

REPORT ON PROCEEDINGS BEFORE

LEGISLATIVE ASSEMBLY COMMITTEE ON COMMUNITY SERVICES

INQUIRY INTO THE EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023

At Macquarie Room, Parliament House, Sydney on Wednesday 1 May 2024

The Committee met at 9:00 am

PRESENT

Mr Clayton Barr (Chair)

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

PRESENT VIA VIDEOCONFERENCE

Ms Liza Butler

* Please note:

[inaudible] is used when audio words cannot be deciphered

[audio malfunction] is used when words are lost due to a technical malfunction

[disorder] is used when members or witnesses speak over one another

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

My name is Clayton Barr. I am joined by my colleagues Ms Trish Doyle, the Deputy Chair; Mrs Helen Dalton, the member for Murray; Mrs Tanya Thompson, the member for Myall Lakes; and Ms Donna Davis, the member for Parramatta. Ms Liza Butler, the member for South Coast, is joining us online. At this stage, Ms Felicity Wilson, the member for North Shore, is an apology for the hearing today. If the evidence we hear today raises any issues for you, you 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 the stakeholders who have made written submissions. We appreciate your input into this inquiry.

Mr MARK SPENCER, Director of Public Policy, Christian Schools Australia, before the Committee via videoconference, affirmed and examined

Mrs VANESSA CHENG, Executive Officer, Australian Association of Christian Schools, before the Committee via videoconference, affirmed and examined

Dr DEIRDRE LITTLE, State Bioethics Convenor, Catholic Women's League Australia—New South Wales Inc, sworn and examined

The Most Reverend ANTHONY FISHER, OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, sworn and examined

The CHAIR: I welcome our first 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 the Committee staff know if you object to having photos and videos taken and used. Do you have any questions about the hearing process?

DEIRDRE LITTLE: No.

The CHAIR: Mr Spencer and Mrs Cheng, am I right in thinking that you are both representing the Australian Association of Christian Schools? Is that correct?

MARK SPENCER: Not quite. Mark Spencer represents Christian Schools Australia. Mrs Cheng represents the Australian Association of Christian Schools. We made a joint submission to the Committee.

The CHAIR: Would you like to make an opening statement? Would that be one opening statement or will you separately be making an opening statement?

MARK SPENCER: We'll make a single opening statement, which I'm happy to make.

The CHAIR: Go ahead, please, Mr Spencer.

MARK SPENCER: Thank you. I appreciate the Committee's time this morning. Between our two organisations, Christian Schools Australia and the Australian Association of Christian Schools, we represent some 83 schools across New South Wales, educating more than 35,000 students. As we indicated in our written submission, our concerns are particularly focused from a schools perspective, from the nature of our schools and the types of schools we are. Our schools have a very holistic view of education and seek to provide education for the whole child. We do that in the context of a community of faith. All of our staff, both teaching and non-teaching, need to share the doctrine, tenets and beliefs of a particular school community, reflecting those beliefs in their conduct and their lifestyle. That goes both within and without the school in context.

As a result of that, our particular areas of strongest concern are around the proposals to amend the Anti-Discrimination Act and remove the current balancing provisions in that Act which would allow us, and do allow us at present, to ensure that our doctrines, tenets, beliefs around matters relating to protected attributes under the discrimination Act can be enforced in relation to our school staff. The proposals in the bill would completely gut those provisions and those protections, and effectively remove any effective protections for our schools to be able to employ staff who share our beliefs across a range of areas, and in doing so undermine the rights of parents to be able to choose an education that's consistent with their values and beliefs in accordance with international law which, under international law, is an absolute and very highly protected right.

We also mention in our submission some of our concerns briefly around the proposed changes that the bill would make to the Births, Deaths and Marriages Registration Act, particularly in relation to the impact on sex-based protections for young people. We commented briefly on the need, as we can see it, for an inquiry into the treatment pathways for young people in particular suffering from gender dysphoria or other related concerns as a way of improving the safety and wellbeing of the community more broadly. We note that there is significant international attention to this area and, most recently, the final report from the Cass review in the UK has been released and raised significant concerns around the so-called gender-affirming treatment pathway over there.

We also share, in terms of a number of other groups who have made submissions or read the submissions from some of the other groups appearing with us this morning around some of the broader areas relating to prostitution and the like, particularly as they might directly affect schools. The idea of solicitation outside of schools is basically abhorrent to most fair-minded people and is something our parents would certainly strongly object to and be concerned about. We support a number of those wider areas of concern that have been addressed in some of the broader submissions. I think those are the comments that we need to make upfront. Happy to answer questions as we go along with this.

The CHAIR: Thank you very much for that. The Most Reverend Anthony Fisher, did you have an opening statement you would like to make?

ANTHONY FISHER: I do. I'm grateful to be invited to appear before the Committee today on behalf of more than 20 Catholic and orthodox bishops of New South Wales to express our concerns and those of our people in relation to the bill. We sympathise with all efforts to discourage or forbid unjust discrimination against LGBT people, but there is a troubling anti-religious undercurrent in the bill.

[Interruption from gallery]

The CHAIR: I direct the attendants to remove from the public gallery the person who is interjecting. The Most Reverend Anthony Fisher, would you like to start again?

ANTHONY FISHER: No, I'll just go back one sentence. We sympathise with all efforts to discourage or forbid unjust discrimination against LGBT people but there's a troubling anti-religious undercurrent in this bill. For example, the bill proposes to remove the few existing protections for religious institutions from anti-discrimination lawfare including schools, health and aged care facilities and welfare and pastoral services while offering no protections at all for individuals of faith. As the Committee would be aware, New South Wales and South Australia are the only two States where it remains perfectly legal to discriminate against a person on the basis of their religious belief or activity. In proposing to remove the only religious protections, the bill would only enlarge the scope for discrimination against believers.

Secondly, regarding prostitution, while prostitution has long been legal in New South Wales, there are certain restrictions in place to safeguard public decency. This bill would make it permissible for a person to engage in solicitation even outside a church or a faith school. A third example is regarding self-identification of sex on official documents such as birth certificates. This will not only put women-only spaces at risk but make it near impossible for religious communities to retain customs regarding separation of sexes in prayer, wedding only those of the opposite sex, ordaining only men or schooling girls separately from boys. It's one thing to disagree with world religions on such matters but quite another to deny them the right to practice their faith by making official documents deceptive regarding a person's biological or birth sex. It's difficult to view these three proposals as not being inimical to religious freedom in this State.

The bill also places vulnerable groups at risk. Its proposals around commercial surrogacy risk exploitation of women, especially in poorer countries, while its proposals around medical consent allow children to undergo life-altering medical treatments without parental consent, exposing children to interventions they may well later regret. Just when several overseas jurisdictions and local experts are counselling caution regarding gender-affirmative treatment of minors, and even an outright ban, this State would be giving it the green light. The reality is that this bill, in the name of equality gains for a few, proposes reducing the rights of a great many with faith and puts at risk some of the most vulnerable. I commend these considerations to the Committee.

The CHAIR: Thank you very much. Dr Deirdre Little, did you have an opening statement you'd like to make?

DEIRDRE LITTLE: Thank you for the invitation to Catholic Women's League to speak to this Committee. While we acknowledge the sincerity of this bill, we have multiple serious reservations and cannot support it, as per the issues outlined in our submission. Catholic Women's League believe the inherent dignity of the human person places them above categorisations and therefore as Catholic women, respecting the unique personhood of each created individual, we regard the classification of persons into defined subgroups of sexuality and expressions of gender as confining and restrictive to the individual. Similarly, the creeping assumptions of

siloes male and female stereotypes are equally invalid, failing to respect the infinite variation of human personalities. We are much more than the parts of our nature now being drawn by societal definitions. Compartments—compartmentalisation—oversimplify who we are.

