research Centre in Sex, Health and Society, has quite a large section on family and domestic violence, including statistics

on the impacts of family and domestic violence on all members of our community: gay, lesbian, transgender, gender diverse. I'd be very happy to provide that report and the detail that it has as well.

Ms FELICITY WILSON: Thank you, everyone, for being here today and for your submissions and the work you have done. I want to bring together the conversation we were just having about gendered violence, which is not just a current challenge for us in Australia but has been for an extensive period of time, and some of the conversation we were having earlier about legal gender recognition—if I can come back to that—because there are organisations and submissions that we have heard that have a real concern where I would say there is the intersection of those two issues.

While noting that you have identified that other jurisdictions in Australia have different ways of accessing a legal gender recognition change, there are concerns amongst some organisations and individuals that allowing these changes to legal gender recognition could create concerns for women in what are seen as—I can't remember the terminology—women's only spaces, for example, things like swimming pool changing rooms, women's prisons, women's refuges. Those concerns have been expressed. Could you speak to those concerns and give us your perspective on those?

ANNA BROWN: Thanks for the question, Felicity. As Ghassan said earlier, this bill does not change that it's already unlawful to discriminate, to turn away, to refuse service against a person based on their transgender status or their gender identity under New South Wales or Federal law. That is already illegal. This bill does not change that position. This bill is about allowing trans and gender-diverse people the dignity of recognition as who they are. Like we were saying earlier, it's just so important when you go through life in public spaces or accessing services or employment to have ID documents that match your identity, and obviously a trans person could speak to this much more powerfully than I could. But we live in a world where some of these arguments are being put by the opponents to this legislation, and I think it fails to recognise that, as we were just discussing, trans women actually do face violence at disproportionately high rates.

Instead of policing gender and being stopped to check the veracity of their gender—I mean, I get stopped going into bathrooms or get mistaken as a man, and I'm obviously not transgender. The impact is far greater on a trans and gender-diverse person, but we shouldn't move towards a society where policing gender stereotypes becomes the norm. It should be about how do we help people, how do we support them and how do we allow them to live their lives and work, study and participate in a society with dignity and respect. That's what this legislation is about. It really is a bit of a furphy or distraction to say that this legislation somehow has an impact on the ability to access spaces, when that's already unlawful.

GHASSAN KASSISIEH: Can I just add a couple of points? It's not an auction in terms of who has the highest rates of family violence or gender-based violence. We had an example earlier this year of two gay men who also experienced horrific violence, so there shouldn't be a discounting of the impact. When our community experiences violence, particularly from people who are close to us—intimate partners or exes—one of the challenges that we face because of a normative view of what a relationship generally looks like is access to support and services. People are discouraged from going to police.

I can speak to personal experiences that I'm aware of where gay men are struggling to access domestic violence services because of an assumption that men are always the perpetrators and never the victims and, equally, that women are always the survivors and never the perpetrators when it's a female same-sex couple. So what's really important, when we talk violence and the way our community experiences it, is that that discrimination based on our sexuality and our gender identity manifests in barriers to accessing support when we need it from police and from service providers.

The other thing I would say is women's groups, and particularly women's groups that support survivors of family violence, have supported this legislation. They're amongst the 80 organisations that have signed the open letter to the Premier because they know that, at those times when people need the most support and they're at most need, services should be available for them—not to discriminate or to turn them away or to ask them invasive questions about their bodies, but actually to provide the care and support that's necessary at that time to help them leave a dangerous position, which hopefully means that they're not the next statistic in terms of the murders that we've seen. I don't need to dwell on those numbers, but one case is too many. It doesn't need to be more than that for us to recognise that any murder of a person by an intimate partner is something that isn't acceptable, but we need to have support available.

ANNA BROWN: And I think you'll find that Domestic Violence NSW does address this point in their submissions and that they say it wouldn't impact on the practices of refuges, but we'll obviously leave their evidence to speak on that point.

NICOLAS PARKHILL: Domestic Violence NSW have done some great work in this space and led that, as has the New South Wales commissioner, making sure that our communities are included in policy settings and really investing in some great professional development within the DFV sector for addressing these issues with sensitivity and care, and affording people their dignity, particularly when they're in crisis and needing help. I think it's important, too, that some of this gendered violence that we're seeing play out, at its heart, is symptomatic or reflective of these beliefs that people have around very binary notions of sexuality and gender, and leaning into notions around toxic masculinity and what it means to be a man. That plays out, absolutely, for women, but it also plays out for gay men and particularly for trans women, who are vulnerable to those very binary notions and an inability to see the complexity of human sexuality and gender.

Ms FELICITY WILSON: I know we don't have a lot of time but I'm going to ask the question anyway, and hopefully we can get a view on it, around children making informed medical decisions for themselves to undertake any medical treatments around their gender identity. You're very well informed, so I'm sure you may have seen the submissions by the Australian Lawyers for Human Rights and Intersex Human Rights Australia where they look at the proposed amendments to section 174A (2) of the Children and Young Persons (Care and Protection) Act and looking at parental consent. They talk about proposing some additional changes because of concerns around consent, both for children's agency and the notion of where we draw the line at the age of 16 for informed consent—and then under that, if you're a Gillick-competent child—applying those provisions.

When it comes to intersex children, they talk about decision-making residing with the child, and if and when you actually bring the parent into making those decisions. But there's also the broader question that we get around when and how is it appropriate, particularly for minors, to make decisions about what can be quite life-altering treatments—noting, as well, that there are time sensitivities around some of these treatments and understanding why there are proposed changes. But there are concerns in the community about the appropriate medical pathways and decision-making constructs, whether it be through a human rights lens, for instance, but also ensuring that we have informed consent and good long-term decision-making. I know you don't have much time, but this is definitely an area where people are quite concerned about decision-making around children. Could you visit some of that and give us some of your views about where we think that line is and how it's best and most appropriately managed?

The CHAIR: Just before you start, I'm mindful of the time. We are already just a tad over. I'm actually going to ask if it's okay if you take that on notice and provide some—

ANNA BROWN: We can give a short answer if that's helpful, just to ease Felicity's mind immediately.

The CHAIR: Thirty seconds.

GHASSAN KASSISIEH: The issue of intersex children and their ability to consent needs to be dealt with separately in separate legislation, because there's a consent there between a parent making a decision for the child before the child can consent. While I appreciate intersex advocates' views on that, I don't think it's resolved by this bill because it needs a separate piece of legislation that manages a situation, generally, of children under two, so there's no question of them being able to consent. What this bill does, though, is it normalises the rules for all types of treatment for young people so that there is an easier pathway for trans and gender-diverse people to be able to consent in the same way as another mature minor would be, save to say that the Family Court still requires both parents to consent to any treatment on a child under 18. All this bill does is say, if you've got a Family Court order that authorises the treatment, you don't need to go to NCAT and get a separate order. It doesn't fix that issue entirely but it does try to reduce the legal barriers to accessing care.

The CHAIR: Thank you very much for that short, sharp response. Thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. The Committee staff will also email any questions taken on notice from today—and I think there was one at one stage—and any supplementary questions from the Committee. I'll be providing one asking you about your thoughts about the Cass review, at the very least.

(The witnesses withdrew.)

Mr ALASTAIR LAWRIE, Director of Policy and Advocacy, Public Interest Advocacy Centre, before the Committee via videoconference, affirmed and examined

Dr AILEEN KENNEDY, Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights, before the Committee via videoconference, affirmed and examined

Dr MORGAN CARPENTER, Executive Director, Intersex Human Rights Australia, before the Committee via videoconference, affirmed and examined

Ms EMMA GOLLEDGE, Director, Kingsford Legal Centre, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media platforms. Please let the Committee staff know if you object to having photos or video taken. Before we start, do you have any questions about this Committee inquiry process and hearing?

EMMA GOLLEDGE: No.

The CHAIR: You are each representing different organisations. We always provide the opportunity for an opening statement or remarks. I might start with you, Ms Golledge. You're in the room. Do you have opening comments that you'd like to make on behalf of the Kingsford Legal Centre?

EMMA GOLLEDGE: I just wanted to briefly in my opening remarks pay my respects that we're on Gadigal land at the moment and to say that Kingsford Legal Centre is a community legal centre with a long history and specialisation in discrimination law across New South Wales. I was able to hear the benefit of the evidence by my colleagues from Equality Australia and endorse their expertise and the consultation they've done around this bill. We have endorsed the open letter that was tendered in evidence earlier in the session. We welcome the bill, which we believe will further human rights in New South Wales. It's long overdue and it closes very significant legal loopholes, that you've heard evidence of this morning, that create distress and do not support inclusion in New South Wales.

We note the consultation process and the wide range of experts that are giving evidence to you over the next couple of days, and we don't propose to comment on all parts of the bill because of the breadth and the complexity of the matters and the importance of hearing about lived experience. I wanted to emphasise that, in our view, the bill strikes the right balance. Some of the questions have gone to that balancing act around rights. New South Wales has fallen really drastically behind in terms of human rights and the realisation of human rights, and that has really big impacts on levels of discrimination, distress and inclusion in the community. It goes to community attitudes. We need to recognise the important norm-setting role that laws like these provide. I wanted to indicate the support that we have for the bill.

The CHAIR: Dr Carpenter, do have you any opening remarks on behalf of Intersex Human Rights Australia?

MORGAN CARPENTER: Yes, I do. Thank you very much for the opportunity. IHRA is a charity that promotes the health and human rights of people with innate variations of sex characteristics, including through advocacy and psychosocial support services. I'm also a research affiliate at the University of Sydney in the School of Public Health. I have a doctorate in bioethics conferred by the University of Sydney, where I'm to take up a new position soon to lead a five-year medical research future fund project developing new models of care for people with innate variations of sex characteristic and their families. I'm also a member of the NSW Health implementation committee for the LGBTIQ+ Health Strategy that was adopted by the Perrottet Government in 2022. I'm speaking today as the executive director of IHRA.

Innate variations of sex characteristics are also known as intersex traits, disorders or differences of sex development. They comprise a heterogeneous group of traits relating to sex characteristics, including chromosomes, genitals, gonads, hormones, and other reproductive anatomy and secondary features that emerge from puberty. People with these variations face risks and experiences of stigmatisation and harm because of the ways that our bodies are perceived as different to medical and social norms for female or male bodies. These include harmful practices in medical settings, such as medical interventions intended to make our bodies appear or function in ways that will closely fit norms for female or male bodies. Where these interventions take place without clear evidence of medical necessity or personal informed consent, they violate the rights of the child. In our submission we set out the case for legislation in line with proposals by the Australian Human Rights Commission and developments in the ACT and Victoria.

People with innate variations of sex characteristics also face social discrimination and discrimination in employment settings. Because of these factors, we congratulate Alex Greenwich, MP, on bringing forward this bill. I want to acknowledge Dr Aileen Kennedy, who will speak on behalf of Australian Lawyers for Human Rights, who is also the chair of our board and who drafted our legal analysis on the bill. With permission from the individual concerned, I can also advise that we support the case made by the anonymous person whose affidavit appears in submission 65.

We welcome the Government's instigation of a Law Reform Commission inquiry into reform of the Anti-Discrimination Bill and we welcome the fact that the legislation will hopefully undergo more systemic review to improve clarity, readability and functionality. We take this opportunity to also support calls for a human rights Act for New South Wales. In the meantime, we support most aspects of the bill before us today, with some caveats and exceptions. In relation to the proposed attributes of innate variations of sex characteristics, this proposal is out of step with national norms, which are to provide protections on grounds of sex characteristics.

Our preferred model, which is the national norm, is much less likely to require an individual to out themselves unnecessarily in order to avail of protections, but we accept the current approach is necessary at present as an interim measure, as the current Act contains a comparative test and not a less favourable treatment test. We support the provision of longer periods for birth registrations where an infant is born with a variation in sex characteristics, but we cannot regard this as a significant measure to meet the needs of our population, as it provides no measure of protection from harmful practices.

In relation to body and personal searches and amendments seeking to introduce the term "intersex" into legislation, we do not support the use of this term in legislation, as availing of protections can out somebody unnecessarily. Also, perhaps because the term "intersex" is not the most widespread term used to refer to people in our population, it's also associated with misconceptions about identity that can limit access to protections by people who may need them. We would prefer instead to see protections for everybody who believes that their physical features or sex characteristics may give rise to stigmatisation or vulnerability in the context of body and personal searches, and we're supportive of suggestions that such persons could nominate the gender of the person to perform a search.

Finally and most significantly, we're unable to support the proposed section 174A (2) (a). This provides that a medical practitioner may administer medical or dental treatment to a child if a parent of the child consents. In our view, this gives parents wider authority to consent to medical treatment unfettered by existing safeguards provided by the best interest test. Even though we know that test is flawed, the effect is to remove limited protections that exist, when instead we seek greater legal protections from unnecessary medical interventions. We note the concerns expressed by the New South Wales Government on this matter in its submission to the Committee and we're grateful also for the support of Australian Lawyers for Human Rights in this matter. We call for the redrafting of this section or its removal and we call for the enactment of protections in line with the recommendations of the 2021 report by the Australian Human Rights Commission, which is also now followed by reforms and developments in both the ACT and Victoria. Thank you.

The CHAIR: Dr Aileen Kennedy, on behalf of the Australian Lawyers for Human Rights, would you like to make some opening remarks?

AILEEN KENNEDY: I would. Thank you so much for the opportunity. As you've noted, I'm here on behalf of Australian Lawyers for Human Rights. I'm a qualified lawyer. I'm a current legal academic at UTS and my specialty is in law relating to sex, gender and reproductive rights. There's already been an acknowledgement of country—so thank you—but I want to pay respects to all First Nation peoples and cultures and Elders of past and present generations. Also, we pay our respects to those amongst the lesbian, gay, bisexual, trans, intersex and queer communities who have worked to support robust human rights protections. We honour their contributions and celebrate the extraordinary diversity of people's bodies, genders, sexualities and relationships.

Australian Lawyers for Human Rights welcomes and supports this bill, which will bring New South Wales into line with other States in implementing key human rights reforms which affect the LGBTQIA+ communities. We support the bill, subject to some minor revisions which we recommend. In particular, we support the proposed amendment to the births, deaths and marriages Act which will ensure trans and gender-diverse people can access ID that matches their identity without facing cruel and unnecessary legal barriers. We support the amendments to the anti-discrimination legislation to ensure protections for all LGBTQIA+ people. In drafting laws to battle discrimination, Australian Lawyers for Human Rights submits that reference must be made to the fundamental principles of human rights law, which is that all rights are equally valuable—there is no hierarchy of rights—all rights should be protected together and that any interference with a right must have a legitimate aim such that the interference or restriction is proportionate and necessary. So when we apply these principles, we

submit that the right to express one's religious beliefs does not trump other rights such as the right to be free from discrimination.

Human rights entail both rights and obligations, and insofar as any person is entitled to protection of human rights they must also respect the human rights of others. The current religious exemptions in the anti-discrimination legislation are too broad and permit discrimination against LGBTI people in a wide range of activities and situations. The proposed amendments will provide a more balanced approach and will bring New South Wales into line with other States where the narrower approach has operated successfully. The current Act doesn't include protections for people with innate variations of sex characteristics despite extensive evidence of ongoing stigma and discrimination in this community. So we support the recognition and protection of this attribute, and we also support the extension of protected attributes to include bisexual and non-binary people. We support the Surrogacy Act amendments, which aim to protect the rights of children born to parents via international commercial surrogacy.

Finally, we support the amendments to the Children and Young Persons (Care and Protection) Act which remove barriers to accessing gender-affirming care. We support these amendments to confer authority on young people to consent to gender-affirming care and amending the Act so that children who have capacity should be empowered to consent to gender-affirming care. However, we do share the concerns expressed by Dr Carpenter on behalf of Intersex Human Rights Australia that the conclusion of section 174A (2) (a) gives a parent unfettered authority to consent to treatment on behalf of a child aged 16 or under. We believe giving unfettered authority to one parent to consent to treatment is problematic and fails to meet the recommendations of the Australian Human Rights Commission that drafting consent provisions should be guided by a human rights framework based on principles such as children's agency and medical necessity. So while we support the aims and intentions of the amendments, the drafting must embed a human rights approach. On that basis, we recommend the redrafting of section 174A (2) (a) or its omission altogether. Thank you for the opportunity.