The irony here is that gender identity itself can become assigned by modern theories, filed and sub-filed. Children are growing up in an era of emphasis on their categorisation in social media, culture and educational contexts. We don't believe the lettered representation of persons benefits wellbeing. Children are becoming afraid of puberty and its lettered descriptors, insecure, and timid to embrace their advent to manhood and womanhood. Their young hearts are becoming troubled and afraid. It is this induced confusion that we need to care for. Terms in current usage, like "sex assigned at birth", feed into this confusion. As a GP obstetrician of many years—25 years in a hospital in New South Wales—I did not assign the sex at birth. I recorded it. I observed it.

Our most serious concerns, however, surround the invasion of the parent-child relationship. The intrusions of concern are medical decisions which can be made under this amendment bill without the necessary consent of parents. Parental decision-making can be removed and their place taken by medical decision-making. While young pre-teens and pre-pubertal children may be able to give their consent to minor procedures, such as suturing, their capacity to give informed consent for life-altering medical management is doubtful. Decisions regarding gender transition, social transition and pharmaceutical transition are major decisions that can usher in lifelong health and social consequences, lifelong medicalisation and pharmaceutical dependency.

As such, these decisions require a higher level of capacity and competency. This is a fundamental precept of valid informed consent. The commencement of puberty blockers, for example, has complex ramifications which a child of 10 to 12 years is unlikely to be able to wholly envisage. A pre-pubertal child will not fully know and comprehend the future effects of staying small and underdeveloped while their peers grow in height and strength and stature. The appearance and interests of their cohort will develop while their own appearance remains behind, without the same flourishing. This fosters a sense, I would submit, of social detachment.

Parents who follow international research developments and prefer evidence-based medicine will be unable to elicit this care. Instead, their child will be subject to the older guidelines used in Australia, which promote gender-affirming pathways of medicalisation. The off-label use of puberty-blocking drugs and cross-sex hormones could be imposed on their children, who lack the discernment and the cognitive ability to fully comprehend the issues at stake. Current medium- and high-quality research, as identified within the Hilary Cass review, now considers hormonal pathways experimental. In the UK, Finland and Sweden, they may now only be used under the strict provisos of a registered clinical trial. Here, they are wholly unregulated.

Multiple codes of conduct and ethical standards in Australia uphold the highest precepts for valid informed consent. Historically, where these have been laid aside, tragedy has resulted. Since it is known that, in some research, only 2 per cent of those who commence puberty blockers do not go on to cross-sex hormones, this treatment is not a pause but a prelude. Similarly, there is no evidence that access to hormone treatment reduces a risk of suicide—the Cass report, and I have forwarded a copy to the members of the Committee. Appreciation of these researched facts is crucial to informed consent of both parents and minors but is missing from most gender affirmation model discussions.

The CHAIR: Thank you very much to all of you. We will go to questions. I will throw to my colleague from Murray, Mrs Helen Dalton.

Mrs HELEN DALTON: Thank you, everyone, for attending and giving up your time and for your submissions. The bill allows practitioners to medically treat a child under 16 if their parent consents or if it is in the best interests of the child's health and wellbeing, and if the child understands the risks and consequences of the treatment. Can you detail more of your concerns about this? I suppose I will start with you, Dr Deirdre Little.

DEIRDRE LITTLE: Yes, I can. As I said, I have forwarded around to the Committee the papers that I am referring to. It is known that the informed consent process needs to be provided with adequate information. I hope I am answering your question here. But we have guidelines that are developed from what has been a lower standard of evidence that is being implemented in Australia, that is informing the consent of parents and children, and yet we have international evidence which considered medium- and high-quality evidence of benefit from these treatment pathways which conflicts with the evidence that we are using in Australia. It conflicts with the Sax report, for example, that was formulated, because the report that was formulated in Australia used all the research, regardless of whether it was low quality or not deemed to be generalisable.

There is a hierarchy of research. At the bottom you have case reports, then you have case series, then you have observational studies and then you have cohort studies. If you are going to be looking at medium- and high-quality research, you'll be looking at the research in the higher level where it is more generalisable and where participants are not taken from a Convenience sample but are randomly selected. How you provide that

information for informed consent needs to be the best-quality evidence we have to give the very best treatment to our children and grandchildren.

Mrs HELEN DALTON: Would anyone else like to comment?

ANTHONY FISHER: Perhaps if I could just comment. I think there is no single right age that is the age where someone is competent to make all their decisions for their life, but we normally use 18 in this State for voting, for marrying and for all sorts of purposes. We say that by that stage we can assume that most people are mature enough to make such life-altering decisions. Why we would say that with respect to this area of life-altering decision—that would mean, for instance, you couldn't have children or some other very serious medical treatments—that suddenly you are competent at age 16 or 17, and that parents don't need to be involved in the way we would expect them to be involved in your decision-making normally for a 16 or 17-year-old. I think it's very strange that we would just say it's okay to treat 16-year-olds as competent for this purpose but not for so many other social purposes.

We know that some 16-year-olds are very mature and very capable of making all sorts of decisions for themselves, and others still need a lot of guidance from mum and dad, so we pick an age that we think is reasonable, where most are mature enough. Then, perhaps with a younger person, we involve them more and more in the decision-making. The Gillick test says, "Let's see how mature they are and involve them in the decision-making while still ultimately leaving it to the parents to make the final decision." I think that's the balance we've rightly come to in medical treatment, as in other parts of our society.

Mrs HELEN DALTON: Anyone else like to comment?

MARK SPENCER: Just to make a comment, less about the evidence base, which I think Dr Little has covered very well and more just to reflect on some of the lived experiences of schools, where increasingly you are getting young people who may have other issues in their life, whether it be they're on the autism spectrum or other mental health issues, where they are reaching puberty and struggling with the challenges of puberty and making very strong claims about what they want their future life to look like. To give a not uncommon example, a young girl who might be on the autism spectrum reaches puberty, finds that confronting and, through a variety of reasons often involving social media and online influencers, decides that she wants to be a boy rather than go through puberty. Those sorts of real-life challenges are the situations being faced by schools around the country.

For many decades now we've worked with parents, supported parents, supported that young girl through that process and into womanhood. Increasingly, that is being challenged by laws in Victoria and more recently passed in New South Wales around so-called conversion practices bans. That does go to this whole area of competence and the ability of young people, particularly with some of these other issues present in their life, to make that judgement about what are life-altering matters. Our schools want to care best for them. Parents want to care best for them. And we don't want the law to get in the way of making those best care decisions for these young people.

DEIRDRE LITTLE: If I might just add on the issue of Gillick competence, there is research which shows that the rapid onset of gender dysphoria is a relatively new entity. It doesn't fit the clinical picture that we've been accustomed to over decades for the onset of gender dysphoria. There are studies which show that is often preceded by an increase in social media contact or by having a friend come out as transgender. One of the provisos in Gillick competence is that we look to see whether the young person has been unduly influenced in their decision-making. I would suggest that social media and a level of social contagion that has been talked about have a role to play and are considered in the assessment of Gillick competence.

Ms TRISH DOYLE: I'm just going to pose a question to the Christian schools in the first instance. Your recommendation in the section relating to additional ways of improving the safety and wellbeing of the LGBTIQ+ communities is to ask that the New South Wales Parliament conduct an inquiry. I'm just wondering whether you have any other suggestions. How could the safety and wellbeing of students in these categories in faith-based settings be protected whilst also protecting religious freedoms?

MARK SPENCER: I'm happy to respond, but feel free, my colleague, to jump in. Certainly, there are strong protections already and we point to the very strong child protection regime in New South Wales. There are very strong laws both in terms of the Working with Children Check, the Child Safe Standards. Our evidence has been to a number of reviews and inquiries that there are protections in legislation in place to protect young people from harm. That's very strong legislation and it does provide a very high level of protection against genuine harm.

What we have been seeing is some claims around the country—often unsubstantiated, often made in a very generalised way of what in many ways constitutes mere feelings around not being affirmed or not being celebrated. In faith-based schools we do have particular views around gender and sexuality. That's who we are. We make that very clear. We hold those views. But we also hold a very high standard of everyone has been made

in the image of God and created with inherent dignity and worth. Those things are in place at the moment, and our schools do pride themselves on their high level of pastoral care for all students and their strong anti-bullying policies. There are very effective protections in place.

Our recommendation in the submission was that—as we are finding internationally, particularly, but also in Australia—the evidence around so-called gender-affirming care is starting to shift. We think it is time for there to be discussion around these matters rather than—as we found, unfortunately, during the debate on the recent conversion practices ban legislation, the Legislative Council was prohibited. It proposed to undertake an inquiry and then that was stood down. We don't know why there was so much fear and unwillingness to actually take an evidence-based approach to those issues, and we think that would be in everyone's best interests.

Ms TRISH DOYLE: Did you want to comment, Vanessa?

VANESSA CHENG: Simply to add that our schools have students enrol from all sorts of backgrounds—faith, non-faith, that may identify as trans or gay. Our schools love and care for every single child that's enrolled within our school, and that's part of our Christian ethos. As Christian schools, we see every child made in the image of God. Pastoral care, that community of faith and that culture of caring and compassion, is something that our schools pride themselves on. As part of that, we're wanting children and young people to know that they are loved by God and they're made in his image, and to teach them from our biblical world view how we believe God sees them in that prism of love and being made in his image, and to teach our beliefs that God made us male and female. We want children to know themselves in that prism, but at the same time, regardless of how children identify, that they are loved and accepted within our schools. There's zero tolerance to bullying for any of those attributes.

Ms LIZA BUTLER: Mrs Cheng, this is for you. You're saying that a student who identifies as LGBTIQA+ in a school is supported, yet you're not wanting to employ staff who may identify the same way. Is that correct?

VANESSA CHENG: Our schools employ staff who share the faith of the school. Our schools are Christian-based schools, so they seek to employ people who can uphold and model the beliefs of the school. The schools that I represent—100 around the country and 40 in New South Wales—hold to traditional, I guess you could say conservative, beliefs around gender and marriage, from their religious perspective and understanding of the Bible. We ask staff, teachers and non-teaching staff to be able—we expect our staff to believe and uphold and model those beliefs to the students, and that's the choice that parents are making when they send their children to a Christian school. We're open about who we are and what we believe, and parents are making that choice to have that Christian environment and that Christian culture for their children.

Ms LIZA BUTLER: So how does it support children who identify as LGBTIQA+ when they can't see a role model in their school that identifies the same way as them?

VANESSA CHENG: That's an interesting question. Our schools see children not in those categories. We see children as made in the image of God, as I said before, and so each child has inherent worth and dignity based on that fact. We don't see children in those categories; we see them as humans and loved and cared for. I'm not sure if that's answering your question, but—

MARK SPENCER: Maybe I can just jump in there for a moment. In our view, that's a very reductionist view of humanity. We are more than our sexual orientation or our comfort around gender expression. We are, at our core, relational beings, and known and understood best in terms of our relationship to God, from our perspective. We can hold that view. We can care for everyone in that view. We can care for people who don't share our view about the nature of God and even the existence of God. We already have in our schools people who don't share our Christian beliefs or hold other faith beliefs. They are loved and cared for in the same way as those who may have conformity with our beliefs and they don't, in our schools, have those role models they might look for.

It's about the culture of care that arises from our beliefs. Our staff are role models for our beliefs. They look at every child as an individual, as a whole person—not just a sexual orientation and not just a gender identity but as a whole person—with a variety of intellectual, spiritual, emotional and social needs. They try to deal with each of those children as individuals in the context of a school community and in the context of their family background, whether they might come from situations of domestic and family violence, whether they might come from broken homes, or whether they come from homes where there is a same-sex couple as parents. All of those situations exist in our schools. All of those young people are cared for as individuals—loved and supported. We can agree to disagree around issues of faith, we can agree to disagree around issues of sexual orientation and appropriate sexual activity, and we can agree to disagree around the expressions of gender identity, but we still love and care for those young people.

Ms LIZA BUTLER: But what I'm saying is that if the Anti-Discrimination Act was amended, then you wouldn't be able to refuse staff to remain employed at your schools. Don't you see that as discrimination if you have other teachers that don't share those beliefs? It might be a Christian woman who identifies as a lesbian and you don't want them to teach at your school.

MARK SPENCER: There are a range of schools and a range of beliefs around various moral matters, and there are lots of alternative schools they can teach in where they would be a better fit. Our schools are very clear about our beliefs on those and other topics. We make that very clear up-front and we want staff to model those beliefs. We are offering a particular style of education to parents who are choosing that for their children. That's part of that fundamental right that is protected under international law.

Mrs TANYA THOMPSON: I have two brief questions, if I may, to the honourable Reverend. The bill proposes to prevent religious bodies from discriminating when providing adoption services. What concerns do you have about this change impeding religious values?

ANTHONY FISHER: As with a number of the other areas that the bill treats, I can appreciate the concern that there not be discrimination against different kinds of people when you're choosing, for instance in this case, future parents for a little one that has no parent. However, if, for instance, a particular family is a Christian family—and the child may well come from a Christian family and the actual birth parents want the child to go to a Christian family—and the child ends up in the Catholic adoption service, that we choose a family with a mum and a dad and some of those Christian values seems reasonable to me. To have discrimination laws used against such adoption agencies or against such potential adopting parents seems to me to be going too far. It's saying, "We're just not going to allow Christian families to be formed through adoption in future." The sorts of pretty minimal exemptions that there are at the moment allow other models than what might be the most common socially prevailing model in education or in health care or in adoption services, and we think there should be the space for both.

Mrs TANYA THOMPSON: With the Catholic Church being a male-only priesthood, what problems do you envisage in continuing this practice if a person's sex can be changed on official identification documents without any record of their birth sex?

ANTHONY FISHER: I think this is a real problem for those faiths that have particular roles within their faith for men or for women. They are issues around the ordination of men or women in a particular faith. It goes to issues of marriage if you believe that it can only be between a male and a female. It goes to many other practices of religions in terms of those religions that divide into two groups at their worship and so on. Of course, this is true of many other parts of society too. We have women-only clubs. We have girls schools. We have women's hospitals. We have sports, and it's a very live issue amongst sports, but there are sports that still hold to biological sex determining who can compete where.