The CHAIR: Mr Lawrie, on behalf of the Public Interest Advocacy Centre, would you like to make some opening remarks?

ALASTAIR LAWRIE: Yes, thank you, Chair. The Public Interest Advocacy Centre [PIAC] supports the Equality Legislation Amendment (LGBTIQA+) Bill 2023 as an important and necessary package to protect the rights of LGBTIQA+ people in New South Wales. PIAC has long campaigned for modernisation of the outdated and broken New South Wales Anti-Discrimination Act 1977. We welcomed the referral of this legislation to the New South Wales Law Reform Commission for comprehensive review and will continue to actively engage in that process. However, we also welcome the equality bill's amendments to the Anti-Discrimination Act as measured and targeted reforms which address some of the existing major gaps in that law, and we call on New South Wales Parliament to support this bill as an interim step.

If passed, the equality bill will finally ensure that all members of the LGBTIQA+ community are protected against discrimination in New South Wales. This includes addressing the exclusion of bisexual people from coverage under the Anti-Discrimination Act, with New South Wales being the only jurisdiction in Australia which fails to prohibit discrimination against bisexuals, as well as extending protection to non-binary and intersex people. We particularly welcome the equality bill's reforms to protect LGBTQ students and teachers against discrimination. New South Wales currently has the broadest exceptions for non-government schools of any State or Territory applying to all private educational authorities rather than religious educational institutions and granting blanket exclusion from the Act with no test which these schools are required to satisfy before being able to lawfully discriminate. The equality bill's reforms in this area draw from the successful precedents of other jurisdictions which have already protected LGBTQ students, including Tasmania, Queensland, the Northern Territory, ACT and Victoria; and teachers—Tasmania, the ACT, Victoria and the Northern Territory.

The reforms in relation to religious schools are consistent with the straightforward recommendations of the recent Australian Law Reform Commission inquiry into this issue, while the need for their passage is made more urgent by the recalcitrance of the Commonwealth Government to implement reforms federally despite their clear election promises to do so and the release of the ALRC report they initiated. All students in all classrooms across New South Wales deserve the right to learn and to grow free from the fear of discrimination because of who they are, and all teachers should be employed on the basis of their skills and experience rather than their sexual orientation or gender identity. New South Wales Parliament has the responsibility to guarantee these rights and, with the equality bill, the opportunity to make them a reality. Thank you.

The CHAIR: Thank you all very much for your opening remarks. I am very mindful of the time. I just ask that, as we work through this, if you could make your answers and responses to the questions that come as brief as possible, please do so, and I ask members to keep their questions as brief as possible as well. Before I throw to Ms Wilson, I'm going to ask the first question in this instance. Dr Carpenter, I want to make a very

important point clear and distinct for everybody who might be participating in the process: It is my understanding that people think of birth and the sex of children as being very binary—clearly male or clearly female in a very physical, biological sense. But I think there is research out there—and it's fairly clear research—that shows that it's more than bimodal and that between the male and female there are other variations that are less clear.

I believe that sometimes it's the actual sex organs that are non-specific and I think that sometimes it's XY chromosomes or XX chromosomes or XXY or both XX and XY chromosomes in a single person, or XYY. Could you just clarify, number one, that my understanding there is true—that there is a non-binary, non-clear, non-specific physical sex biology happening—and could you give us an estimate of the numbers or the proportion of births that that is the case for?

MORGAN CARPENTER: Thank you very much for the question. I should preface all of my remarks by saying that many of the issues that you've identified here are contested. There are numerous different models by which people presently and historically have sought to determine sex, particularly in cases where there is some doubt, and those models include approaches that take particular characteristics to be determinative of sex. Historically we've seen phenotype—physical appearance—being used as a determinant of sex, typically at birth, and we've also seen models of sex determination that rely upon gonads or sex chromosomes or gametes or even micturition, which is a term used to describe the method of urination.

For almost all people, those different methods will produce the same outcome in determining sex, but for a very small number of people, people with innate variations of sex characteristics, those methods can sometimes produce different outcomes—that is, that phenotype or chromosomes, if we take either one of those, or if we take gametes to be determinative of sex, then the sex that you might see as appropriate could differ. This really only affects people with innate variations of sex characteristics. The Australian Bureau of Statistics has developed a statistical standard for sex gendered variations of sex characteristics and sexual orientation that takes account of the ways in which we determine and register or assign or observe sex at birth based upon sex characteristics and that takes account of the diversity of different models that have historically existed in the case of people currently born in Australia.

I think what I would add to that in response to your comments about whether there is a non-binary kind of body, I would actually say that the bodies of people with innate variations of sex characteristics defeat simplistic notions about sex, whether we think of sex as a binary or think of sex as a ternary. There is no single kind of intersex body and it is not reasonable to construct a third category of sex called non-binary or intersex, assuming that that's going to somehow capture or be relevant to the needs of people with innate variations of sex characteristics. We are far more heterogeneous than that. To your final point about numbers, numbers are contested, and the numbers are contested depending on where people draw lines.

Some people take one or other model of sex determination and seek to draw a line that relates to their particular preference about how sex should be determined, which may not actually have any real-world relevance in terms of trying to capture people who experience stigmatisation or medicalisation because our bodies are different. One of the most widely quoted percentages is up to 1.7 per cent of the population. We think that is not a particularly accurate source, but there are no better sources available at present. That particular percentage is trying to draw a line around people whose bodies are different to the extent that people with those bodies become medicalised or stigmatised because of their difference.

Ms FELICITY WILSON: Thank you, everybody, for joining us today and for your submissions. I found them very informative, and particularly, Dr Carpenter, the detail that you went into was very helpful as well. I want to delve into the understanding of children, minors, and decision-making around medical interventions. I see that in two broad areas. One is for those minors who have innate variations of sex characteristics, which you've spoken to in your submissions as well, and the other is obviously around gender identity and looking at medical interventions for minors around gender identity where it's not for an intersex reason.

I asked this question of Equality Australia—you may have seen it—the proposals that you've made about changing the amendments around parental consent and looking at ensuring that children can make consent when legally able to, over the age of 16, or if they are Gillick competent under the age of 16. Dr Carpenter or Dr Kennedy, could you give a very brief understanding to us about how you'd like to see that applied for intersex people and what changes you'd like to see with this bill?

MORGAN CARPENTER: If I may, I would be very happy for Dr Kennedy to speak as well. I think both Australian Lawyers for Human Rights and my organisation have called for changes to section 174A (2) (a), which is specifically a provision that allows a parent of a child to consent to the administration of medical genital treatment to a child. Of course, parents must be able to consent to treatment on children, and parents do it all the

time. Parents have to consent to medical treatment on infants, children and even adolescents sometimes, but those rights that parents have to agree to medical treatment on the child are not unfettered; they are not unlimited.

There are certain kinds of medical interventions that we know can cause harm, and the Federal Family Law Act—which is referred to, I think, in section 175 of the Act—does place some constraints on what parents can consent to, particularly in relation to treatments that affect the fertility of their children. Children whose bodies appear visibly different from the norms for female and male bodies in New South Wales and elsewhere in Australia routinely face medically unnecessary medical interventions to make their bodies appear or function more typically in line with medical norms for female and male bodies. This includes medical interventions to modify the appearance of genitalia that are classed as female and it also involves medical interventions on the bodies of children observed or registered as male. Clinicians in Australia have reported that those interventions include cosmetic interventions largely on the bodies of girls, but also vaginoplasties and other surgeries to modify genital appearance and function in very young infants.

In terms of boys, surgeries are often intended to enable boys to be able to stand up to urinate where that's not possible. That is often framed as a functional requirement rather than what I would characterise as a cultural norm. The idea of boys having to stand up to urinate, to my eyes, is a cultural norm rather than a function. Paediatric endocrinologists in New South Wales wrote a paper in 2020 in the *Australian Journal of General Practice* where they stated that surgical options are an acceptable rationale when determining which sex to assign in situations of doubt. They describe those situations as rare, and we would accept that those are rare situations. But in those situations, the argument that surgical options are an acceptable rationale when determining which sex to assign is actually an argument saying that children who are assigned female need to look female and need to have surgery to make them look female, and that children assigned male need to look male and be able to stand up to urinate.

These interventions are human rights violations. When I say that, I'm saying that on the basis of recommendations and research by the Australian Human Rights Commission in regard to practices in Australia. I'm saying it on the basis of recommendations by UN treaty bodies to Australia, including the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. I'm also saying it on the basis of statements and reports by the Office of the UN High Commissioner for Human Rights and a resolution that passed earlier this month by the UN Human Rights Council.

The position I'm stating there is one that I think is a mainstream human rights perspective about medical intervention, and it's one that I think gives very serious cause for concern about practices currently in New South Wales. I believe that this bill is not the right vehicle to attend to those issues, but the New South Wales Government and the Parliament can certainly call, in your analysis of this bill, for legislation that attends to the proposals of the Australian Human Rights Commission in relation to our population. Thank you.

Ms FELICITY WILSON: Maybe if somebody else is happy to answer, if we put aside the challenge for people with innate variations of sex characteristics, is there a discussion of decision-making around minors changing gender or accessing gender-affirming care? Can you speak to how the current system reflects informed consent for children, how it reflects parental decision-making and what the proposed changes would enact?

AILEEN KENNEDY: I'd like to speak to that. Thank you, Dr Carpenter, for outlining the position for children with innate variations. In a sense, the changes to section 174A of the Children and Young Persons (Care and Protection) Act are intended, on the one hand, to legislate to give effect to the common law position, which is that children who have capacity to understand the nature, consequences and risks of a medical procedure are able to consent to that procedure without getting parental support or consent. In other words, under the common law, children who have that capacity are able to consent to medical treatment on their own behalf.

That position was changed somewhat by a case called *Re: Imogen*—I think it was a 2018 case—which required that, in addition to a child having to have capacity, they also had to be sure that both parents were in agreement with the proposed treatment, gender-affirming care. This is the only medical treatment in Australia where the active consent of both parents is required. My understanding is that section 174A was, on the one hand, intended to give effect to the ability of young people—minors—to consent to treatment if they had capacity but also to allow one parent to consent to treatment on behalf of a child who has Gillick competence or otherwise, so without requiring that both parents gave active consent to the care.

We don't support the current provision as it stands because we think that it needs to be redrafted so that it's either specific to gender-affirming care or doesn't give unfettered power or authority to parents to consent on behalf of their children. Otherwise, we do support the position set out in the legislative amendments, which is to allow children with capacity to consent to their own treatment, including gender-affirming care, and if a child is over the age of 16—so if they're 17—there's a presumption that they do have capacity. Does that help clarify what we see as the position?

Ms FELICITY WILSON: Are there any concerns about children making those types of decisions, which can be life altering and irreversible, at that age? Do you believe that there is a level of informed consent to make those types of decisions?

AILEEN KENNEDY: I guess that's part of the tests—that if a child, in relation to their age, doesn't have the ability to understand the nature, consequences and risks associated then they won't be entitled to make that decision on their own behalf. The courts or the authorities will look to—sorry, the doctors, actually, will look to the parents and see if they can get parental consent from one or both parents or guardians.

The CHAIR: Thank you, Dr Kennedy. I'm going to ask our four witnesses if they're willing to stay on for an extra 10 or 15 minutes, if that's okay; otherwise, we're not going to get to everyone.

Mrs HELEN DALTON: I guess this is further to the questions that have been asked previously. Do you agree that a birth certificate is a legal document? That's the first question, and do you think that there should be a further register to identify gender? That's open to probably all of you.

The CHAIR: Why don't we start with you, Ms Golledge.

EMMA GOLLEDGE: Yes, a birth certificate is a legal document. It's a powerful legal document. I wouldn't see that there would be another reason to register somewhere else as a matter of legality. I mean, we do it all the time to access goods and services in other ways, and I guess the point that's being made is the ID requirements in New South Wales cause really big barriers and problems. I guess the question you're posing is that someone would have a different document to what they then change, as a birth certificate?

Mrs HELEN DALTON: A further register, because people could make the change later on down the track to change the birth certificate, given that it's a legal document.

EMMA GOLLEDGE: I think this goes to the human rights of the people that will benefit from this legislation, which is the pain and distress and the lack of inclusion that not being able to make that change to the document creates. Equality Australia spoke really powerfully about the problems in relation to that, and I would support that evidence.

ALASTAIR LAWRIE: Just jumping in there, yes, a birth certificate is a legal document. No, we don't support the introduction of a separate register. It has been the case in New South Wales for almost three decades that at least some transgender people have been able to update their birth certificates to reflect who they are. Unfortunately, the barriers that are imposed on them in order to do so are extremely high and are no longer reflected in any other jurisdiction in Australia.

I think the most important thing to recall or reflect on in relation to the birth certificate changes which are proposed in the equality bill is that they are simply bringing New South Wales into line with what already exists in most other Australian jurisdictions, including Tasmania, Victoria, Queensland and the ACT. They have done so for some years and have done so without creating undue difficulties. We think that this bill should be supported to bring New South Wales up to those standards.

Ms TRISH DOYLE: I'm going to be quick here. Do you believe that this bill appropriately balances the rights of the LGBTIQ+ communities to be protected from discrimination whilst also preserving the ability of religious organisations to deliver services?

The CHAIR: Dr Kennedy?

AILEEN KENNEDY: Yes, we do. As we said in our submission, there's no hierarchy of rights, and I think this bill does a good job of balancing the rights of different groups.

The CHAIR: Any other comments?

ALASTAIR LAWRIE: PIAC also thinks that this bill adopts a careful balance of the rights of LGBTIQ+ people and people of faith, noting of course that there are many people who are members of both communities at the same time. In terms of the religious schools amendments, once again this bill is simply bringing New South Wales up to the standards which already exist in many other Australian jurisdictions and which have had no detrimental impact on the ability of religious schools to continue to operate. I think one thing that does need to be implemented at some point, and most likely through the NSW Law Reform Commission process, is to ensure that people of faith also are protected under the Anti-Discrimination Act by standard or conventional anti-discrimination protections, without introducing new rights to discriminate against other groups.

EMMA GOLLEDGE: I would also agree with that position in the sense that I think the bill actually strikes a good balance in how we recognise people's identities and also the freedom of religious organisations where it's relevant to the practice of their religion. I agree that religious discrimination is a significant hole in

New South Wales. I think our submissions and also PIAC's submissions—this doesn't correct all the problems with discrimination law in New South Wales. That's part of a broader conversation. But I think the gaps are too big for us to wait for that to be resolved, and hopefully we can be part of that longer and more considered discussion about the broader scope of discrimination law in New South Wales. But the exemptions are so broad and so not in keeping with the way we live today that I think this bill does need to be passed in relation to that.

The CHAIR: Dr Carpenter?

MORGAN CARPENTER: I'd like to express my agreement, particularly with the positions expressed by Alastair and Aileen. My perspective on this issue is the same one that Aileen identified in her opening remarks: that human rights are universal and we all have the same human rights because we're born human. I don't think that LGBTI+ people, people with innate variations of sex characteristics, or trans and gender-diverse people have special rights. What I believe is that we all experience particular forms of stigmatisation and discrimination because we don't fit normative ideas about how women and men—girls or boys—should behave, function or identify. Those experiences of discrimination are particular to populations. They differ depending on whether somebody has an innate variation of sex characteristics, if they're trans or gender diverse, or if they're same-sex attracted. Of course, some people can be both gender diverse and have an innate variation or can be gay and have an innate variation of sex characteristics, and the experiences that we have can be markedly different because of that intersectional experience. I certainly think that the bill has the right balance in terms of protecting the needs of our populations to be free from discrimination.

Ms LIZA BUTLER: I'm going to keep this one to Ms Golledge. If anyone else wants to provide a response to this, if you could kindly do it in writing. I'm just thinking of the time. On page 4 of your submission, you address the amendments to the Crimes Act 2007. Can you provide more information on why you believe it's important to amend the Crimes (Domestic and Personal Violence) Act to include threats of outing someone as a relevant factor for orders under the Act?