It's not just for us in the religious groups that the ability to find what a person's biological or birth sex is quite important. Certainly for religions, many religions have many roles open to everybody of whatever sex and sexuality. But there are some particular roles, such as being a husband and a wife, that sex matters. So we need to know reliably what a person is and at least what they are biologically at birth. That is not saying that they can't in other ways represent themselves differently and elsewhere. But if our documents all effectively falsify what they were at birth and make it impossible for anyone to find out, it becomes more difficult, certainly, for religions but I would say also for all those other social situations where sex still matters.

Ms DONNA DAVIS: There are at least 1.7 per cent of residents in New South Wales who have been born with atypical sex characteristics. This is open to everyone. I note that the CWA in New South Wales is opposed to the introduction of self-sex identification law. Can you please expand on how this fits with parents who are able to make decisions about the gender of their infants when they are born with atypical sex characteristics, knowing the impacts of that on individuals in our communities where decisions have been made for them as children that are then irreversible and impact them and their way of life as adults?

DEIRDRE LITTLE: I think it's important in this discussion to delineate the difference between atypical and ambiguous. Again, as an obstetrician, the percentage of children, or the number of children, who are born with ambiguous genitalia whereby the observation could be male or female, that's an incidence that's less than one in 2000. Sometimes that can just reflect a condition called hypospadias, where there's an opening on the dorsal or ventral aspect of the penis. Those things are present at birth. That's not the same percentage figure; it's much rarer for ambiguous genitalia, where a decision is certainly a very important thing to be made, and we would support the delay in declaring the sex of that child, given the ambiguity of genitalia in that small group of people.

In terms of atypical sexual development, that gets into other areas of pathology, which may be treatable and reversible. I can take a more detailed question on notice, if you would prefer for that. As I say, I'm an

obstetrician, not a paediatrician. But we are getting into areas there where you've got reversible and treatable conditions, where the genitalia was not ambiguous but where there may be other background effects on, for example, hormone production and things like that from the organs that they do have.

Ms DONNA DAVIS: The bill is proposing that, when it comes to birth certificates, there should be an ability for a non-specific gender to be assigned, not male or female. In these situations that you've just mentioned, your submission is very black and white. Would you consider responding differently?

DEIRDRE LITTLE: I might need to ask you to tease out the question a bit more, I'm sorry. First of all, I'm a little bit confused between whether you're referring to gender or biological sex.

Ms DONNA DAVIS: I'm referring to gender.

DEIRDRE LITTLE: There is scope for one to add a category of gender. We would be not opposed to the scope for one to add a category to the birth certificate, although I don't necessarily understand why that would be necessary. We do need to know, for the safety of women, whether someone is biologically male or female and there needs to be a preservation of women-only spaces in refuges, in hospitals, in various areas. Some cultural needs come into play there. I do think we need to know if someone is biologically male or female, particularly with some of the injuries that have been sustained in sporting events recently by women who have fractured tibias and fibulas from more hefty male opponents playing the game with them. I do think we need to know, yes, on birth certificates whether there is "male" or "female".

MARK SPENCER: Chair, I think you know that Mrs Cheng and I need to go to another meeting. We do thank the Committee for your willingness to have us here this morning and we're happy to take any questions from the Committee on notice.

VANESSA CHENG: Thank you.

The CHAIR: I say to our other witnesses thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for correction. Committee staff will email you any questions taken on notice. Dr Little, you might have just taken a question on notice at the end.

DEIRDRE LITTLE: Yes.

The CHAIR: That would be appreciated, please.

DEIRDRE LITTLE: Yes. If I could have the question written out, please, as well?

The CHAIR: Yes, absolutely.

DEIRDRE LITTLE: Thank you.

The CHAIR: We'll work through that process and bump that across to you. The Committee may come up with supplementary questions that we want to extend to any and all of our witnesses. In the instance that we do that, we ask that, if and where possible, could you turn that around in seven days.

ANTHONY FISHER: Thank you for your important work.

DEIRDRE LITTLE: Thank you very much for your time.

(The witnesses withdrew.)

Ms ANNA KERR, Principal Solicitor, Feminist Legal Clinic, before the Committee via videoconference, affirmed and examined

Dr VIVIANE MORRIGAN, Public Officer, Coalition of Activist Lesbians, affirmed and examined

Ms VIRGINIA MANSEL LEES, Convenor, Coalition of Activist Lesbians, before the Committee via videoconference, affirmed and examined

Ms JANET FRASER, Women's Rights Network Australia, 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 pages. Please let the Committee know if you object to having your photos and videos taken. Before we start, do you have any questions about the hearing process that we are undertaking?

VIVIANE MORRIGAN: No.

JANET FRASER: No.

The CHAIR: Dr Morrigan and Ms Lees, you are both from the Coalition of Activist Lesbians. Would one of you like to make an opening statement before we begin questions?

VIRGINIA MANSEL LEES: Yes, we have divided up what we wanted to say. Viviane is the public officer of CoAL and I am the convenor, so we were wanting to split what we're going to say. Thank you for the opportunity to speak. The Coalition of Activist Lesbians wishes to acknowledge that wherever we meet, we do so on Aboriginal land, land that has never been ceded, and that Aboriginal people are the custodians of land and waterways where we are located. We pay our respects to all Elders, past and present. We also acknowledge Aboriginal people present at this hearing. CoAL is a UN-accredited non-government organisation that advocates for lesbians across the life cycle.

Whilst we support the rights of people who identify as transgender to be free from discrimination, CoAL objects to the proposed equality bill because it promotes trans/queer+ interests to the detriment of lesbian/gay/bisexual people. The bill would rob lesbians and other women of our rights by removing sex from law. The Government has no mandate to introduce gender self-ID, an imaginary concept dreamed up by transsexual activists and their allies that has no basis in the material reality of the sexed body, except in being in opposition to it. Sex has and will, into the foreseeable future, shape the human condition, including our sexual orientation, reproductive capacity, healthcare needs, sporting performance and the necessity for separate spaces for women to be safe from the discrimination, harassment, exploitation and violence that some men persist in inflicting on women.

Lesbians are especially targeted by such men, including those who are affronted by the very existence of lesbians who represent a big no to their sexual desires. Lesbians are, by definition, grounded in the material reality of our bodies, and our sexual attraction is only towards those who have similarly sexed bodies—that is, women. Today, Viviane Morrigan, public officer of CoAL, and I will specifically address the three areas of interest to the Committee of inquiry. I'll hand over to Viviane now.

VIVIANE MORRIGAN: Thanks very much, Virginia. Firstly I want to speak to the provisions of the bill, which is the first of the three key areas of interest to the Committee. First up, the bill has poor regard for safeguarding principles usually required for ethical medical practices—in particular, little consideration of the psychological, hormonal and surgical harm to vulnerable minors and young people. Many would be lesbians and gender-nonconforming individuals suffering from anxiety, depression and other emotional problems, making them vulnerable to knowledge claims about their body that are confused, confusing and lacking in precision.

For example, none of the submissions made to this Committee contain a clearly expressed definition of gender or gender identity, nor have I found any published definition of gender identity, anywhere, that is not based on circular reasoning. Sex, on the other hand, can be clearly defined in terms of the material reality of the human body, in terms of the consistent occurrence of a binary system of sex cells produced across all sexually reproducing organisms and differentiated by their size. In humans, females, by definition, produce large eggs and males, by definition, produce small and usually motile sperm.

Secondly, lesbians would also suffer from the loss of our rights, as this bill's aim is to make gender identity legal, instead of the material reality of the sexed human body, thereby erasing the female sex and the meaning of same-sex attraction—that is, our lesbian identity—as well as the legislative protections we have fought hard for, such as the human rights as women in the Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW, and the freedom of expression and assembly in the ICCPR, International Covenant on Civil and Political Rights.

There is no mandate for this radical proposed legislation aligned to the interests of a minority of men and their allies. This legislation is an example of top-down forced compliance mediated by political activists against a majority of civilians, in the interests of a small number of well-funded TQ+ communities and businesses, who appeal dishonestly to people's social conscience. Lesbian and women's safety have fought for and won the right to same-sex spaces—for example, lesbian social and cultural events, women's sport, women's domestic violence shelters, women's hospital wards. We're now under a concerted backlash for daring to maintain our beliefs in sex as objectively knowable and binary.

The second issue of concern to this Committee, that we understand, is operational issues for government agencies—raised by this bill. Firstly, we'd like to raise the issue of corrective services, which would need greater financial resources to ensure safety of both female staff and female prisoners, some of whom will be lesbians and many of whom will be survivors of male abuse and none of whom should be exposed to men with violent or

sexually dangerous behaviours. Australian politicians have recently made a great show of supporting women's safety from male violence in the face of mounting evidence that male violence against women is escalating.

Female officers would not be happy with this amendment that would require them to perform duties such as strip-searching potentially violent men. Correctional services are notoriously under-staffed, and staff, especially female—making them an unsafe workplace, because the government services would have the escape clause, in the legislation, "if reasonably available"—if staff were reasonably available. The Government must instead devise policy and corrective services that protect the safety of men who identify as women without expecting women to tolerate the risk to their own safety and wellbeing.

The second area we thought we'd just discuss or mention is health services, which would also need greater financial resources to ensure the safety of patients and staff again, and effectiveness of sex-appropriate medical treatment. Lesbians and other women must continue to be able to have the safety of intimate care from an attendant of the same sex and accommodation in a same-sex ward. Staff must be able to identify the sex of trans-identified patients so they can give the appropriate care, and secretive and dishonest gender identity legislation will cause unnecessary confusion and possibly life-threatening errors in medical treatment. In addition, efficient and effective health services planning needs to be able to produce and rely on accurate data on sex-based health needs of patient populations. Similarly, effective medical practices rely on generating and using reliable data.

The CHAIR: Can I just interrupt there for a second? These were meant to be short opening statements. We're 15 minutes into our 45-minute session. I'm going to move on and see whether or not Ms Kerr would like to make a short opening statement at all.

ANNA KERR: Mine will be four minutes, I think. I'm the principal solicitor of Feminist Legal Clinic. My work is focused on advancing human rights for women and girls. I have qualifications in law and psychology and have worked as a solicitor for over 30 years. I specialise in domestic violence advocacy and discrimination law. Feminist Legal Clinic is an organisation in special consultative status with the United Nations Economic and Social Council, and I'm also the country contact for the Women's Declaration International. The amendments proposed by this bill will not achieve kind, progressive or compassionate reform. Indeed, this bill is part of a regressive and misogynistic pushback that will undo the accomplishments of generations of feminists, scientists and educators.

These amendments are predicated on a belief system that denies the biological reality of sex. This is not about recognising that people should be able to dress and behave without being constrained by oppressive sex stereotypes. Feminists support that position, but this bill proposes something entirely different. It denies that women are adult human females and it denies they have unique needs on the basis of their sex. It creates the fiction of the legal woman. These amendments compel the whole of society to share in this belief system despite the lack of any scientific basis for this. The provisions for self-declaration of sex require society to accept that men can be women if they say so and they must be accepted as women whenever and wherever they want, including in spaces previously reserved for the safety and privacy of women and girls.

McIver's Ladies pools, ocean baths that were a birthing pool for Indigenous women before colonisation and provide the only haven for some orthodox Jewish and observant Muslim women wanting a swim away from the male gaze, as well as for women who are survivors of sexual assault and others—their management has been pressured to admit any male identifying as a woman. This has included bare-chested and bearded individuals. There is no way to distinguish between those who are earnest and those who are trying it on as a laugh. Any challenge to these individuals puts the pool at risk of a discrimination claim, even under the current legislation, and the changes proposed by Mr Greenwich will remove the remaining legal defences for the management of the pool.

Lesbian women have been battling incursions into their spaces by entitled and predatory males claiming to be lesbians for decades. We are currently representing the Lesbian Action Group in their proceedings against the Australian Human Rights Commission, which has refused them an exemption to hold lesbian events that exclude males identifying as lesbians. Unfortunately, the need for safe spaces and other special measures has not changed. Male violence and sexually predatory behaviour fuelled by a sense of entitlement to women's bodies has not declined but has reached epidemic proportions.

Mr Greenwich's reforms also assist the fast-tracking of young people into medical and surgical interventions they are likely to regret the rest of their lives. Our service is already supporting many such individuals. I can tell you that the affirmation model of care is anything but kind and has created a global human rights scandal that is currently unfolding in courts around the world. Women from all walks of life are angry and fearful about what is being done to us and our children, but our voices, particularly those of us on the left, are not being represented in our political parties or heard in media outlets tightly controlled by the powerful and well-resourced trans lobby.

Indeed, those few with the courage to speak out have experienced extraordinary persecution, being sacked, expelled, defamed, evicted, ostracised and subjected to legal and disciplinary proceedings. Legislation that was originally introduced with the intention of protecting women and children is now being used against them as a weapon. The legal system is punishing women when they attempt to protect themselves and their children from male violence and sexual abuse.

If Mr Greenwich succeeds in passing these amendments, he will not only effectively dismantle protections against sex discrimination but also transform domestic violence laws into a weapon to silence women, including trans widows and others, and facilitate their ongoing exploitation through prostitution and surrogacy. Many individuals have supported gender ideology out of a fear of being labelled a bigot. Society has been groomed by a lucrative and powerful sex change industry, but it is time to wake up to the fact that women and children are being harmed. The responsibility rests on you, as our elected representatives, to put a stop to this dangerous nonsense.

The CHAIR: Thank you, Ms Kerr. Ms Fraser, do you have a short opening statement?

JANET FRASER: I do. Thank you for the opportunity to provide the Committee with our submission on the equality legislation amendment bill. The Women's Rights Network Australia is a nonpartisan network of women across Australia organising to promote and protect our sex-based rights. The recognition of biological sex, factual accuracy and evidence-based science are critical elements to consider when developing policy and law. In our work, we promote the sex-based rights of females in Australia by raising awareness on the current limitations of and threats to women's rights. We advocate for policies and laws that promote and safeguard sex-based equality. The Women's Rights Network opposes this bill in its entirety.

The bill, if passed, will have serious consequences for women, gay and lesbian people, and children. It will have consequences for the accurate collection of data, making it impossible to track sex-based discrimination in equality and even crime. This closed-door process for considering the bill also risks undermining its ultimate reception within the community. The bill deals with a number of concepts and terms that have been subject to disputed definitions. The bill uses many terms and concepts without providing a definition. These include "sex", "gender", "gender identity" and "transgender person".

In order to clearly discuss these issues, Women's Rights Network uses the following terms: We use the word "sex" to mean the biological categorisation of humans and most other living things. Sex is binary, meaning there are two sexes: male and female. Males produce small, motile gametes; females produce large, stationary gametes. We use the word "woman" to refer to adult human females. We use the word "gender" to indicate the cultural expectations and typical behaviours attached to the category of sex, which can include stereotypes that change over time.