EMMA GOLLEDGE: I think it goes to some of the earlier evidence this morning about the high rates and personal violence and domestic violence that people in the community experience. I think it goes to an aggravating factor in relation to people's fear and threats. It can be extremely debilitating and impact on people's employment, how they operate in society, the threat of outing. It's a clear gap in the law, I think. The risk of threat can mean that people might not engage with legal services or go to the police. I think it's an important amendment to recognise that there are high levels of prejudice and discrimination in the community, and the law needs to better recognise the ways in which people are fearful of engaging with legal protections and processes and that it's disproportionate.

The CHAIR: I might just move on to Ms Thompson.

Mrs TANYA THOMPSON: My question was actually addressed through Ms Wilson's question, so I'm okay. Thank you.

Ms DONNA DAVIS: My question is to Ms Golledge, Mr Lawrie and Dr Kennedy. I note that several submissions, including from the Australian Association of Christian Schools, Faith NSW and Better Balanced Futures, refer to the bill being in violation of article 23.1 of the International Covenant on Civil and Political Rights. This may be a question you want to take on notice, but I wanted to know from your perspectives what this particular covenant is and whether it does actually have any standing in our legal jurisdiction?

EMMA GOLLEDGE: Being in person I might take it on notice, but I recognise that in human rights we're having difficult conversations about the balancing of rights. We're living together and we want to ensure a society in which we can live freely and that our rights are protected, but there's a necessary balancing. I guess what we're saying in relation to the paring back of what are the very broad and unbalanced religious exemptions is that there is a better balancing in the bill. I don't know specifically without the benefit of Google in front of me, so I'm happy to take it on notice and come back to you, but these are difficult balancing conversations because we have intersecting rights that we have to manage all the time and that we do manage through discrimination legislation.

The CHAIR: Dr Kennedy, I might throw to you and then you, Mr Lawrie, if that's okay.

AILEEN KENNEDY: I'm sorry, I'll need to take that question on notice because I don't know off the top of my head section—was it clause 23.1?

Ms DONNA DAVIS: We'll provide that information to you.

AILEEN KENNEDY: Thank you.

The CHAIR: Mr Lawrie?

ALASTAIR LAWRIE: I think we'll need to take that on notice to provide a fuller answer. But to reflect the representative from Kingsford in the room, international human rights is obviously a balancing act of a wide range of competing rights. Some groups might cite article 23. Equally you could cite article 26 of the ICCPR, which talks about prohibiting discrimination and guaranteeing to all persons equal and effective protection against discrimination. That's what we'd argue the equality bill is aiming to do.

The CHAIR: Thank you for staying with us a little bit longer. It's been a fascinating exchange. Thank you for appearing before us today. You will be provided with a copy of the transcripts of your evidence for corrections. Committee staff will also email any questions that have been taken on notice today. I think there were a couple. We'll also send you any supplementary questions from the Committee and ask that you respond to those within seven days.

(The witnesses withdrew.)

(Luncheon adjournment)

Reverend Dr ROSS CLIFFORD, Executive Director, NSW Council of Churches, sworn and examined

Bishop MICHAEL STEAD, Bishop of South Sydney and Chair, Freedom for Faith, sworn and examined

The CHAIR: Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and video during the hearing. The photos and video may be used on the Legislative Assembly's social media pages. Please let the Committee staff know if you have any objections to that. Before we start, do you have any questions about the hearing process itself?

MICHAEL STEAD: No.

ROSS CLIFFORD: No.

The CHAIR: Obviously, we have your submissions, but before we start questioning, would you like to make a short opening statement?

ROSS CLIFFORD: On behalf the NSW Council of Churches—the submission sets out its history and the mainline Protestant churches that have been part of it for nearly 100 years—my submission is in support of Freedom for Faith and what Bishop Michael Stead will be saying but, in particular, I've picked up the issues of education, whether that be school, tertiary or other forms of education. I'm well aware that schedule A may not be in scope at this stage. If that is the case, I would obviously limit what I am going to say, and if the ADA concerns are picked up elsewhere, then obviously what I've got to comment on would be limited in that regard. But if the AD Act and schedule A is still in scope, I can certainly make some comments in that regard.

The CHAIR: Sorry, I know we have not started questions yet, but could you clarify that you understand that the ADA is not in scope or is in scope?

ROSS CLIFFORD: That's what I'm saying; it's not in scope. But as I read the Act and section 56 and the hollowing out of the Act, it certainly raised provisions for us, which we've responded to.

MICHAEL STEAD: You'll see from our submission, which is written by Freedom for Faith but also supported by a number of other faith groups, that we are opposed to the legislation in its entirety. If pressed on the particular issues that I'd like to speak to the Committee about, I would certainly invite questions. In relation to our section F, which starts on pages 9 and following, which is about the issues arising from the conflation of sex and gender—the sex self-ID part of the packages and, more broadly, what we see as the incoherence of the definition of sex and gender that underpins the various parts of the bill. So there are some logical inconsistencies as well as quite significant, we think, practical difficulties in the implementation of the proposed sex self-ID part of the bill.

Section G of our paper, which relates to lowering the age of consent for life-changing medical practices and the exclusion of parents from that process—that's a particular area of concern. And to reiterate what Dr Clifford has said, to the extent that it's likely that the proposed amendments to the Anti-Discrimination Act are going ahead, we also have very grave concerns with the implications for religious institutions and particularly religious educational institutions of those changes. Our comments about whether they're in scope or not is in response to the Government's submission on this, which has indicated that they're not going to proceed with it. If the view of this Committee is that they're unlikely to proceed, then we don't want to waste the Committee's time in focusing on those issues.

The CHAIR: I might make a quick comment on that. Obviously, we've had a chance to read the Government's submission as well. I think that's not a decision for anyone in this room. We're going ahead with this inquiry considering that everything is in play, but given that you've read the same submission as us, if you could not get too distracted over there, but don't miss it either. Don't avoid it.

ROSS CLIFFORD: Okay.

The CHAIR: That would be great.

Ms DONNA DAVIS: Thank you for taking the time out on this wet day to be here. Having read the submissions, I would just like to ask you how you would suggest that the Anti-Discrimination Act be amended, if at all, to balance the need to protect LGBTQIA+ persons from discrimination while also preserving religious freedoms?

ROSS CLIFFORD: With respect to schools and religious institutions, I set out—I think very clearly—that they are a value-based educational institution. Therefore, with respect to employment and staff et cetera, it's absolutely essential that they are allowed to live out their values. With respect to students, religious tertiary institutions like theological colleges—Catholic, Baptist, whatever—will have a test with respect to sexuality. That is basically not whether one is of a particular sexual persuasion but that marriage is where sexual intimacy is played out, and marriage is between a man and a woman. It's as simple as that. Students, in my case, in a tertiary education institution or faculty or staff who breach that understanding of marriage—particularly if it's stated, it's clear, it's on websites, it's whatever—do face a situation where they're no longer living the cultural values of that institution, and that of course goes to the whole question of what education is. It's modelled, it's lived and it's exercised.

I would say that, with respect to schools, I do not know a school that if a student is in the process of transition or in the process of saying that their sexual preference has changed—that the school would do anything else than act pastorally towards that student and care for that student. But there's a difference in religious education. Tertiary religious education—training people for ministry—has specific requirements for those who enter into those training programs, whether it be the priesthood, Baptist ministry or whatever it is. That goes to faculty staff as well as students. In that context and as I read what's proposed, it seems to me—and I'm still a bit perplexed—that under the proposed amendments, religious institutions are removed from protection in section 56 (2) (a). Even education is not covered, and the reasonable and proportionate tests apply to those not in that category.

Ms DONNA DAVIS: Sorry, the question was how would you suggest that the Anti-Discrimination Act could be amended to balance the need to protect the LGBTQIA+ person? You haven't quite answered that question.

ROSS CLIFFORD: My answer with respect to schools that have those values—whatever faith base—and religious institutions, you can't really do anything in that context to protect because it's a values-based institution, and those values-based institutions will employ and operate on the basis of those values. With respect to students as against staff, faculty and whatever, there may well be a requirement that the students themselves are not subject to the same provisions that staff and faculty are.

But for religious institutions, you can't apply that to a seminary or you can't apply that to a theological college that is training people for ministry that understand the marriage code is what they are modelling and living. I would think that if you want to change the Anti-Discrimination Act for that particular purpose and for that purpose alone—and I support the protection of that community in all other areas—but if you want to apply that to a value-based education, you've taken away valued-based education and the State has entered into the place of religion, which it should never do.

MICHAEL STEAD: Thank you for that question. I agree with the direction that's been suggested by Dr Clifford. I'd perhaps frame it in a slightly different way because I'd want to make a distinction between teachers and students at a school. Teachers at Christian schools or other faith-based schools in many cases are individuals we choose because they embody the values of the school. There needs to be a provision to require that teachers will certainly teach the religion of the school but in some cases to model it by their conduct. They are not just conveyers of education; they are modelling the religion itself. Whereas for teachers providing that provision, not as a way of overriding rights, but recognising that at a point at which a teacher says, "I want to teach at that kind of a school because there is a values alignment," that is a choice an adult can make at a point of employment. If they make that choice, the school should be able to expect them to conform to that.

Students are in a different category. Students may not know, in fact, if they are gender diverse or same-sex attracted. That may be something that emerges over time. I'm not aware of any school that expels students because of their sexual orientation or gender identity. All that the schools require there is the ability to ensure that when

the students come to school they're happy to operate within the faith framework of that school. The child can't say, "I'm not going to chapel because I'm going to hear things which are offensive to me," or, in other ways, not to comply with the general rules of the school that are shaped by its religious ethos. I'd want to make that strong distinction between teachers, who are adults, who make choices about employment, and students, who are operating in a context. I think different rules will apply there.

ROSS CLIFFORD: Can I just make one rider to that? While I agree with that, the Act talks about religious education, which is school and tertiary. The mistake is to lump it all together. While I concur with those general comments with respect to schools, what has not been identified is that in tertiary education—training people for priesthood or whatever—the values of the student and code of conduct are as vital as the values of the teachers in a learned community. That which operates in a school will not necessarily operate in a Christian tertiary institution or another faith-based tertiary institution that has a specific value set and that operates for adults who are part of that community. It is not dualistic; they are training as part of that community as adults in that context.

MICHAEL STEAD: Probably the last thing to say in response to that question is that this is not an easy area to resolve. The Federal Government has been battling with this issue for several years now. They've had a referral to the ALRC. That hasn't produced fruit in the sense that the Government has signalled that they're not going to go in the same direction of the ALRC. My suggestion would be that perhaps the State of New South Wales needs to watch what is happening in that jurisdiction because, in a sense, it's exactly that same issue that the Federal Government is wrestling with—how to protect students and teachers from discrimination whilst maintaining the rights of a faith-based institution to genuinely be values based. That's the conundrum.

Ms DONNA DAVIS: What about people that are LGBTIQ+ that also are of faith and that also want to be teachers or work in those tertiary institutions?

MICHAEL STEAD: If they are willing to teach and adhere to and model the values of that institution, that is no problem. The issue is when an LGBTI Christian says, "I want to teach a version of Christianity which is different to the version of Christianity taught by the school." That is the point of tension which, at one level, is no different to a Christian person who converts and becomes a Hindu or a Buddhist or a Muslim and says, "I want to now teach my new faith in this school." It is whether the individual rights of the individual believer and how they fit within the rights of the collective group—whether the rights of the minority trump the community rights, or whether the community trumps the individual. The answer of international law has always been that the institution is able to maintain its character, and freedom of religion means that the person who has changed their religion is free to leave and seek employment elsewhere or start another religion, rather than the religious institution has to change to accommodate the minority.

ROSS CLIFFORD: I've given you a case study where that happened in my own environment—again, talking a tertiary theological training environment—where someone who had signed our community code and whatever and was a good member of faculty indicated to me that she would be marrying a person of the same gender. We worked together for that employment to not continue. That would be the position of many Christian theological colleges and in tertiary education because, again, I can't model that sexuality is, within a marriage, between a male and a female if my staff and others don't live out. That is not what education is. Education is living your values as a teacher. A school is in a different situation to a theological college or tertiary education or a Catholic seminary. They are not in the same, and I think that has to be understood in that context. That is when I talk about civil disobedience because the truth of the matter is that we would not bow to that.

Mrs TANYA THOMPSON: Thank you for coming along today and for your submissions as well. Could you please expand on why you believe it is inappropriate to include a reasonable and proportionate test in the Anti-Discrimination Act?

MICHAEL STEAD: Article 18 of the ICCPR indicates that freedom of thought, conscience and belief is one of the fundamental rights that ought only to be overridden where it's necessary to protect the fundamental rights and freedoms of others. The key word there is "necessary". Necessary is a much higher standard than reasonable or proportionate. At a fundamental level, if the introduction was where it's necessary to do so, I don't think I'd have any objection. It's the fact that it's lowering the bar. It's saying, "Freedom of thought, conscience and belief is not as important as everybody else thinks it is. It's something that can be overridden if it's reasonable to do so"—the second reason for opposing it—beyond an ideological reason in that the bar is set in the wrong place. The next problem is who gets to make the call about what is reasonable and proportionate. It means that we are now asking judges and people who sit on tribunals to make those kinds of questions of judgement about the reasonableness of Christian faith or Muslim faith or whatever faith is being judged.

There is a string of cases that I can point to which demonstrate that these judges are not well equipped to make those kinds of assessments. I'm sure that I could tell you things about the Christian belief that you would think are completely unreasonable. I believe in a man who rose from the dead and who will come back at the end

of time to call us before a judgement throne. You probably think that I'm crazy for believing those things, that it's in the same category as fairies at the bottom of the garden. I don't want judges to be able to make those kinds of calls about the belief I hold as a Christian, that God made us fundamentally male and female and that he blesses a union between a man and a woman to produce children and that family context is a special thing. Those are religious statements which come from my Christian belief. I don't want a judge to be able to overrule those and say, "Those beliefs are not reasonable and proportionate in these circumstances." It's the fact that we have an unelected, unaccountable judiciary making those judgement calls.

ROSS CLIFFORD: Can I just add also that my experience in tertiary education and schools is that such tests involve the institution or the school in a year or two years of just total legal engagement, process and media. It becomes the main game. I think that needs to be a consideration where you have a value-based school. Provided they are working consistently with their values—values that are not seen as abhorrent from society—and they are a value-based school, then that is reasonable and appropriate for them to create a culture that represents their values. They don't need anybody else to determine that to be the case.

The CHAIR: Ms Butler, down there on the South Coast, I am going to throw to you for questions.

Ms LIZA BUTLER: Thank you for attending today, and I'm sorry I couldn't be there in person. New South Wales and Western Australia are the only States that require a person to have surgery before altering their recorded sex on their birth certificates. Are you aware of any administrative or operational issues that have arisen in States that do not require a person to have surgery to alter their birth certificates on their formal records?

MICHAEL STEAD: Before I answer the specific question, it would be helpful to clarify that, although other States have other procedures, none apart from Victoria are as simple as what's being proposed in this bill—that is, with a simple change by statutory declaration. In most jurisdictions it requires a letter from a medical practitioner certifying that somebody is living in their new chosen gender, and in many areas there are limits on how many times and with what frequency a person can change their sex or gender. So it's not surprising that in other jurisdictions there haven't been as many issues, because there are higher bars than what's being proposed here. But in answer to your question, I'm not directly aware of administrative problems that have arisen from that. I'm aware that for many people it's a non-issue because they can already change their passport, because the Federal Government records gender in the sex category on the passport. For the purposes of legal identification overseas, a person can change the gender that's recorded on their passport, and so in many cases it's a non-issue.

Ms LIZA BUTLER: If that was a non-issue, wouldn't you feel that it wouldn't be an issue to change your birth certificate, because then it would be the same? We've got a bit of an anomaly there where you can change one but not the other. Why not change your birth certificate as well?

MICHAEL STEAD: What's being proposed here is much more radical than just changing "M" to "F". To use my earlier illustration, with the Federal Government on your passport, you can record "M", "F", or "X". You can't record asexual, demiboy, gender neutral, gender fluid, transgender—any one of dozens of potential sex descriptors, which is what's being proposed here. Nor is what happens federally a conflation of sex and gender occurring. That's actually the issue that we're most alarmed about: It's the collapsing of sex into gender or gender into sex, whereas these things have always had distinct meanings.