"Gender identity" is separate to a person's sex and cannot impact on personal traits that are attributable to a person's sex. The definition conflates "sex", a material fact, with "gender", a cultural expectation, by allowing that modification of the body may be freely chosen to give expression to a gender that is independent of sex. Gender identity is a belief, not a status, and is not a characteristic capable of protection. It cannot be independently verified and can change over time, hence it cannot be protected as an immutable status. The word "sex" refers to a material, observable characteristic and should be relied upon in law. We use the term "trans-identified person" to describe a person who professes a gender identity that is not the same as their sex. Our usage includes both trans-identifying males and trans-identifying females. In summary, the Women's Rights Network asserts that we cannot pass a bill into law that lacks legal, workable definitions of its key terms and that dismantles or makes meaningless current legal protections for women and girls.

Ms DONNA DAVIS: Thank you very much for coming here today. How do you suggest that the bill be amended to provide better protections for transgender, non-binary and intersex individuals?

JANET FRASER: Would you like one of us to address that?

Ms DONNA DAVIS: That's to whoever would like to speak first.

ANNA KERR: I'm happy to answer that. I think the protections are there, and I think that if we interpret gender identity as protecting just that, which is—when I consider gender, I consider it as, for instance, a manifestation of masculinity or femininity. Those concepts are social constructs. They're changeable. They're fluid. They defy definition. They basically represent sex stereotypes. So to protect them, I suppose what we might be protecting would be, for instance, if a woman wants to wear clothes which are traditionally regarded as masculine or a man wants to wear clothes that are traditionally regarded as feminine, they shouldn't lose their job or be deprived of accommodation or refused services on that account. Feminists would strongly support that interpretation of gender identity.

The problem only arises when gender identity is conflated and confused with the concept of sex, which is a very easily defined thing because it is a biological reality. So when the two concepts are confused—I mean, there isn't really a need for the protection of gender identity because the sex discrimination provisions already protect against that sort of thing. If someone is, for instance, sacked because he wore a dress to work, that would provide grounds for a discrimination claim, because obviously he's being treated less favourably than a woman in the same circumstances because a woman who wears a dress to work doesn't get sacked. There's already sufficient protection in the sex discrimination provisions. There was no need to add transgender status or gender identity or any of those other things to the legislation. What that has done is created a great deal of confusion, and it's intentional because it is undermining the sex-based protections for women. I don't know if that was clear, sorry.

Ms DONNA DAVIS: Thank you, that's very helpful. Anyone else want to—

JANET FRASER: Sure. LGB is an immutable characteristic. You are lesbian, gay or bisexual; it is demonstrable, it's verifiable, it's immutable and it can be captured under anti-discrimination law. Along with sex, ethnicity, disability and age, we can independently verify these and we can protect them. Anti-discrimination law, as Ms Kerr has already said, protects people and should protect people in areas such as housing, employment and daily life. No-one should be discriminated against for holding the belief that they are the opposite sex, as no-one should be discriminated against for holding a belief in a religion. The existing laws which allow women and lesbians to be employed, to access housing, to leave their superannuation to their life partner, visit their partner in hospital—these things have always been very important in the struggle for women's rights and LGB people.

If we water down protection for LGB people by confusing sex, the material fact, with gender identity—unverifiable personal belief—we erase homosexuality. People have sex with their sexed bodies, not their gender identities. Lesbians are adult human females attracted to other adult human females, and their twin oppressions of sex and homosexuality should be protected in law. As the bill stands, though, women have no protection since sex is not listed as a characteristic worthy of protection. In a country where men have murdered almost two women a week so far this year, we would say that that's unacceptable.

Mrs TANYA THOMPSON: I'm interested to hear your concerns about NCAT making decisions based on the best interests of the child when considering applications to alter a child's sex through medical intervention. That's open to anyone.

ANNA KERR: I'm happy to say that it's a major concern. There is actually child protection legislation which really says that no-one should be making decisions that result in the sterilisation of a child unless it's in that medical emergency, lifesaving sort of capacity. The trouble is I think our opponents argue it is lifesaving because they argue—with really negligible evidence—that otherwise these children will go and definitely commit suicide. This is the unfortunate thing—that they say to parents who are anxious about giving consent to these procedures, "Do you want a live son or a dead daughter?" They put it like this.

The poor parents are coerced because anyone given that scenario obviously says, "Give these treatments to my child," but there's no evidence base for any of this. Yes, there's a lot of adolescent angst and there are a lot of children who do say very extreme things, particularly because they're coached to do so on the internet through social media. They're told what words will be effective in getting them cross-sex hormones and they're told that they need to make those sorts of statements in order to access these hormones. There's nothing being done to close down this kind of grooming on social media, which is so dangerous and is causing so much harm. It shouldn't be a tribunal making those decisions. Frankly, I don't think anyone should be making decisions to sterilise children unless it was in a context where it's to save their lives. Why on earth would we be doing that? That's just crazy stuff.

VIRGINIA MANSEL LEES: It's Virginia. I would like to speak, thanks.

The CHAIR: Go ahead, Virginia.

VIRGINIA MANSEL LEES: Thank you. One of the major issues that CoAL and its members experience—and we feel very strongly about—is young women who are, like all young people, trying to find out who they are in the world and where their path is going to be. We have young people who are perhaps more masculine in their appearance, who are then immediately shepherded off with "Oh, you're going to be a man." We have strong views that this is actually not the way to be. In previous times those young people would have seen themselves as being butch lesbians. They now find it difficult to find other like-minded lesbians that they might be able to talk to so, in essence, they take the path and then in their twenties become detransitioners because they realise that, in fact, what has happened to them is that their life has been changed immeasurably.

You cannot start beta-blockers and hormone therapy—all of those things—and then just stop doing it. It is a lifelong pharmaceutical situation. For many young people, they then have had breast surgery et cetera. It is a terrible way for young people to start to try to find their way in the world. We also have, across the lesbian life

cycle, many women who come out later in life, who are then trying to find out who they are. When they see what's happening, they then are feeling very uncomfortable to search and seek out who their tribe might be because what they're actually seeing is completely the antithesis of what they want their life to actually be. I think that the whole gender medicine regime has been very effective and has made some people a huge amount of money but it has not been effective for young people. We see that time and again with young lesbians who, after having substantial treatment, then want to actually undo that but, of course, physically that's not possible. So I consider that this is a very serious issue.

JANET FRASER: Our view is that children have a right to go through the maturation and adult making of puberty. Children are protected from making other irreversible decisions that can harm them—we don't let 12-year-olds have tattoos—but suppressing puberty in children has significant effects, such as sterilisation, because if you prevent puberty starting before puberty has even commenced, then obviously a person does not mature into a fully functioning adult. It creates lifelong medical patients who are dependent on constant medical assistance and intervention, which is largely an unknown area. We don't know what's going to happen long term to people but we do know that they are sterilised.

The Cass review, which I commend to the Committee, has demonstrated that there's no evidence that the so-called gender affirming care model actually improves patient outcomes. We know that once you give children puberty suppressing agents that suicidality can increase and certainly their distress can increase—and we're happy to provide proof of that if required. We actually advocate for an inquiry into youth gender medicine in New South Wales and draw your attention to the recent report from Maple Leaf House, which is one of the busiest gender clinics in New South Wales, that does not appear to be able to provide people with information about the sex or other characteristics of the children for whom they are prescribing these serious drugs. We hope that you will also direct this question to Genspect when you see them, because that's really their area of specialty.