Sex is a biological concept. It has to do with chromosomes and primary and secondary sex characteristics and is well recognised. Gender is a person's own felt or innate identity of their perception of—I was going to say of sex, but that's not right; it's perception of gender. But what's being proposed here is to actually collapse sex into gender, and therefore all of the distinctions in our society which continue to have a grounding in biological sex are going to be lost. That's the fundamental concern here, not that people can change "M" to "F" on their driver licence. That's really a secondary issue. It's the fact that it means something different.

Ms LIZA BUTLER: Reverend Clifford, do you have anything to add to that?

ROSS CLIFFORD: No, I concur.

Ms TRISH DOYLE: Thank you both for being here today. As you would be aware, in discussions and debate about this bill and the issues surrounding it, there have been quite a number of statements made from a number of organisations and individuals. I'm interested in your response to a comment made in another submission, and that was:

Exempting only religious institutions, in a secular democracy, empowers these institutions to permit hate and to exclude some communities from both religious practice as well as important social infrastructure such as welfare services and education. No other social institution is exempt.

Would you comment on that, please?

MICHAEL STEAD: I think I'd like to reject the premise of the statement, and certainly the second statement, the suggestion that Christian institutions—or other religious institutions, for that matter—exclude people from receiving social services. That's patently untrue and frankly offensive—the idea that we would turn people away from hospitals because they're gay or trans or something like that. In fact, I'll go out on a limb and say I think that it was Christians who were at the forefront of responding to the AIDS crisis. At a time in our society when everybody else was not willing to look after HIV people, it was the Christian institutions in Sydney, particularly, who responded with love and compassion, and that's how we continue to respond to people. It's not actually about hate, so I think I actually want to reject the premise of the argument that what religious institutions want is the permission to hate and that we are anything-phobic in the way that we engage with people.

To the specific question of why we want an exemption, it's not about excluding people from receiving services. It's actually in order to maintain the religious character of the institution. To the point at which you're saying a religious body, when they engage in the provision of things to the wider society, can't be religious anymore—that's effectively where that argument leads to— if you're going to do anything to provide services to the world at large, and not just to your own flock, then you have to become secular or you have to give up your own religious identity. That actually means we cease to be religious institutions anymore.

It's saying to the religious people, who have been at the forefront of looking after orphans and widows since the second century—we've been the ones who've been looking out for people who have nobody else to look out for them, and we do it for religious purposes. But to suddenly say, "Okay, if you want to provide adoption now, we're going to tell you who you can adopt to or who you can't adopt to," actually means that we'll just be forced out of the provision of those services. That's not embracing and inclusive of religious identity; that's actually excluding the operation of religious bodies in this State.

Ms TRISH DOYLE: Thanks for that clarification. I have another question, this time to Reverend Clifford. You described Karen Pack as an exceptional educator. She's a committed Christian and an ordained pastor. How is it Christian to sack her?

ROSS CLIFFORD: I put that in as a case study and I'm on record, so I need to be cautious of what I say. Karen signed a community code which said that marriage is between a male and a female. She entered into employment signing that code, as is in the contract of employment. Karen, unbeknownst to me, indicated that she had reached a position where her position on marriage and gender had changed and she would be marrying her partner. Therefore, she asked me what that meant. We went through a period of communication and decision and discussion with Karen and said that that is not consistent with who we are and our values and our situation. As a result of that, Karen left us.

We sent letters to all the staff and all the students, both from Karen and ourselves. We had a farewell for Karen and always said to Karen she's welcome on campus, and then 12 months later Karen decided that that probably wasn't the way she wanted it to happen. Karen said to me, quite openly, "I don't want to be a hero for the left or a martyr for the right or whatever. I just need to get on with my own life." We paid six months for Karen to finish her PhD at Macquarie University. I think that's pastorally operating with someone and caring for someone who no longer can live out a basic value of your system.

It would have been exactly the same if person X came to me and said "Ross, I'm going to move in with person Y, who's of the opposite gender, and we're going to exercise a relationship outside of marriage". It would have been exactly the same conversation, exactly the same process. The choice that Karen made was not with respect to the gender, per se, but that she was going to actively live a life outside of our understanding of marriage, being sexual intimacy being between a male and a female.

Why did I say she's an excellent educator? And I don't apologise for that. Because I wanted to make it very clear: We were not in, the case of Karen, because we respected her so much as a teacher, going to try to performance review her out or do what others would seek to do to remove this person from our employment. I think that is totally dishonourable. What we were saying is, "This is consistent with our values". Karen entered into employment consistent with our values. Karen's changed her position. It is not the position of the denomination; it's not the position of the theological college. It's essential to what we do in ministry about training people for ministry and the like, and so, therefore, it's not appropriate that this employment continue. In my situation, and I'd say for many in Christian tertiary education, there would be no other opportunity to do that. She was not hounded off campus, as people might suggest. It was a pastoral, considered approach as to how we deal with someone who, in this case, can no longer hold to a significant value that you hold to. But, as a person, she is fully respected and always welcome on campus in any other capacity.

Ms TRISH DOYLE: I appreciate your explanation.

Mrs HELEN DALTON: Thank you for attending and for your submission. Could you outline some of the problems if this bill passes with religious single-sex boarding schools and how you would adapt, just for the rest of the Committee, who I think probably have had no experience with boarding schools?

Ms FELICITY WILSON: I went to boarding school

Mrs HELEN DALTON: Were you a boarder?

Ms FELICITY WILSON: I was a boarder at an Anglican school.

Ms DONNA DAVIS: And I was a boarder at a boarding school.

Mrs HELEN DALTON: All right, I'll retract that. Could you outline some of the difficulties?

ROSS CLIFFORD: I have a residential college at Morling, or did when I was a principal. That worked on the same policy that I'm saying with respect to marriage and relationships—not policed, but that was expected. We're always full, because there are many students and international students who want somewhere that is safe. They want to be in an environment where they think their sexuality and their own right to not be caught up with drunken wild parties or whatever on their floor is respected. So one floor is female and one floor is male; it's not prudish. But you'll find many, many residential colleges are going exactly the same way, because women in particular want to be safe when they come to a residential college and not be caught up with what the guys think is a wonderful behaviour or whatever.

But, not being aware of what happens in a school boarding school, I can say that principals of schools I've spoken to—and I'm sure this would apply to a boarding school but to a boys school as well—would say that if the situation happened that someone was transitioning or felt that they were of another gender, they would do everything within their pastoral care to support that person. I'm sure that would go to provisions if they were a boarder in that situation—pastoral care to ensure that the focus is then on that particular person, allowing them to feel supported in that particular environment. I could be wrong, but I can't imagine a Christian institution acting any other way with respect to someone in a boarding school situation.

Mrs HELEN DALTON: On another note, I'll be careful with the next question, just in case I get beaten up again. If parents disagree with certain medical procedures that a medical practitioner believes are in the best interests of the child, what are your views on how this should be resolved or addressed?

MICHAEL STEAD: Thank you for that question. This is a particular area of concern in this legislation—and we've outlined it in section G in our paper—that the proposed changes in the new 174 of the Children and Young Persons (Care and Protection) Act enable both the child themselves, if over 16, and a medical practitioner for the child under 16 to allow life-changing medical procedures, which run counter to a whole string of recent decisions of the Family Court, which have affirmed the importance of parental consent, as well as the operating guidelines of NSW Health in relation to gender-affirming medical treatment in particular as a particular area. It's really saying that the parents are not good judges of what is best for the child and we're going to outsource that to a medical practitioner and, in some cases, to the NCAT if the child is under 16. That, again, does not respect the very significant roles parents have in shaping their children and having a responsibility for doing that in the best possible way. Yes, there are extreme cases where I acknowledge that parents make bad decisions, and we do have court processes—that happens rarely, but it does happen—but making it much simpler, which is what's being proposed, would be disastrous.

ROSS CLIFFORD: On the issue of common sense, personally—as I think with many in my faith persuasion, looking at some other bills for consideration—the thought that an 18-year-old-plus person couldn't seek prayer for transition or transformation or suppression but a minor without parental consent could take medication for the same purposes is absurd. Common sense would indicate that I believe that a minor should be under parental guidance, but we are in a situation where we're actually trying to limit the rights of an adult in how they seek transition or suppression or support. But a minor can do so without parental consent. I just think we as a society need to have consistency in how we view parental rights and children in the process and how we view adult rights as well, otherwise, again, we're infringing into areas I don't think States should go.

Ms FELICITY WILSON: Thank you for being here and for your submissions. You spoke a little bit in your submission, Reverend, about surrogacy. You did say that the bill liberalises commercial surrogacy. I understand that your point is not that it legalises commercial surrogacy within our jurisdiction, because it does not, but you have some concerns about the extraterritorial impacts of the surrogacy changes.

MICHAEL STEAD: I would probably say extraterritorial. I wondered whether that was an option, but you never know.

Ms FELICITY WILSON: Even more interesting. We'll get into that in our next inquiry. The extraterritorial impacts in foreign jurisdictions—could you speak to those? In doing so, I'd like to ask you to also reflect on how you think the current system meets the rights of children that have been born through surrogacy in New South Wales and if you do think there are any concerns that we have to address. If so, would you look at doing that in a different way?

MICHAEL STEAD: Thank you for the question. The concern with the proposed change is that it will incentivise—I won't put it as baldly as I might—people to look overseas to find surrogate wombs and it will incentivise choosing the people who are in the very worst of circumstances, because that will increase the chance of that child being able to gain adoption and legal status in Australia because the court here will say, "Well, we have a child which has been conceived through surrogacy in India. The choice is between leaving them there where they are or bringing them into a loving home in Australia. Of course, that's in the best interests of the child." So it actually incentivises choosing the child's surrogate womb on the very basis of that child ending up in a worse off situation, because if they choose a surrogate where the child will have access to a wonderful healthcare system where they are then there's less incentive for the child to be adopted in Australia. That's why it will tend to incentivise a particular choice of a surrogate womb in order to exploit what is in the best interests of the child by having children conceived in situations which are not in their best interest. That's what's fundamentally driving that concern.

Ms FELICITY WILSON: Do you believe in the current system that women are forced to make decisions about surrogacy because of economic pressures overseas? Do you think we currently contribute to that as a jurisdiction?

MICHAEL STEAD: I don't have anecdotal evidence to be able to support the claim, but my suspicion is that women are forced into surrogacy because they don't have other options. If you have somebody who's prepared to pay tens or hundreds of thousands of dollars to look after you through the period of surrogacy, we are exploiting women who are in vulnerable positions. That is my concern about non-altruistic surrogacy: As soon as there is a commercial element, it tends to incentivise those who are most desperate for that need. So we're exploiting vulnerable women.

Ms FELICITY WILSON: Which is obviously the reason we do not have legal commercial surrogacy in our jurisdiction.

MICHAEL STEAD: And if we don't have it here, we shouldn't be incentivising it elsewhere.

Ms FELICITY WILSON: I do understand the position that you are putting; I think it is very reasonable. I also go back to some of the commentary within your submission and some of your contributions today about parental responsibility and the rights of the child. If we are in a circumstance where we do legally allow children to be raised by surrogate parents here in our jurisdiction and yet there are legal areas of confusion when it comes to things like parental rights and responsibilities, how do you balance the conflict between not wanting to incentivise commercial surrogacy but also ensuring that once those children and families are here in Australia there are appropriate legal rights and responsibilities both for parents and the children that are here?

MICHAEL STEAD: I think my point is that the children shouldn't be here in the first place. People are taking advantage of loopholes in the law. It is not that we think overseas commercial surrogacy is okay and we just haven't got around to validating it. We actually think it's a bad thing here and elsewhere. Other people have realised that, notwithstanding that, they will still engage in extraterritorial surrogacy arrangements and then, having created a problem, they turn to the law to fix the problem. I am saying that the problem is actually in the use of that loophole in the first place. It would be better to say, "Australia does not support international surrogacy."

Ms FELICITY WILSON: We talked earlier in some of the discussion about legal gender recognition identification documents. While I don't think it was put this way within your submissions, there have been other contributions in the public realm and amongst submissions about the notion of women-only spaces. I note that you represent organisations that are not just based within New South Wales—so, obviously, the question from Ms Butler about other jurisdictions and the operation of other jurisdictions. We hear a lot about women-only spaces and this notion of things like change rooms, women's prisons and women's refuges, and concerns about what would occur in those circumstances with the ability to change your birth certificate. I am still struggling to see how the change of the legal document leads to that outcome. I am wondering, if you have that concern, if you can walk us through that, how you see it and if you see it occurring in other jurisdictions.

MICHAEL STEAD: In the proposed legislation it says that when a person changes their sex descriptor this will be their sex for all legal purposes in New South Wales. It uses that phrase. At the moment the Anti-Discrimination Act in New South Wales and the Sex Discrimination Act federally distinguish between sex

and gender and make distinctions, for example, around the whole question of single-sex schools. That is a category that is recognised, but there are also distinctions that are made so that women-only gyms, like Curves, can operate. That is a legitimate distinction based on the category of sex.

The problem is, as soon as you change the legal category of sex, that thing which used to be biologically determined is now determined by statutory declaration. Right now a person who says, "I identify as this sex," in New South Wales—apart from a surgery to actually effect that, that doesn't change their sex. That actually just changes their gender. That's the thing that will mean that a person can turn up to Curves and say, "I now have a birth certificate that says I'm female for all legal purposes notwithstanding the fact that I am biologically male, and you need to allow me in." The concern is because the current exemptions are all based on the category of sex and its biological basis.

Ms FELICITY WILSON: Can you explain to me why it would be a problem if someone turned up to Curves and they identify as a woman—they have made that change on their birth certificate? What is the outcome that you are concerned about?

MICHAEL STEAD: I'm not speaking as a woman, you'll be pleased to know. I understand that some women who go to gyms like that like to exercise in the absence of males. That's the whole reason why those kind of gyms are popular. It is actually about protecting the privacy of the other users of that facility. The concern is that they would prefer not to do it in the company of men.

The CHAIR: Thank you very much for appearing before us today. You will be provided with a copy of the transcript of your evidence for correction. Committee staff will also email any questions taken on notice from today and any supplementary questions which may come from the Committee. We would ask that you respond to those within seven days. Thank you very much, gentlemen.

(The witnesses withdrew.)

Mr JOSHUA ROWE, State Director, NSW/ACT, Australian Christian Lobby, sworn and examined

Mr MURRAY NORMAN, Chief Executive Officer, Faith NSW and Better Balanced Futures, sworn and examined

Mr JOSH BONETT, Director, Research and Strategic Communication, Faith NSW and Better Balanced Futures, sworn and examined

The CHAIR: I welcome the next witnesses. Thank you for appearing before the Committee to give evidence. Committee staff will be taking photos and video during the course of the hearing. The photos and video may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos or video taken. Before we start, do you have any questions about the hearing process itself?

JOSHUA ROWE: No.

MURRAY NORMAN: No.

JOSH BONETT: No.

The CHAIR: Excellent. Before we get into questions, I am going to ask if Mr Rowe, on behalf the Australian Christian Lobby, would like to make a statement and whether or not Mr Norman or Mr Bonett would like to make a statement on behalf of Faith NSW and Better Balanced Futures.

MURRAY NORMAN: Thank you very much for allowing us to appear before the inquiry today. Better Balanced Futures and Faith NSW work across all the faith communities. We're very thankful that we can come and talk. It's really important for the faith communities that gender, the family and the place of faith in the community are preserved and held, and we're very keen to engage in this process so that all people of faith can be included, their faith beliefs are respected, and we can be included within society. Thank you for having us this morning.

The CHAIR: You're welcome. You can come any time. That's a nice start.

JOSHUA ROWE: I'm Joshua Rowe, a representative for the Australian Christian Lobby. We represent around 57,000 supporters here in New South Wales. It's the submission of the ACL today that the equality bill should be rejected in its entirety. That submission comes on the fact that there is no obligation for the Parliament to pass such a complex and convoluted piece of legislation. Being an omnibus bill, it covers and spans a broad range of issues that could take months and months of consultation just to get through one of them, let alone a

couple of 45-minute sessions. I'm sure we will get into those issues today and look at some of the impacts on religious freedom, parental rights, children's protection, women's rights and so forth, as has been covered. Thank you for the opportunity to appear today. I look forward to your questions.

The CHAIR: You are welcome.

Ms FELICITY WILSON: Thank you very much for joining us today and for your submissions as well. I wanted to talk about—I was about to say the rights of children, but I think perhaps part of the perspective brought by your submissions is actually about the role and rights of parents when it comes to decision-making about gender-affirming care and medical interventions. The legislation looks at changing the current status quo, and obviously you've reflected on that in your submissions. You said you reject this in total, but do you have a view that the status quo should be maintained, or is there an alternative approach that you believe would be appropriate for us to consider?

JOSHUA ROWE: Specifically in reflection of the amendments to the Children and Young Persons (Care and Protection) Act 1998, I believe that, as has been stated already, it is fundamental that parents have rights to govern and help their children make decisions. This is a natural part of child protection, especially when we are reflecting on the un-evidenced nature, for example, of affirmative care. We are seeing consistently at the moment, if you look at the Australian day-by-day evidence coming out, especially in response to the Cass review, concerns with puberty suppression and the kinds of long-term implications it has on young people's health as well as those who are taking it who are of consensual age, and how the sex modification procedures that are being undertaken are having irreversible effects on their fertility.

These are decisions that children are always not equipped to make, so parents play a very important, protective role in that process. In regard to your question about where we go from here, I think that the status quo as it is at the moment is appropriate, and that is that you have to be of a consensual age in order to undertake certain clinical interventions.

Ms FELICITY WILSON: You have to be of consensual age or have the Gillick competency test applied, and you did just say that children are never competent to make those decisions. Do you not support the Gillick competency test in the status quo? Do you think there need to be further protections for people under the age of 16 than there currently are?

JOSHUA ROWE: Yes, good question. I would say that I'm speaking very explicitly in the spirit of this amendment which, as I can see it, is in relation to people who are gender dysphoric and giving them access to certain affirmative interventions—namely, cross-sex hormones and puberty blockers. Therefore what I was referencing was that, in undertaking that kind of intervention, I don't think that Gillick competence can be fulfilled with affirmative care—namely because being able to demonstrate to a child the kinds of implications that this is going to have long term, and for them to be fully conscious of what it means to lose your fertility and to be irreversibly changed, is something that will never be able to be fulfilled under Gillick competency. This is something that Hilary Cass outlines quite clearly in the review that she has just submitted. In this instance, no, I don't think it's appropriate.

Ms FELICITY WILSON: Mr Norman or Mr Bonett?

JOSH BONETT: One of the things we wanted to pose is that the family unit is sacred in our society, and that's not just the faith communities. It is sacred in First Nations cultures; it's a sacred unit. There are aspects of this legislation that actually drive a wedge into that and I think are problematic in just a pragmatic sense of how it's working—one parent agreeing on paper. Okay, but in reality, how is that going to look in a family that is fractious? I think there are really dangerous parts of this. To refer to one particular part which is in our submission and is also in Michael Stead's submission that we discussed before, it requires:

... that the applicant themselves (the child) evaluate expertise, by considering the counsellor "has suitable qualifications, training, or experience to provide the counselling".

Are you asking someone under the age of 16 to evaluate that? I am speaking very practically. I am not calling someone under the age of 16 stupid, but I also know that under the age of 16 you don't have your full cognitive capacities and I don't think you have full cognitive capacity to analyse long-term effects. That's the main question that we are calling into question here—the preservation of the family unit and the capacity of the child to evaluate the long-term effects of this. I think it's a problematic fracturing of prioritising others over the family unit.

Mrs HELEN DALTON: Do you think this bill will erode the rights of women?

MURRAY NORMAN: Can I answer that? I think, with this bill, if women's only spaces become interrupted—I'm just thinking in a mosque on Fridays when they come to pray, only men come to mosques on Fridays to pray. There are women's prayer rooms, but they are separated. If you can change your gender and then

come along to those facilities, that is totally against the Islamic religion. It provides situations where, in different faith communities, it totally disrupts the order. The same can be true in the women's only areas. Men could come to those areas. It totally undermines the theological and doctrinal basis of that faith group, and that's the way they have set it out and those are the tenets of the Quran. It fundamentally alters how that would operate. That's just one example of where being able to change your gender, different to your sexuality, which is biological, would affect women and they wouldn't be protected in that space. It also creates disharmony in the whole community.

JOSH BONETT: Can I give you an example that I think answers Ms Wilson's previous question? I ran a women's gym for 10 years—Fernwood women's fitness at Castle Hill—and about 30 per cent of our members at one point were Muslim. Practically, to answer your question on the previous submission, if I was to go in as the owner, I would stand outside the front door and the staff would go around and announce to all the Muslim members who were exercising without their head coverings that a man was going to enter the premises because they can't be seen with their hair exposed. We would send someone in—because I had to come in to do some sort of work or whatever it was—and they would do all of that, they would all put their head coverings back on and then they felt comfortable.

Even that was a bit of an issue, to be honest, just speaking practically, let alone if someone who has male genitalia or is a biological male was to be in the change rooms where they were fully disrobing. That would be unacceptable. That, practically, to answer your previous question about what that actually means—we would have lost 30 per cent to 40 per cent of our members. Our business would have gone bankrupt. We would have lost it. That's a contentious issue, but the evidence of sex to join our gym was what was on your driver licence or birth certificate. That was the problematic answer for that.

Ms FELICITY WILSON: Your driver licence doesn't say your sex or gender.

JOSH BONETT: Sorry, I meant to say birth certificate.

JOSHUA ROWE: I think it's also worth recognising girls' rights and young girls' protection as well. I think about having children, and when I was in school I remember the first time when I went into a male change room and an older gentleman got disrobed. That was quite confronting for me as a young man. I think about that in terms of having a girl in the future and being confident or comfortable allowing her to go to the women's bathrooms, and then knowing that because there has been no medical intervention and someone has changed their sex descriptor on their birth certificate and now has a new legal culpability, they can access those spaces and potentially threaten the safety of that young girl, as well as her dignity, from young exposure.

Mrs HELEN DALTON: Can you elaborate on the concerns that the proposed amendments to the Surrogacy Act would create new commercial surrogacy markets in countries that permit commercial surrogacy? What are your concerns with the Surrogacy Act?

MURRAY NORMAN: My concern is last year I was blessed on a Churchill Fellowship to travel around the world. In one of the places that I visited I was taken by the Hindu community to one of their poorer villages in the country. Sixty per cent of the country is in the village. The community was incredibly welcoming, but they were incredibly poor. The thing that concerns me about the surrogacy laws is, for anyone looking at that, if you were making an economic argument for the village or the girl, it would be a good thing for them to operate—do you know what I mean?—if you were looking at it just economically, and they weren't looking at it morally or religiously, to have a surrogacy.

I chatted to the village elders. They were making decisions between allowing their kids to go to school or eat. They were making the decision, "I'm not going to send my child to school because they need to be in the field, and if I don't go into the field"—and so the Hindu community is helping them by teaching them they actually need to have their children be taught. They were making that possible by helping them, but that's a whole education process. It's very concerning that if countries like Australia allow surrogacy to be able to operate in that way and then come back in, it can really put vulnerable people in a situation that I don't believe is appropriate for Australia and it's not appropriate for those countries too. Seeing first-hand poverty like I've never seen before, and just seeing the real need and chatting to people there—I will never have to make the decision for my four kids whether they choose education over food. That's not a decision that I'd want to make, and that's a decision everyone in that village was making.

JOSHUA ROWE: There's not a lot talked about with children's rights, again, here. One of the things that I would submit, in addition to a lot that's been submitted already in discussion with commercial surrogacy arrangements overseas and the exploitation of vulnerable women—which I think are all very important to note—is that a child's right to their biological parents, as well, is an important factor in this discussion. I've read a lot of evidence around young children flourishing best when they have close contact or direct contact throughout their life with their biological parents, and so there is a child's rights question here with this issue as well.

Ms TRISH DOYLE: Many in our community and many of us, I'm assuming, as we've read a huge amount of submissions and entered into discussion, debate and listening to people speak of their views around this bill, find it perplexing that other Christian organisations have argued that religious exceptions in the Anti-Discrimination Act affect the freedom of the LGBTIQ+ people and that this bill attempts to strike a balance. In your view, why does the inclusion of the "reasonable and proportionate" test not strike the balance?

JOSHUA ROWE: I think the submission made by Reverend Michael Stead is very important, which we heard earlier on, and that's in relation to the outsourcing of the proportionality test to the courts as opposed to those who understand the direct ethos of the faith. The main concern we have here is maintaining an environment in which Christian values or faith values can be upheld.

Ms TRISH DOYLE: So you're saying they're different?

JOSHUA ROWE: Sorry, what—

Ms TRISH DOYLE: Are you agreeing that there are different Christian values, then?

JOSHUA ROWE: I would argue that there is one set of Christian values from the Bible, from the word of God. There are different interpretations of those. Yes, that is correct. But when we're talking about a specific religious educational institution or an institution that's seeking to maintain an environment of faith and to uphold certain values then the statements of belief that they've made and seeking to uphold those values is determined by the Bible—the word of God—and the implications drawn from that on certain controversial issues, including marriage and sexuality. The outsourcing of that externally to the courts—to someone who doesn't hold those views—is never going to be striking the right balance in order to maintain that environment of faith and the values within it.

Ms TRISH DOYLE: Does anyone else want to speak to that?

MURRAY NORMAN: When you're looking at different schools, different schools have different ethos. We have Islamic schools that have fasting during Ramadan. Depending on how the courts view that, it might be reasonable or unreasonable to actually fast. My sister is a PE teacher and she has Islamic students. She actually questions sometimes whether those students can participate in some of the physical activities that they are doing—she's down at Deniliquin and it's quite hot—and whether it's a good idea to be participating at that time. So different communities have different ethos. We're not talking about students but, when you sign up as a teacher, there are different ethos that are being signed up to, and that becomes a contractual arrangement.

There is diversity across the different schools and they all have different views. But to have that outsourced to what is reasonable—a court might decide that is not reasonable, but that might be a core tenet of that faith and that community. But that is entered into at the time of employment, and the faith communities are very strong that each of the faith communities should be able to have their faith ethos represented in their teachers and in their staff so that that can be taught to students and modelled as an example.

An example would be with marriage between a man and a woman. My children, three girls and a boy, have attended and are attending St George Christian School. The ethos there is marriage is between a man and a woman. That is an ethos that's held right across the school body that is contractually signed up to when teachers come. Students are welcomed right across the board, but that is really important to that ethos. As you carry across that to different faiths, they will have different ethos. It's not just on sexuality; we're looking at that here. But to have the reasonableness of that questioned, and the holy text, is quite problematic to the faith communities.

JOSH BONETT: I don't know if this will help or not but I have a small anecdotal story. A friend of mine from the Blue Mountains was in the church council for 20 years, and someone came to her—a lesbian woman—looking for a place, a congregation to find home. She wanted to find somewhere where she really belonged and felt accepted. She shared this story with me because the woman had been to several churches and had felt that that wasn't the place for her, based on what was taught and based on what was expressed by other members of the congregation.

The lesbian woman went to three different congregations and spoke directly to the ministers and said, "I don't want to drag my children through any more churches where they don't feel like they belong or where we feel like we're abnormal". She actually appreciated that the ministers had the ability to speak freely about what their communities were and their beliefs were because she was able to find that, out of the three she spoke to, she found a place for home. She found a place where she belonged.

If we start down the road of restricting the ability for churches and faith communities to express their beliefs and live out those beliefs then I think people will possibly still hold the same beliefs but not express them, and people won't be able to find their true place of belonging, and hopefully even pursue it. We can't legislate that

everyone is going to agree, but we do need everyone to be able to pursue the truth of their own beliefs, the truth of their own faith and the truth of their own holy and sacred texts.

Ms LIZA BUTLER: Just following on from that, can you suggest some alternative ways that religious organisations and churches could preserve their religious ethos and values but at the same time still protect people from discrimination based on their sexuality or their gender identity?

MURRAY NORMAN: I think it's very clear—and it does need to be made very clear in employment situations—that statements of faith, codes of conduct and core beliefs are very firmly explained and made possible in employment situations, and then I think it becomes a choice for people. If they can't sign up to that ethos then they can't teach within—do you know what I mean?—those schooling systems. That would be the position that we would hold. In Australia there's choice between public and private, and there are lots of options that people can choose—different sets of beliefs and different ethos. In my area there are Muslim schools, Christian schools, Catholic schools and public schools. Parents get to make a choice, depending on the ethos that they hold dear, to be able to make that choice for their children.

JOSHUA ROWE: I think it's very important that we frame it in terms of positive protections for people of faith as well. I have noted today that it's been talked about in regard of excluding us from discrimination, but when you're actually looking at fundamental rights, protected under the ICCPR, some of those are, for example, the freedom of expression and religion and freedom for parents to send their children to a school that upholds their religious ethos as a family. One of the things I would like to see are actually stated positive protections for people of faith within legislation that protect them to be able to hold their views on marriage and sex, for example, without fear of being excluded, cancelled or having litigation brought against them for those positions.

Ms LIZA BUTLER: From something you said there, if a family's enrolled a child at school but then the child, as they grow older, identifies what sexuality they are or they are non-binary or gender—how do you support them without discriminating against them in that environment?

JOSHUA ROWE: A Christian world view on sex is that it's biological or binary. So as we begin to look at developing evidence around what's known as gender dysphoria, there is greater awareness that a lot of gender dysphoria can be the outcome of maltreatment, identity confusion or other comorbidities as well. As a Christian and within a Christian family, I wouldn't see that the best outcome for that child is to be affirmed in that dysphoria, personally. Christians or faith-based communities want to be able to send their children to schools that uphold their biblical view on sex, which is that it is binary—male and female—and not actually pursue the pathway of affirming someone in that dysphoria.

JOSH BONETT: I would also practically like to say that, as a parent, if that was my child, I don't think maintaining them in a Christian school whose ethos is alternate to that is the best choice. I think the best choice for that is not to legislate it so that the Christian community can't uphold its tenets of belief. The best choice in that situation is for the child and the family to find a community where that child will be absolutely affirmed in what they are choosing as their family's identity and their individual identities, rather than legislate and watering down the Christian beliefs to not be able to speak into that. That just seems like an impractical solution. Surely that child would want the most encouraging environment they could possibly find.

Ms LIZA BUTLER: The opposite of that is one could argue that that is discrimination in itself, that they are asked to leave the school because they don't have the same views.

JOSH BONETT: I could be wrong here, but I think we need to be careful to not equate discrimination with disagreeing.

JOSHUA ROWE: Another way perhaps to put it is that I agree that discrimination against something on the basis of race, for example—something that someone is born with biologically—is discrimination. But from a biblical world view, for example, we believe in biological sex, so male and female. We do believe it's discrimination to discriminate against someone on the basis of whether they're female or male biologically, but we're talking about gender identity here, which is very controversial. In fact, from a biblical world view, for example, we don't actually agree that gender identity is authoritative in terms of someone's legal documents, their biological capacity and so forth.

Mrs TANYA THOMPSON: I'm still on the same subject matter, I think. If that's all right, can I continue on from there?

The CHAIR: Yes, absolutely.

Mrs TANYA THOMPSON: It's kind of the same question but worded in a different way. In one submission there's reference to the Cass Review. There's a particular finding in that review that says that an unusual number of children who believe they are trans are neurodiverse or have psychiatric disorders or mental

health issues. A lot of people who put submissions in and organisations refer a lot to the best interests of the child. Of course we have to take into account the mental health and wellbeing of that child—not only the parents and the families but the child itself going through those gender identity challenges. What strategies then, therefore, would you see to be implemented there to support the child as they navigate through their mental health challenges and their gender identity challenges in your communities?