VIVIANE MORRIGAN: CoAL would support that call for an inquiry, which is long overdue in Australia and New South Wales and has been long resisted. For too long we've been subjected to campaigns, such as that by ACON, in educating the media and other corporations into gender ideology through such schemes as the WEI—Workplace Equality Index. This example closely follows a verbal strategy first laid down in the Yogyakarta Principles of 2007 and then 2017, which promoted gender identity ideology and TQ+ rights over those for LGB people. These principles were made palatable by framing them as human rights to exploit anti-discrimination concepts and laws, and shape government agendas. The strategy was revealed in the 2017 report by the global law conglomerate known as Dentons, which should be necessary reading for every politician and citizen. That is why CoAL provided a critique of the Dentons document with our submissions.

Ms LIZA BUTLER: Anna, my question is to you, and anyone else can add in. You spoke earlier about the Anti-Discrimination Act. I would like you to elaborate on your concerns about a conflict between gender identity and women's rights in the proposed amendments. Also, currently, LGB people, especially TQI+ people, are not protected under the Anti-Discrimination Act because of religious exemptions. Could you elaborate on how you might see that we could protect a group of people under the Anti-Discrimination Act while still protecting women's rights.

ANNA KERR: First, I'm not in favour of any particular religious exemptions. I don't agree with any of that at all. I appreciate that many of the people who share my position in opposing this legislation are coming from a conservative Christian perspective. I'm not. I have strong feelings that religious exemptions to discrimination legislation are harmful for women, and lesbian women and gay people generally. So that is to respond to that. When you say they're not currently protected, as I was trying to explain earlier, I do actually think the protections against sex discrimination do protect people who are gender nonconforming, to put it that way. For instance, a woman who presents in a masculine manner—what we would consider stereotypically; this is according to sex stereotypes—and is disadvantaged as a result in her employment, for instance. Some employers are still trying to get women to wear high heels and skirts, for instance. I think that's a clear breach of sex discrimination legislation because you are being treated less favourably than a male.

Men, for instance, if they want to wear dresses—leave them to it, frankly—and cosmetics, and they get discriminated and lose their job or won't be served in a shop or whatever, they would be able to say they're being treated less favourably than a female. So under the sex discrimination provisions, these individuals would be able to bring claims if they are denied services, employment or accommodation. I think feminists generally, we support that and we believe those cases should be brought.

This is not about that. When you confuse things by introducing this new gender identity, what you're saying is that men who, for instance, claim to be women should be treated identically as women. I don't think that the legislation does quite say that and I think at the moment the legislation is a little bit ambivalent. Until you've had certain cases, I think it's still arguable that that's not the case. But this is what Mr Greenwich's amendments

will make absolutely clear. At the moment, I think the New South Wales legislation still has definitions of "man" and "woman" in there, which have been removed federally, for instance. But in New South Wales they're still there, and I imagine it's among his amendments.

For instance, there is a very clear and quite broad exception for sport in the New South Wales legislation. His amendments propose a much narrower exception for sport which is, no doubt, just a stepping stone for the ultimate outcome, which is no exception at all. But at the moment the exception for sport is quite broad in the New South Wales legislation. Please don't amend it; don't make it any worse. It's not ideal. In terms of gender identity, I think the example of McIver's pool is a good one. You have a pool that has, throughout its history and even before colonisation, excluded males. Then a man challenged that some decades ago and there was a case fought on discrimination and the pool was successful and, in fact, was granted a certification by the Minister that they could exclude males. A year after that decision, the amendments were made to the Anti-Discrimination Act introducing discrimination on the grounds of transgender status. The case hasn't been had yet, but it's confusing.

Now the question is: Can women exclude males who claim to be transgender or claim to be in the process of transitioning, because those provisions are very broad in the Act, even if someone hasn't yet transitioned but may be perceived as being trans. It's extremely broad in the discrimination legislation. If you exclude them—it depends on how you interpret it. Are those men entitled to be treated the same as other men or is the legislation saying that they must be treated the same as women? If you have legislation which recognises them as women legally because their birth certificates have been changed—and that is the other part of these amendments. They want to make it even easier so that individuals can change their birth certificate on self-declaration rather than having to go through surgery, which, of course, a very small number of people actually go through.

Once you say self-declaration, then you have a whole group of people who are able to claim the legal status of being a woman who aren't women. At that point it becomes unenforceable to have women's spaces. In fact, even now it is because women are too frightened of bringing on a discrimination claim. You don't know what the person's motives are. There is no way to test their motives when they say, "I'm a woman." You can't distinguish between, for instance, predators and males who earnestly believe they are women and perhaps should be treated more sympathetically from those who, for instance, are doing it for nefarious purposes. But there is no way for a management to distinguish between those individuals. Sorry, I've probably gone too lengthy there.

The CHAIR: We need to move on and we need to be very brief.

Ms TRISH DOYLE: I want to thank you all: Janet, Viviane, Virginia and Anna. I think that you have very powerfully and in an articulate manner made your position clear today and through your submissions. For the record, I want to acknowledge that my feminism was honed by Margaret Jones, who was part of the lesbian separatists and was a huge part of my education. She'd be applauding you all today. Aside from the bill, what are your views around wellbeing and how we protect the wellbeing of those who do declare that they are gender diverse young people and children? That's part of what our inquiry is looking at. If you want to put aside the bill, what are your views around the wellbeing of those who declare themselves gender diverse?

JANET FRASER: I think my previous answer about holistic therapy will be the WRNA position.

ANNA KERR: I think education of the community, that people should be more accepting of diverse expressions of gender. When I say "gender" I'm talking about masculinity and femininity. I think that's one good thing that's come out of all of this, and just being light with the legislation because I think that's causing harm.

VIRGINIA MANSEL LEES: I'm in the upper age group, so I've been around a long time and been a feminist all of my adult life. As a child growing up, I wanted to be a range of different things and it wasn't really—I had very long hair in a plait so I always looked very female, but there were lots of things that I wanted to do that I saw boys doing that really weren't kind of open to me. What I think needs to happen is that we continue with the idea that, if young people want to dress in a particular way, be in a particular way, they can do that. It doesn't need medical intervention. What it needs is people to be able to say, "Yes, you can do that", and who cares whether a boy wears girls clothes to school and vice versa. If we can do that and do that well, we're actually really enabling children and young people to unpack who they are and learn who they are along the way.

I don't think we—medical intervention has to be at the very far end of anything and we need to give children the opportunity to be whoever they see themselves as at different parts of their life cycle. Then, when they're older, if they want to follow a medical set of procedures when they're able to make that decision themselves, let's look at that very differently. Because this has become big dollars for both big pharma and any medical services, so the children and people who are involved in that become kind of incidental, and that's probably the worst outcome that we could actually have. I agree with Anna about kids being able to dress in different ways. I see that around me all the time. I think that's healthy and let's maintain that. Let's not have such fixed structures

in schools and then allow children to go through all of these different ways of finding out who they are. Then in adulthood, if they choose to go down the medical path, let's make that possible.

Mrs HELEN DALTON: There are 20 different forms of legislation that go with this bill down to discrimination, birth certificate, surrogacy, prostitution, the definition of gender, the definition of sex—all of those sorts of things. Do you think that it is fair and reasonable to treat all of those issues under one bill? This is open to any of you to comment.

ANNA KERR: It's ridiculous. I don't actually agree with a single one of the amendments, but it was an onerous job going through all of them. No, each one of them is a very significant area and needs its own inquiry. No, it's completely unreasonable to foist that upon the Parliament.