JOSHUA ROWE: Can I just say on this, first and foremost, I think the most important thing for the New South Wales community at large is an independent inquiry into gender services and gender-affirming care. Cass's report is quite clear in indicating that that should be the operation from here on out. A number of countries overseas—Sweden, Finland and Denmark, as well as the UK—and States in the US are now banning puberty blockers for under-18s as well as doing their own reviews. There are calls around Australia for reviews into gender services, and I think it would be appropriate that we have an independent review in New South Wales. That was part of our submission when it comes to improving the wellbeing and safety of LGBTQ+ people, especially when we're talking about those who are confused about their sex or gender dysphoria.

I would repeat that there is a lot of evidence evolving that suicidal ideation in these young people is not, in fact, linked to whether or not they can transition or be affirmed, but rather often to comorbidities, and also that they're amongst some of the most maltreated individuals as well. I think that what is necessary and needed is appropriate care and holistic counselling and the approaching of those traumas, the confronting of gender dysphoria as a dysphoria, and working towards a reconciliation with one's biological sex. That would be, in my opinion, the best pathway forward in order to help those individuals.

MURRAY NORMAN: In relation to schools, when we're talking about teachers, we are talking about them signing up to statements of faith and religious convictions. When we're talking about students, students are cared for within those schools, and they receive the pastoral care and the counselling. We're not trying to draw a distinction at that level about—at the school where my children got to, there have been parents of other faiths that have been thinking about joining. They've come and the principal has explained to them clearly that we teach about Jesus—his role coming and dying on the cross—and they've gone, "Oh, maybe we don't want our children taught that," so they've decided to go somewhere else.

But every student that comes to the school that is accepted as a student is cared for, is loved by the teaching staff and they are referred. My children have experienced this. They're cared for. Sometimes that's been medical; sometimes that's been psychological; sometimes that's been—do you know what I mean? Going to those different services, and the school does have those. The school does partake in those. But when you're looking at gender, that is taken very seriously. Using puberty blockers or hormone treatments that have lifelong implications, as a Christian school, in our case, we are very keen that they not be used and recommended for minors within the schooling context because of the ethos we have. That doesn't mean that parents can't go to other places or those types of things, but those decisions being made is not in what we would see as the ethos of the school—making those decisions that can't be reversed in children so young and the connection between family and students at that age.

Ms DONNA DAVIS: We heard this morning—I think it was 1.6 or 1.7—

The CHAIR: It was 1.7.

Ms DONNA DAVIS: —that 1.7 per cent of our New South Wales population—and that's just an estimate—are actually born with atypical sex characteristics. Therefore, we have tens of thousands of people in our communities who may have been identified by their family as a particular sex in their infancy, but as they have matured they feel that that is not right and that is not the way they feel they want to be identified. When I read your submissions and listened to your comments today, I do not really see how there is a place for consideration of this significant number of people that live in our community who may also be people of faith. How do you actually align your faith and your responses in terms of discrimination with the rights of these people to be able to identify and potentially change their identifier as they grow up?

JOSH BONETT: I would like to say that I'm not here to argue that people don't deserve rights. We're actually here to present that, as it's currently drafted, by promoting diversity inclusion here you are removing diversity inclusion over here for religious and faith communities. In no way, shape or form do I ever want to go on the record that—do you know what I'm trying to say? The opposition is to the legislation as it's drafted because it is removing the ability for people to outwork their faith as it has been for thousands of years and in the sacred texts. That's the opposition.

JOSHUA ROWE: I think that the conversation that we're entering into now is specifically with regard to intersex people, and it's very important to know that that is something quite different from transgenderism, as it's called, or this idea that gender is fluid and changeable. In fact, intersex presupposes that there is some form of

binary, because it's something in between the two binary sexes which we have traditionally ascribed to. I would say, in terms of a Christian and pastoral treatment of people who are intersex, yes, that needs to be very sensitive, and it is an entirely different issue to a biological male coming and saying, "I'm a woman now," or for me to do that or for a woman to say the opposite. There does need to be appropriate consideration for people who are intersex. There needs to be consideration around their dignity and spaces that they feel safe and comfortable within as well. But I think we're conflating two very different conversations there between intersex and, actually, this belief that gender is fluid and non-binary.

Ms DONNA DAVIS: Until I raised that there had not been any differentiation in the discussions you have had. It has just been very generic. All of a sudden there is a difference, but I think that it speaks to the fact that this is complex and this involves the need to actually—you have been putting forward quite black and white views about this.

JOSHUA ROWE: Sure.

Ms DONNA DAVIS: You say here that the equality bill only does a disservice to the people it claims will benefit. Would you like to expand on that?

JOSHUA ROWE: Yes. That was in the final section of our submission, specifically speaking to gender-affirming care. When it comes to gender-affirming care and to those who are confused about their sex, access to that care and a quick pathway for children—with amendments like the one to the child and young person's protection Act—are doing a disservice to those people. I've compared it before to an institutionalised form of self-harm. For example, when someone is supremely not comfortable within their skin because of trauma or things that they've faced, historically, a young person might harm themselves by cutting themselves. My concern is that we're providing a socially acceptable and institutionalised form of self-harm within the medical practice, and that's why I think that needs an immediate independent inquiry. That's what I was referring to specifically when talking about a disservice to those people.

In terms of not addressing the difference between intersex and gender identity or fluidity, I didn't believe that was within the scope of the discussion in the submission, but I'm sorry for that omission and I'm glad that I was able to clarify. It certainly does highlight the complexity of the equality bill, and that's why I would return to one of my first and foremost recommendations, which is that an omnibus bill of this nature that covers and spans across so many different concerning issues really shouldn't be a package like this passed by the New South Wales Parliament. I think it would be appropriate if the Government considered these issues separately with more public scrutiny and greater time.

The CHAIR: To that end, one of the pieces of legislation that is proposed to be changed is around the amendment to the birth, deaths and marriages Act to "provide that a live birth of a child where variations of sex characteristics do not allow for the easy assignment of sex must be registered within 180 days" instead of the first 30 days. But you do not support that either.

JOSHUA ROWE: Yes. I argue for the rejection of this bill in its entirety. The reason I argue for that is that amendments like the one you have just highlighted can be dealt with in other legislation. They don't need to be packeted together in a bill which, I believe, has an underlying philosophy that is centred around the redefinition of the human person as well as implications for large and wideranging issues within New South Wales law. But you have picked out, very specifically, an amendment which we wouldn't have an explicit concern with. If the bill was amended down to just that amendment, for example, we would not be concerned, but what I'm saying is that I think it can be dealt with more appropriately than in an omnibus piece of legislation with so many concerns like this.

The CHAIR: Would you accept that this legislation—it doesn't matter how you approach it or who approaches it or when it gets approached—is fundamentally a spider's web, where everything is intertwined and interlinked. If you start picking at something there, then it is going to reverberate over there, and that is going to have a consequence here and there. Isn't it necessary, by the very nature of the layers upon layers, that it is dealt with as an omnibus bill? If we picked out one of those and changed it, that would have an immediate consequential effect on that and that. That is why it comes together as a package. Does that make sense? Or would you like to see this broken down, because it deals with 20 pieces of legislation? Do you think it is possible to deal with this one piece of legislation at a time?

JOSHUA ROWE: I think that an inquiry or consideration of all of those implications at once can be helpful, but when we're talking about passing an omnibus bill that has this kind of packet with this many amendments—I walk the halls here, and I talk with members of Parliament frequently about this bill. Often they don't even understand what's in it and the kinds of implications it can have. It is undemocratic in the way that even my representatives and the representatives of the people out there in New South Wales are often voting on

something or discussing it without even having a direct understanding of the implications of that legislation. Many of the issues we've discussed here and talked about today—I'm glad to do that and make this representation. But so often in public and even in these chambers, those concerns are not discussed. If a bill like this gets pushed through or if something gets missed, which often happens with omnibus bills, that's my concern, and that's why I would suggest to reject.

MURRAY NORMAN: Can I add that this is a complex omnibus bill because it covers so many areas. There is a review into religious discrimination. There could be areas that could be carved off and could be sent to the review that's currently going on. That would be a good place to look at it. With so many complexities, it makes it very hard for parliamentarians—the whole system of both Houses, the crossbench—to deal with this. Splitting some elements that could be looked at with the religious discrimination could be one way of lightening that load, and then it reduces the amount of things that need to be looked at, because it does create a nexus—like you were saying—with a whole lot of entanglement and a whole lot of things and complexity. Maybe that is one way of splitting and lightening that load, just as a suggestion.

The CHAIR: I take on board your experience with members of Parliament in this place that were not as aware. Obviously this bill has been on the table for some time now. There has been a second reading speech. There have been multiple opportunities for members to get briefed in person by groups for and against. There are many pieces of material that have been floating around, but I accept that some members of Parliament are wandering the halls without a great knowledge. I thank all of you for attending today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions which might come from the Committee. We hope you could turn those around in seven days. Again, thank you very much for your submissions and your time here today.

(The witnesses withdrew.)

Mr WARREN TALBOT, Member and Secretary of the Uniting Church in Australia's national apology to LGBTIQ+ Australians Task Group, Pitt Street Uniting Church, sworn and examined

The CHAIR: I welcome our next witness, Mr Warren Talbot. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used in the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos and videos taken. Would you like to make a short opening statement before we begin the questions?

WARREN TALBOT: Yes. Thank you for the opportunity to appear and speak at this public hearing. Our minister, the Reverend Dr Josephine Inkpin, has unavoidably another commitment today and tomorrow and unfortunately is not here. Dr Inkpin is a transwoman and a theologian and would have added a great deal of texture, shall we say, to comments around trans and gender-diverse people. Dr Inkpin sends her apologies. I may not be able to answer all of your questions, but I'll do what I can. But if I have to pass or I make some general comments and then pass, I think you'll understand.

The CHAIR: I will let you know that there's every opportunity to take a question on notice, which means you'll contemplate it and come back to us in writing. At the end of this session, all the Committee members will have an opportunity to lodge further questions to come out to you in writing as well. If you're uncomfortable with anything by all means pass, take it on notice, and we'll keep moving.

WARREN TALBOT: Thanks. I'll just proceed with the remarks that I've prepared. As you know, I'm representing the Pitt Street Uniting Church. Pitt Street has had a particular engagement with LGBTIQ+ communities in Sydney for over 40 years. This reflects partly our location in the heart of Sydney, but also 191 years as a church community which has prized independent thinking, tolerance and diversity. In 2018 the Uniting Church in Australia changed its policy on marriage to permit the marriage of two persons, consistent with the amended Commonwealth Marriage Act. Pitt Street has been delighted to celebrate the marriage of quite a number of same-sex couples. We regard this approach as fully consistent with the best of the Christian tradition: upholding faithfulness, love and commitment, regardless of the gender of the persons involved.

The Uniting Church has a small but growing number of LGBTIQ+ clergy, making the point that being a person of faith and being LGBTIQ+ are not mutually exclusive areas of life. The fact that we have growing numbers of openly queer clergy indicates there is no simple or single Christian view on approaches to sexuality or gender identity. The dignity of all human beings, created in the image of a loving God, is universally agreed by Christians and other people of faith and is the bedrock of Christian social teaching. Over a number of years and with much study, the Uniting Church in Australia is of the conviction that all citizens should be equal and

free to exercise rights, regardless of matters such as sexual orientation, gender identity and physiological sex characteristics.

This, I think, is the key to understanding Pitt Street's support for the Equality Legislation Amendment (LGBTIQA+) Bill 2023. We celebrate diversity in many areas, including diverse sexualities, diverse gender identities and diverse physiological sex characteristics. We regard this human diversity as a part of the goodness of God's creation, not a part of human brokenness, not a part of human alienation or, in traditional terms, not in and of themselves sinful. As people who seek to follow the way of Jesus, we see this approach as practising Jesus's teaching and following his example. The Pitt Street submission was not written by legal experts. Our foundation point, though, is that to the maximum extent possible, LGBTIQA+ people should be able to lead free, equal and healthy lives, living, working and contributing in all areas of society. Thank you.

The CHAIR: Thank you, Mr Talbot. I remind members that we have Mr Talbot with us for only 30 minutes, of which we have 21 left. As we move across our seven questioners, please be mindful of your three minutes. I'm going to start with Ms Davis.

Ms DONNA DAVIS: Thank you very much for coming today. As the Chair said, if you feel that there would be more information that could be provided in a written response, please, by all means do so. Are you able to provide more information on why you believe that amendments to the Mental Health Act are important to protect people with diverse gender identities?

WARREN TALBOT: Yes. I think it goes primarily to the understanding that a diverse gender identity and diverse gender expression is an authentic part of the human condition and, therefore, not to be considered as an illness or a disorder. I understand a number of the medical manuals will still talk about gender dysphoria, but my understanding is that trans and gender-diverse people, certainly those who are members of our congregation, prefer not to use primarily medical terms but to talk about variations or diversity. I think the primary underlying reason is to not regard gender diversity, like sexuality and intersex variations, as being a disorder of being human.

Mrs TANYA THOMPSON: Can you expand on your reasons for stating that a blanket exemption for private schools and faith-based service providers is an unjustified restriction on freedom for LGBTIQA+ people?

WARREN TALBOT: As someone who has drafted submissions on the numerous national inquiries into this matter, the word that's used all the time is how to achieve the "balance". The fact that we haven't achieved a satisfactory outcome at the national level just underlines the complexity of the issue. I see the bill as one that is narrowing, but not eliminating, the exemptions. I think that's an important distinction to make. On the one hand, we're upholding the human rights and dignity of LGBTIQA+ people in all areas of life, including employment, and including employment as teachers. On the other hand, in a multi-faith, diverse society, we want to respect different religious traditions. It seems to me that what the bill is trying to do—and I'm sure there can always be some refinements—is to focus that in particular areas.

For example, a school principal or deputy principal, to me, quite evidently needs to be able to represent the values and ethos of the school, as would chaplains and religious education teachers. It seems to me that for a year 10 maths teacher, you want someone who can inspire young people into the importance of maths and science, not primarily their views about the virgin birth or some other matter of religious doctrine. In some of the comments I've read, some people have made comments about the school gardener. I would want a school gardener who's aware of the principles of ecological sustainability, not the Nicene Creed. Therefore, it goes to matching the person with the task being undertaken. As I say, it is for the school principal to represent the values, the ethos and the religious teachings of the school, but as you go to other areas within school life, I think that becomes less important, and that is narrowed down.

Ms LIZA BUTLER: I'm a little bit confused at the moment because, as we've heard from the previous witnesses from religious organisations, they're totally against the bill. Can you explain why your organisation, which is also a Christian religious organisation, has a different view and believes it's consistent with religious values?

WARREN TALBOT: I think I touched on that in the opening remarks. In some ways that is the nub of it because we are starting, in a sense, from different starting points. If one believes that sexuality variation and gender identity is in some way condemned, clearly and unilaterally in the scriptures, then that's going to lead you to quite a different outcome. If your interpretation is not that—as I indicated, our conviction across the range of the Uniting Church; although, even within the Uniting Church there's diversity—at Pitt Street our conviction is that the diversity we're talking about, in terms of sexuality, gender identity and intersex variations, is fundamentally a part of God's good creation, to be affirmed and celebrated in the same way in which we celebrate and affirm the beauty of the environment and all human beings. Does that go some way to answer what you're asking?

Ms LIZA BUTLER: Yes, that does go some way. Thank you.

Ms TRISH DOYLE: I want to comment on your opening statement first, before I put a question to you, about how uplifting and positive it was. We have heard a diverse range of views in our reading and today, and to hear you say Pitt Street celebrates diversity as part of God's creation, I find very positive. Thank you. What are your views on some of those that have been put to us about the impact this bill will have on religious freedoms? In terms of the viewpoint that you put in your opening statement, and following on from what Ms Butler asked, how will the bill impact religious freedoms in your view?

WARREN TALBOT: It's the balance question again. One of our points would be that religious freedom, like any freedom—for example, the freedom of LGBTIQ+ people to live good lives—is not absolute. In any society there are limits. One point is my understanding is that for religious institutions that train clergy or priests or whatever the faith tradition is, there's no application of this bill or any other legislation nationally or State-wise. If, for example, the Sydney diocese of the Anglican Church wishes to not have women as priests and be the only Anglican diocese in Australia that does so—if they don't want to, there is no law in New South Wales and no Federal law which prohibits them from doing that for the training and operations of their religious institution. But if you go to something like faith-based schools, there's a whole range of other factors that come into play, which involve the social licence that society gives to an organisation to operate a school and take on the solemn responsibility of care, upbringing and education of children.

For example, schools at a very basic level have to follow occupational health and safety rules. Schools can't choose their own curriculum. It's not possible in New South Wales to teach seven-day creationism in the science curriculum. The curriculum is set by a State board. I'm making the point that there's no such thing as absolute religious freedom, and society is, in a sense, constantly redrawing some of the boundaries between personal lives and private lives, between private and public et cetera. It seems to me that this bill is a very good attempt to redefine those boundaries somewhat more than where society has reached so far, in terms of acknowledging the human rights of LGBTIQ+ people.

Mrs HELEN DALTON: Is your church attached to a school or is it just a standalone church in Pitt Street?

WARREN TALBOT: The Pitt Street Uniting Church is a local congregation of the Uniting Church. The Uniting Church in Australia does run a number of private schools.

Mrs HELEN DALTON: Yes. You are just representing your congregation in your outlook. You've made five points, but you didn't touch on parental influence and all those other things in the bill. That wasn't of concern to you—surrogacy, birth certificates and all those things?

WARREN TALBOT: I think we may have commented on legal documents, but I made the point that, firstly, we're conscious that we're not legal experts. Secondly, we brainstormed those things where people had direct experience or some professional knowledge. Like surrogacy, for example. We don't have any particular experience or expertise on that. Therefore, we simply couldn't comment on that. We didn't try to cover 20 pieces of legislation.

Mrs HELEN DALTON: No, 20 pieces of legislation is quite complex. Thank you. That's all I had to say.

Ms FELICITY WILSON: Thanks very much, Mr Talbot. Thank you for being here and for the submission that Pitt Street Uniting Church provided. You did refer to legal documents and updating legal documents. We've heard a broad range of views about the ability to update legal documents. Without trying to paraphrase previous witnesses, though I know that you were here for some of them, there is conjecture about the notion of the definition of sex and gender and whether or not legal documents, like a birth certificate, should delve into the realm of defining sex rather than gender.

Some of the discussion in the community is around whether or not those legal document changes can then create risk in other areas. Some people believe it can impact places like, as you would have heard from the previous witnesses, gyms or change rooms. We've heard about women's refuges or prisons. Are there actually any concerns that you or the congregation hold about flow-on effects of being able to change your sex in your legal documentation in any of those spaces, or is that not of concern to the congregation?

WARREN TALBOT: What has mainly been discussed in the congregation is the enormous complexity for trans people in changing their legal documentation. That's the main thing that's been reported. Our minister, Dr Inkpin, is from Queensland. She has experience in another jurisdiction. I understand that elsewhere the procedures are somewhat simpler than they are currently in New South Wales.

Ms FELICITY WILSON: They are.

WARREN TALBOT: But, beyond that, I can get back to you with more.

Ms FELICITY WILSON: Does the Uniting Church—I know you don't speak for the entire Uniting Church but, to a certain extent, you can reflect on the values of your faith. Are there concerns about this, just broadly looking at the conflation of sex and gender, or is that not a primary concern when it comes to the practising of your faith?

WARREN TALBOT: It has not been raised as a concern. In fact, I know our community services agency in New South Wales, Uniting NSW.ACT, which is a large body with just over 9,000 staff, has extremely detailed documentation for how they supervise carefully a staff member who's transitioning while they remain as a staff member and how matters move in terms of practical arrangements in facilities at different points of transitioning, in terms of toilets and whatever. So my sense would be that people in the Uniting Church have entered doing the spirit of wanting to welcome broader participation and, with a bit of thought and care, most of the situations can be thought through. Toilets are often discussed. At Pitt Street, we've had a gender accessible toilet for more than 40 years. It happens also to be the physically accessible toilet. Provided that there's floor-to-ceiling privacy, there has never been a concern raised about that facility.

Ms FELICITY WILSON: You did touch on Uniting NSW. You said to the member for Murray that Uniting does run some schools as well—which I know is not your bailiwick, but if you have a view. Uniting NSW is a large employer and also a large service provider to a range of different individuals that can require complex care and can have a great need for the services that are provided to them. Are there any views that you've heard broadly in educational environments or within the services and care that are provided by Uniting NSW about this legislation?

WARREN TALBOT: No, I've not heard about this legislation.

Ms FELICITY WILSON: Okay, thank you.

The CHAIR: Mr Talbot, thank you so much for appearing before us today. You will be provided with a copy of the transcript of your evidence for any corrections you would like to make. Committee staff will also email any questions taken on notice today—I don't think there were any—and any supplementary questions that may come from the Committee, which we will work on over the next day or two. We ask that you return them within seven days, if that's possible. The Committee will now take a short break and return at 3.15 p.m. We'll clear the gallery, please, for that break. Thank you so much.

(The witness withdrew.)

Ms JOANNA MEGAN, Chief Executive Officer, Sex Workers Outreach Project NSW, affirmed and examined

Mx MISH PONY, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you both for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages, but please do let the Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

JOANNA MEGAN: No.

MISH PONY: No, I don't. Thank you.

The CHAIR: Excellent, because I don't have any answers. I'm just kidding. Before we start questions, would either of you like to make a short opening statement? I'll start with you, Joanna.

JOANNA MEGAN: Thank you for having me here today. I am the CEO of SWOP NSW and we have been operating since the early '80s, performing outreach to sex work workplaces across New South Wales, including brothels, massage parlours, street-based zones, strip clubs, homes, and hotels in metro and regional areas. Our peer-based approach allows us to engage meaningfully, and we have earned high levels of trust and respect within the sex work community over many decades. We maintain the highest level of contact with New South Wales sex workers of any agency, and we communicate regularly with other sex work organisations nationally and globally, as well as other service providers, clinicians, researchers, authorities and policymakers.

We are, very clearly, the most qualified and best placed to offer you information about the experiences of New South Wales sex workers and what is needed to improve outcomes for health, safety and justice. Today

I will be speaking primarily in support of schedule 18, the repeal of part 3 of the Summary Offences Act 1988, and sex-work-specific provisions in the schedule 1 amendment of the Anti-Discrimination Act 1977. I would like to note, however, that we offer our full support for all updates in the Equality Legislation Amendment (LGBTIQA+) Bill 2023 and that many of the non-sex-work provisions will also be of significant benefit to New South Wales sex workers.

In our written submission we provided considerable detail about the redundancy of part 3 of the Summary Offences Act. We feel very strongly that sex workers along with everyone else are better served by existing non-sex-work-specific legislation. In some cases the penalties for crimes committed against sex workers according to the Summary Offences Act carry far lesser penalties than those for equivalent crimes in legislation that applies more generally, framing sex workers as being less worthy of protection and, therefore, an ideal target for perpetrators. One example of this is the purported anti-pimping clause, which, in reality, only serves to criminalise the adult family members of sex workers who receive any financial support, such as adult children that live at home while studying. These clauses have since been superseded by far more effective consent legislation.

These laws also continue to criminalise some sex workers with dangerous consequences for some of the most vulnerable members of our community, and must be repealed as a matter of urgency if there is any genuine concern for our health and safety and to complete the process of decriminalisation that started in 1995. As an example of the practical impacts of this outdated and ineffective legislation, I am going to share with you some of my own observations and experiences from over a decade of outreaching to street-based sex workers across New South Wales. I have repeatedly witnessed police cars loitering very visibly and for prolonged periods where street-based sex workers are attempting to operate, sometimes pulling over potential clients without reason, intentionally obstructing lawful business.

I have also been pulled over several times and asked about what I am doing there in an aggressive and intimidating manner. I've been asked a range of questions by police, indicating a lack of knowledge of relevant laws and demonstrating high levels of prejudice—for example, "Don't all prostitutes have AIDS?" What is clearly understood by the police is that they remain the regulators of this sector and, therefore, believe that they can behave in this manner without any fear of recrimination. I have also routinely observed police harassing sex workers—on one memorable occasion, bringing a woman I had spoken with 10 minutes earlier, who seemed quite cheerful then, to tears after they told her to "go back to Blacktown station and hang out with all the other junkies." This ensures that sex workers are extremely unlikely to contact the police even when they do need help.

Violent perpetrators remain undetected and in some cases go on to offend against other members of the community. The murder of Jill Meagher in Victoria is one very well-known example of this. Most street-based sex workers do operate in lawful areas—typically isolated industrial zones where they are exposed to unacceptable levels of risk—but in some areas this isn't possible. In one area, despite street-based sex workers being accepted as part of the community by local residents and business owners, they are subject to heavy police surveillance and punishment. Police are, for very good reasons, not supposed to use condoms as evidence, but will often look for them when targeting suspected street-based sex workers. As a result, I have struggled to provide condoms to street-based sex workers to the detriment of their health, the health of their clients and the general public.

The fear of carrying items which might connect them to sex work has also meant that I have been unable to share resources in relation to drug and alcohol use, mental health and domestic violence. In our written submission, we also discussed at length the urgent need for comprehensive anti-discrimination protections for New South Wales sex workers. I would like to reiterate that the particular provisions within this bill have been carefully considered, are supported by legal advice and evidence from other jurisdictions, and are the minimum requirement to ensure that sex workers and their friends and family members are effectively protected. Recently Australian media has reported cases of discrimination against sex workers resulting in termination of non-sex-industry employment and barriers to completing tertiary education. Many cases go unreported, other than to us, because currently this kind of discrimination is completely lawful.

Many sex workers prefer to maintain other non-sex-industry employment as well for financial stability and security because sex work income does tend to fluctuate, and to avoid resume gaps, which will prevent them from obtaining non-sex-industry employment in the future. When sex workers aren't able to complete qualifications or gain other employment, they are effectively trapped in sex work, whether or not they intended to make this their permanent profession, and this can't continue. Sex workers also face practical difficulties and mental and emotional distress when trying to secure housing and other accommodation. When landlords and property managers know or suspect that a tenant is a sex worker, whether or not they are operating from home, sex workers are often ejected from the property. As a result, in order to secure housing in the first place, sex workers are forced to lie on their rental applications, despite work being lawful, often at odds with their personal values.

Sex workers in this environment are unsafe in practical terms and also exist in a state of anxious hypervigilance about being rendered homeless. The widespread denial of basic financial services is devastating for sex workers. For many sex workers, it is absurdly difficult to maintain the basic systems required to run a completely lawful business. Bank accounts are closed without warning, legally-earned income is seized in some cases, and we are prevented from paying for advertising and other business necessities. This has devastating consequences for financial security and is also a source of acute ongoing stress. Health service providers routinely discriminate against sex workers. A 2020 study conducted by UNSW found that 91 per cent of the sex workers they surveyed had experienced discrimination in health settings. This mistreatment discourages sex workers from seeking medical attention and from openly identifying as sex workers in health settings, impeding the kind of data collection that should inform public health priorities and programs.

In closing, I want to highlight that the examples I have been able to share with you here are important but limited. The ongoing impacts of criminalisation, discrimination and vilification are complex and pervasive, and express themselves in a myriad of ways. I hope, however, that I have shared enough to help you understand the urgency of repealing part 3 of the Summary Offences Act and implementing comprehensive anti-discrimination protections for sex workers in New South Wales. I'm happy to provide any further information that might be of use to you now or later, and I want to say thank you for having me here today.

The CHAIR: Mish, would you like to make any opening statement or remark?

MISH PONY: Yes, thank you. Scarlet Alliance is the peak national body for sex workers and our organisations in Australia. Our State and Territory member organisations provide peer education, support and outreach to sex worker workplaces in their jurisdiction. SWOP NSW is our New South Wales member. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. We are the leader when it comes to advocating for the health, safety and welfare of sex workers in Australia's sex industry. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms. We are a member of the Asia Pacific Network of Sex Workers project and the Global Network of Sex Work Projects. We have strong connections with sex worker organisations in the Asia-Pacific region and internationally.

My comments at this hearing will be to sections relevant to sex workers within the schedule 1 amendment of the Anti-Discrimination Act 1977 and the schedule 18 amendment of the Summary Offences Act 1988. Scarlet Alliance has endorsed Equality Australia's submission, and we defer to them on other matters contained in the equality bill. Decriminalisation is endorsed as the best-practice model for sex work regulation by many bodies including the World Health Organization, *The Lancet* medical journal, multiple United Nations agencies, Amnesty International, the International Labour Organization and the Global Alliance Against Traffic in Women. The most recent of these is the United Nations Working Group on Discrimination Against Women and Girls, who released a landmark report in October 2023 calling for the full decriminalisation of sex work globally.

Laws that seek to criminalise any aspect of sex work, including third parties such as brothels or clients, only serve to maintain police as regulators of the sex industry, pushing sex workers underground and cutting off our access to our industrial, legal and health rights. New South Wales implemented its current decriminalisation framework in 1995 in response to police corruption uncovered in the Wood royal commission. Since then, the Northern Territory and Victoria have implemented sex work decriminalisation and anti-discrimination protections that cover sex workers, and a bill to decriminalise sex work and protect sex workers from discrimination and vilification is currently before Queensland Parliament.

The equality bill repeals the remaining nine offences that criminalise aspects of sex work in New South Wales, completing the decriminalisation of sex work that began some 30 years ago. Without this, New South Wales risks being left behind. Since the 1980s, politicians and legal advisers have called for reform of these offences; however, they remain unchanged. The remaining nine offences do not further the rights or wellbeing of sex workers nor are they necessary to protect the general public. These are discriminatory and archaic laws left over from the era of the criminalisation of sex work and their continued existence undermines the once world-leading decriminalisation framework in New South Wales. Issues that these remaining offences purport to address, such as coercion, are already more appropriately covered by non-sex work specific legislation that applies equally to everyone in New South Wales.

I will now speak to the introduction of anti-discrimination and anti-vilification protections contained in the bill. Scarlet Alliance, in partnership with the University of New South Wales Centre for Social Research in Health, has conducted two rounds of quantitative research into sex workers' experience of stigma and discrimination—one in 2020 and one in 2022. This research reports exceptionally high levels of stigma and discrimination faced by sex workers across Australia in relation to sex work. A key component of Australia's ongoing response to HIV, STIs and other BBVs is the reduction of stigma and discrimination faced by key

populations, which includes sex workers. As noted in the 2022 *Stigma Snapshot*, wideranging interventions are necessary to address stigma towards sex workers across all contexts. Sex workers consistently report discrimination in banking and financial services, accessing the labour market, applying for rentals and in accessing services, including health services.

Since Victoria and the Northern Territory have introduced anti-discrimination protections, there have already been high-profile cases where sex workers were declined employment outside of the sex industry based on past sex work and they have engaged in anti-discrimination protections processes. Sex workers also face unacceptable levels of vilification, including the publishing of our private details or threats to do so. In some instances, sex workers have had to move towns due to the level of harassment they have faced. It is clear that sex workers require specific anti-vilification protections in order to provide a level of protection and an avenue for recourse when we experience online and real-world hate speech and malicious exposure of personal information. Thank you.

Ms FELICITY WILSON: We haven't actually touched on the area of sex work yet today, so I'm sure we have many questions out of interest from your submissions. I want to go straight to the removal of part 3 of the Summary Offences Act. Some of the commentary we've received in submissions from other parties has been quite concerned about removing this, putting forward the position that it would continue to maintain the risk of exploitative practices, or "pimping" I think is what you referred to occasionally in some of your submissions. I understand the point that each of you are making about the agency of sex workers and ensuring that adults within households have protections of access to a legitimate and legal income, the same way you would in any other job, but this notion of exploitative management practices—to what extent does it occur in the industry and to what extent do we think that these types of changes would rectify that? I understand getting rid of a stigma. But I'm not aware enough of how the industry operates and how big of a challenge this is for us.

JOANNA MEGAN: I'm really glad you asked this question because I know that there's a lot of misinformation circulating about this point in particular. One thing to note is that under decriminalisation it is very—the exploitative practices described there are very rare because there is a very high level of oversight of the industry. As I've just described, we regularly go into sex work workplaces and speak with sex workers there, so do publicly funded sexual health clinics, local councils who approve and compliance-check these businesses and a range of other authorities, including SafeWork and Fair Work, for example. Under a system of decriminalisation, it's very hard to disguise those sorts of exploitative practices, so they happen very rarely.

But I have gone into a lot of detail about this in our submission. On the off chance that they did occur, the recently updated consent legislation as well as general offences relating to theft far more effectively protect sex workers from those crimes being committed against them. That is the example I was giving of lesser penalties within the Summary Offences Act. I think the penalties for a lot of those things within the Summary Offences Act, if you commit those crimes against a sex worker, is 12 months, whereas in other legislation the maximum penalty is 15 years. If that really is a concern for people, getting rid of the Summary Offences Act would far better achieve that for the community.

MISH PONY: I suppose when we're talking about exploitation at a workplace, we're talking about a spectrum. At the low end you might be talking about underpayment of wages, not giving breaks to your employees. And then at the high end, you'd be talking about modern slavery offences. At the low end, which we've seen in other industries, the civil remedies available through workplace legislation are much more effective than criminal offences. At the other end, New South Wales does have modern slavery offences that would apply equally in the sex industry. So there's no need for these special sex-work-specific laws to address any instances of exploitation if they occur.

Ms FELICITY WILSON: So you both are of the view that introducing these amendments will improve working conditions and safety and agency for sex workers?

JOANNA MEGAN: Yes, definitely. I think that it will improve access to health and safety and justice.

Mrs HELEN DALTON: Thank you for attending. My question is about the Nordic model. What is your view on the Nordic model for the regulation of sex work?

MISH PONY: So the Nordic model is a form of criminalisation. Yes, it criminalises third parties and clients and theoretically not the sex workers ourselves, but we liaise regularly with sex workers who live and work in countries that have implemented the Nordic model or something similar to that model, and they report very strongly that it has eroded their rights and safety. It makes it more dangerous to work because clients are less likely to want to meet them or provide details that would identify them. The opportunity to meet clients is reduced and so you are forced to potentially accept clients that you might not otherwise accept. It really does frame sex work as a form of violence, no matter the wishes of the sex worker involved. The organisations that I referred to

earlier that have come out in support of the decriminalisation of sex work similarly reject the Nordic model. Amnesty International has produced extensive research and a report on the harms of the Nordic model and it is something that we utterly reject.

JOANNA MEGAN: Yes, the only thing I would say in addition to that is that any sort of criminalisation pushes people underground and puts sex workers and everyone else at far greater risk of harm.

Mrs HELEN DALTON: Are there any other measures that you would like to see implemented to protect the wellbeing of LGBTIQ+ people in sex work? Are there any gaps in this proposed legislation, do you think?

JOANNA MEGAN: As I said earlier, I support all of the amendments and recommendations within this legislation, and I note a lot of sex work community members are queer and will also benefit from them being implemented. Mish?

MISH PONY: Likewise. Anti-discrimination and anti-vilification protections for all LGBTIQ+ people should be strengthened and be made more accessible and, in line with the bill's intended purpose, trans and gender-diverse people should be able to access identification that aligns with their experience of gender.

Ms TRISH DOYLE: Thank you, Mish and Joanna, for being here today and speaking to your submissions. You're recommending that definitions of sex work and sex workers be explicitly outlined in the bill to ensure that the legislation operates efficiently and effectively for you and your members. Can you elaborate on why you've put that? I feel that I understand to a degree, but I think it would be useful to elaborate and have that on record.

JOANNA MEGAN: I'm going to very briefly say that in other States where anti-discrimination protections have been based on a lawful occupation or lawful sexual activity, that has proved really insufficient. Because Mish has worked more in those areas, I'm going to ask them to continue.

MISH PONY: Yes. We're of the position that it must be explicit that both sex work itself and being a sex worker must be protected. We've found in other jurisdictions, for instance, if being a sex worker is protected then people can still discriminate against you for the act of sex work itself, and vice versa, so it's imperative that these two definitions go hand in hand in anti-discrimination protections. In Queensland, for example, there is a protected attribute under lawful sexual activity. We have found that—it's a slightly different situation because Queensland had a licensing regime, so it didn't protect sex workers who were working outside the narrow confines of the law, but also Queensland implemented a carve-out for accommodation providers so that accommodation providers were able to discriminate against sex workers. In order for these changes to be effective and accessible to sex workers, we strongly recommend that the definitions included in the bill be adopted.

JOANNA MEGAN: May I add, briefly, just to explain why there should not be exceptions for accommodation providers. For example, some of the awful stories that we regularly hear are about sex workers in regional areas being kicked out of hotels in the middle of the night—so with no access to alternative accommodation, sometimes with no access to transport and sometimes English is not their first language. It just places people in really unsafe situations and is an inhumane way to treat people, basically.

Ms LIZA BUTLER: Following on from that question around anti-discrimination, have you identified any gaps in terms of decriminalising sex work? Are there any gaps in this bill when we think of decriminalising, so that we've ticked off every box so that the things that you've just mentioned cannot be deemed to be illegal anymore?

JOANNA MEGAN: To the best of my knowledge, this removes the remaining criminal offences that relate to sex work. I will very briefly note that SWOP NSW is also currently working in collaboration with the Ministry of Health to address the irregular application of council planning laws. There's a huge amount of variation from council area to council area about how sex industry businesses are regulated, and often that happens in a way which forces people into unsafe areas or doesn't provide reasonable provisions for them to work in a compliant way. But that's, I think, slightly separate to the issue of criminalisation.

Ms LIZA BUTLER: Was there anything you wanted to add?

MISH PONY: No. To my knowledge, this bill repeals all the remaining criminal offences and would completely decriminalise sex work in New South Wales.

Mrs TANYA THOMPSON: Thank you both for your presence here today and for your contributions in your submissions. I've read in other submissions provided by those that oppose the bill that perhaps the amendments to the Anti-Discrimination Act to include sex workers specifically within it is kind of like

cherry-picking. I wanted to ask why you feel that it's so important that sex workers are specifically protected from discrimination through the amendment to the Anti-Discrimination Act in this bill.

JOANNA MEGAN: Something that I will say is that at the moment it is so well understood that we are not protected—that we are the target of violence and hatred, basically. Do you want to add to that, Mish?

MISH PONY: Yes. The reason that we believe that sex worker should be a protected attribute in itself is that we are the ones facing the discrimination. In order to address that discrimination, we need to be covered. In all other avenues that we've seen—for instance, in Queensland, as I spoke to you about protection of lawful sexual activity—it falls down when sex workers try to access those protections. In order for us to be assured that sex workers will be covered by anti-discrimination protections, it is our belief that those protections must be sex work and sex worker.

JOANNA MEGAN: Yes, I do think when there are statistics saying that 91 per cent of sex workers are discriminated against in health settings, there's pretty strong evidence that strong action is required to address that.

Ms DONNA DAVIS: Thank you very much for attending today. Joanna, you mentioned in your presentation that you have witnessed and that there have been reports about police and their lack of training, and in some instances their discrimination towards sex workers. I note that in your recommendations to broaden the parameters of this bill, you include that New South Wales police receive training on their powers and responsibilities in relation to the amendments to sex work laws. Would you like to just expand a little bit on that? Do you have examples of good practice that New South Wales could follow?

JOANNA MEGAN: Sure. I will note first that we do already do a lot of training with police. It tends to be with one LAC or small group of police officers at a time. We do think it's really important that we are supported to provide training, perhaps at the training academy at Goulburn, so that we're speaking to a broader group of people before they start working. I call police somewhere in New South Wales almost every week after we receive reports that sex workers have tried to report crimes against them and have been sent away from the station or treated really badly. I'm often speaking with police about what the laws are and will actually email legislation through to them. Sorry, I've lost my train of thought. There have been some examples. I've worked at SWOP for about 15 years. Honestly, the majority of my interactions with police have been, unfortunately, very negative. There have been a couple of police officers that we have worked well with that have demonstrated that it is possible to work in a cooperative and respectful way with the sex industry.

Ms DONNA DAVIS: Mish, did you have anything you wanted to add?

MISH PONY: No, I don't. Thank you.

The CHAIR: The nature of the police not being as supportive in the application of the law and their job and their role, that's a culture within police that's not going to be fixed by legislation. Would you agree?

JOANNA MEGAN: That is true. There is a poor culture within the police. But I do think that these amendments will have a strong impact. The impact of the Summary Offences Act is that police are effectively still given regulatory powers over the sex industry, which is really at odds with the finding in 1995 that when police are given these regulatory powers, it results in corruption and abuse, and that is what we see. Whilst police maintain regulatory powers, they do abuse sex workers and do not provide the assistance that these sex workers have a right to. We believe—and so does the UN, Amnesty International and the World Health Organization—that full decriminalisation is the best way to address this.

The CHAIR: As an extension onto that, in terms of being provided with health care and support, as required, did you say 91 per cent of sex workers have experienced discrimination in accessing health?

JOANNA MEGAN: Yes. I've actually referenced an old report. I am aware that a more recent study is about to be published and that the numbers are pretty much identical. I have also seen statistics of a similar percentage of health workers self-reporting that they will discriminate against sex workers.

The CHAIR: Do you think the legislation, as it is currently formed, will close that loophole, if there is any grey area? I'm not saying that there is, but it seems like some people are able to hide, do the wrong thing but not be held to account at the moment. Do you think that will close off some of that and make it more clearly black or white?

JOANNA MEGAN: I think on a practical level it does actually give people access to justice. When they experience discrimination, they can seek redress. On another level, I think it improves the relationship between sex workers and authorities such as the police. When they're removed as a regulatory authority and they're not harassing street-based sex workers and there's not that ongoing fear, sex workers are more likely to seek support from them. I think as well that the amendments that are described in this bill send a message to the sex

work community and everyone else that we are equal members of society, which we are and we deserve to be treated that way.

The CHAIR: Mish, I've just asked a couple of questions in a row. Did you want to—

MISH PONY: Yes. I would say that the remaining offences in the Summary Offences Act that are sex work exclusive send a message to the community that there is something different about sex work that needs special attention. This perpetuates that stigma and discrimination, whereas repealing those offences does send a strong message that sex work is work and is able to be regulated like any other work. Similarly, anti-discrimination protections again send a message that the Government does not accept discrimination against sex workers and that if we face instances of discrimination, we have avenues of redress available to us.

Ms TRISH DOYLE: It's not a question as such—I just wanted to take this opportunity to thank you both for your work in a difficult space, communicating with a range of communities and on behalf of your members. I very particularly thank you for the support you gave one of my constituents some years ago when I put her in contact with you around a matter I brought before the Parliament. I just wanted to thank you for that huge amount of life-saving work.

JOANNA MEGAN: Thank you so much, and thank you for referring your constituent to us.

Ms FELICITY WILSON: If I can loop back to another area that was questioned by other submissions around the public acts of prostitution and the changes to section 20—forgive my ignorance to this. I understand the point that you're making here where you're saying, "Visible public sexual activity is already a criminal offence for all people in New South Wales". So you're not saying to change that; you're saying it should be a criminal offence whether you're a sex worker or not a sex worker. But from what I've read in other submissions and concerns was a reference to the fact that the current Summary Offences Act criminalisation is linked to prostitution occurring "in, or within view from, a school, church, hospital or public place". There are views that there is a goal for prostitution to now be able to occur around a school, church, hospital or public place. I'd thought I'd raise that with you for you to explicitly provide the response to that. From my understanding of your submission, that's not the case, but other submissions have made that proposition.

JOANNA MEGAN: Thank you for asking that question too. I really appreciate it. There is a lot of misinformation circulating about the Summary Offences Act. Something that I want to note first up is that the street-based sex work population in New South Wales is very, very small now. The advent of internet advertising and mobile phones mean that there are very few people who do still choose to work in this way, but the ones that do deserve access to health, safety and justice. I don't think we can expect that if these laws are repealed there will suddenly be lots and lots of street-based sex workers operating out the front of a school. I also want to note that sex workers of their own volition operate with discretion. For their own safety and privacy but also in their business interests—their clients also require discretion and privacy—we will operate discretely anyway. We're not interested in standing in the middle of the road attracting a lot of attention most of the time. I really do think that the existing legislation that applies to the whole population is more than sufficient here.

Ms FELICITY WILSON: For me to understand, the current prohibition really just limits solicitation and no sex acts would occur? Is the effect of it essentially about soliciting? What's the current restriction that is not restricted under a ban on visible public sex acts?

JOANNA MEGAN: There are restrictions on soliciting for sex workers and also for clients, so it goes in both directions. It's also worth noting that there are restrictions on soliciting in certain businesses. It's quite an odd collection of them. I think it's something like photo studios, massage parlours and saunas. Those clauses actually, as far as I can work out, directly contradict decriminalisation, which gives local councils the authority to regulate where sex work happens. If sex work is happening in a business that doesn't have approval then it's a matter of noncompliance, not criminalisation. So I think those are at odds with each other. But the key principle of decriminalisation is that you do not need sex industry-specific laws. Generally applicable laws are more than sufficient and remove barriers to health, safety and justice. I would also like to note that there's strong evidence from New Zealand where they did fully decriminalise sex work. In New Zealand it is legal to be a sex worker absolutely anywhere. It did not increase the size of the street-based sex working population, and it did not cause problems. It just improved relationships between street-based sex workers and police.

Ms FELICITY WILSON: Mish, did you have a comment on that?

MISH PONY: It just brings to mind one example that I heard many, many years ago. Within New South Wales, there are some streets where on one side of the street it is legal to conduct street-based sex work, and on the other side it's illegal. What would happen at times, police would pull over one metre into the illegal zone and pretend to be a client and ask a sex worker to come over, and that was then an illegal act. What's happening in

these current laws is that it's really nonsensical, to be honest, that you could be one metre out of that allowed zone and it's a criminal act.

The CHAIR: Thank you, both. We thank you for appearing before the Committee today. You will be provided with a copy of the transcript of your evidence for corrections, if you'd like to make any. Committee staff will also email any questions taken on notice today—I don't think there were any—and any supplementary questions from the Committee, which we will develop over the coming days. We ask that you respond to those within seven days, if that's at all possible. Thank you both again for attending.

(The witnesses withdrew.)

Mr PETER JONES, Policy Officer, BlaQ Aboriginal Corporation, before the Committee via videoconference, affirmed and examined

The CHAIR: We welcome our next witness, Mr Peter Jones. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used in the Legislative Assembly's social media pages. Please let Committee staff know if you object to having the photos and videos taken and used. Before we start, do you have any questions about the hearing process?

PETER JONES: No, I don't.

The CHAIR: Excellent. Would you like to make a short opening statement before we begin to ask you questions?

PETER JONES: I'm representing BlaQ Aboriginal Corporation for First Nations individuals. Today what we are going through means navigating a complex landscape, where the identities as both Indigenous and LGBTQ+SB intersect, often exacerbating the challenge that they face in terms of discrimination, health disparities and access to support services. So I can only today speak on behalf of the organisation and talk about the LGBTQ+SB community in New South Wales.

Ms DONNA DAVIS: Thanks for coming online today. In your submission, you have mentioned the importance of ensuring that legislative reform is informed by First Nations voices. Do you have suggestions on how this could be respectfully achieved?

PETER JONES: Sure. Thanks for the question. I think it's very important to—I mean, the legislation is aimed at better protecting the LGBTQ+SB people from discrimination in various spheres of life, but I think it's also very important if we can consult local communities [audio malfunction] Elders and engaging and participating at a local level with organisations such as BlaQ or Black Rainbow [audio malfunction]. We're engaging with [audio malfunction] people on a daily basis, and we have the knowledge, the experience and the data to be able to [audio malfunction]—

The CHAIR: Mr Jones, I'm going to flag with you that you've dropped out for us at our end, both visually and audio. I had hoped that you can still hear me. We will cut the broadcast.

I would like to clarify that due to some technical difficulties, we are going to be unable to hear from Mr Jones this afternoon. We will make alternative arrangements as to how we might pose questions to him and get responses from him. Given everyone's time and commitment today, and we'll work through things with Mr Jones. I apologise for the delay in proceedings today. I would like to thank all witnesses who have appeared today. I also thank Committee members, Hansard, the staff of the Department of Parliamentary Services and Committee staff for their assistance. We thank you all very much. That concludes the public hearing for today.

(The witness withdrew.)

The Committee adjourned at 16:25.