VIRGINIA MANSEL LEES: Certainly, what we see overseas is that the Scottish Parliament has passed similar types of legislation and have had to actually admit now that they're going to have to do separate legislation that will protect women. I mean, we do not want to end up in that situation. Keeping things sex based and then gender identity—it's being forced on us in all different sorts of ways, including in my workplace. I really am extremely irritated by that. I've been in the current workplace I'm in for 26 years and, if I'm on a Zoom meeting, I like to be called by my name.

I don't want to have to put up my pronouns as a way of being recognised. I have a name and I'm proud of my name. I like people to call me by my name. That is the way in which we operate. We don't call each other by our gender identity, yet that's what's really being forced. I think what's happened is that the whole issue of this being really around human rights has conflated sex and gender to such an extent that many people don't really understand what the differences are and don't want to talk about it for fear of being labelled transphobes or whatever, of which I've had a huge amount of experience, let me tell you.

VIVIANE MORRIGAN: I think the raft of proposed amendments in this legislation are just a wish list for gender ideologues who are mainly concerned in getting gender identity legal so that they can claim that they have a different sex for their own sexual purposes. I think it's totally unnecessary. I think the huge omnibus nature of this legislation is a clear illustration of how it's not really aligned to equality at all. It's really aligned to the interests of certain men who want to be women.

Mrs HELEN DALTON: Janet?

JANET FRASER: Yes, WRNA would suggest to you that the massive omnibus bill is quite obfuscating and dense and difficult for the general public to understand. But it is a principle of statutory interpretation that any removal of rights must be communicated in a clear and unambiguous way, and women's rights are removed and diminished significantly by many of those 22-some pieces of legislation change. It doesn't actually tell women in the legislation that our rights are being removed or diminished. It fails to grapple with the reality of our sexed bodies but it inserts ideological beliefs in their place.

The CHAIR: I'd like to thank our witnesses for appearing before us 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 that may be developed from the Committee over the coming days. The Committee will now take a short break and return at 10.45 a.m.

(The witnesses withdrew.)

(Short adjournment)

Mr ASHLEY SCOTT, Executive Officer, Rainbow Families, affirmed and examined

Ms BARBARA TAYLOR, Parent Representative, Parents for Trans Youth Equity, affirmed and examined

Ms LANNEN DONNELLY, Executive Director, Parents for Trans Youth Equity, before the Committee via videoconference, affirmed and examined

Dr ELOISE BROOK, Health and Communications Manager, NSW Gender Centre, affirmed 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 videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let the Committee know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process that we are undertaking?

ELOISE BROOK: No.

BARBARA TAYLOR: No.

ASHLEY SCOTT: No.

LANNEN DONNELLY: No.

The CHAIR: We'll have three brief opening statements. Mr Scott, would you like to go first?

ASHLEY SCOTT: Sure. Thank you very much for having me today. My name is Ashley Scott. I use he/him pronouns. I'm the co-founder and executive officer of Rainbow Families. I'm also a proud gay dad. My husband and I have been together for 20 years this month and we have two children that were born through surrogacy: Stella and Pia. I'm also a donor for a young person who has two mums. I'm here today as a gay man, a parent and the executive officer of Rainbow Families, which is a charity that I helped set up to support, connect and empower LGBTQ+ parents and their kids.

Our community is incredibly diverse, made up of lesbian mums, gay dads, trans and gender-diverse parents. Our families are created in many different ways: through fostering, adoption, surrogacy, children from previous straight relationships and donors—anonymous and known. While our community is diverse, the one thing we have in common is that we all love our kids. However, under the law we're treated differently from traditional families. Rainbow Families is very much in support of the equality bill. We are pleased that the issues of most concern to our community have been addressed by the equality bill, particularly protecting LGBTQ+ families from discrimination, legal recognition of families created through surrogacy and making processes and forms inclusive of LGBTQ+ families.

While we support the principles that underpin the bill, our families need more protection than what is included in this bill. Regarding discrimination experienced by LGBTQ+ families, this discrimination comes not only from the law but also results from policies, processes and attitudes, even where formal legal equality exists. Currently, the Anti-Discrimination Act allows faith-based organisations providing adoption services to prevent LGBTQ+ foster parents from adopting their children, even when those children have been with their long-term foster carers for a long time. While same-sex couples were given the legal right to adopt children in 2010, the outsourcing of adoption services to religious organisations has been a further constraint to LGBTQ+ people wishing to start a family.

One of our community members spoke to me recently. They told me they had applied for job with a religious organisation that looked after adoption and fostering services. In the interview for that job she mentioned to me that one of the questions was: Are you happy to reject LGBTQ+ parents if they apply to be foster carers or to adopt? This is a lesbian mum who told me this story and she didn't get the job, let's just say, after her response to that question. This highlights the need for religious organisations to not be allowed to discriminate against our families.

I would like to tell you a little more about my family. In 2019 my now husband and I decided we wanted to start a family. I called a fostering agency and went through the process on the phone with them. The last question they said was, "What is your wife's name?" I said, "My partner is a man. We're gay men. The woman on the other end of the phone said, "It's illegal for gay people to foster or adopt in New South Wales," and she hung up on me. Those laws were changed in 2010, which is great, but that was my first experience of wanting to become a parent. We then spent some time exploring co-parenting options and domestic surrogacy, but that didn't come off for us. This left us with international surrogacy as our next option, and we began the process of creating our family in 2010 before the New South Wales Government rushed through, without consultation, the laws criminalising international commercial surrogacy. We were given advice to move to another State or at least to pretend to move to another State just in case we were thrown in jail once our baby was born.

I remember the time of Stella's birth being one of the most joyful times of my life, but it was also incredibly stressful obtaining citizenship by descent and a passport while we were overseas for a child that we knew, under the eyes of the law in our home State, would not be recognised as our legal child. During this process, Stella's surrogate did not relinquish any parental rights and is still listed on her birth certificate. I distinctly remember getting off the plane with my 16-day-old baby and being so, so fearful that Barry O'Farrell, the Premier at the time, would be standing on the other side of that immigration line with handcuffs, waiting to take me to jail. That didn't happen, thankfully, because that would not have been in the best interest of my child at the time.

The ban on overseas commercial surrogacy has been ineffective, with no prosecutions taking place. The effect of the ban has been damaging, resulting in children born through overseas commercial surrogacy being deprived of the security and certainty of legal parentage. We welcome the removal of the ban on international commercial surrogacy included in the bill. It's a wonderful first step, but so much more needs to be done to protect families like mine. In New South Wales, families through surrogacy can apply for a parentage order to transfer the parentage from the surrogate and her partner at the time of conception to the intended parents. However, I and

most other families like mine have not done this because we are still fearful of being charged with engaging in commercial surrogacy. This leaves my family and thousands of other families like mine in legal limbo.

In regard to the equality bill and the changes for families through surrogacy, we support the principles that underpin this aspect of the bill. We welcome it as a first step towards equality for our families and for children born through surrogacy. It's a stopgap to ensure children aren't discriminated against, but the bill does not go far enough. For domestic surrogacy arrangements, currently the surrogate and her partner are considered parents of the baby until a parentage order can be obtained from the court, which leaves these families in legal limbo for up to 12 months. We would like to see a simple administrative transfer of parentage that's carried out during the pregnancy and implemented at the time of birth. Essentially, all our children need to be equal before the law, regardless of the circumstances of their conception, and criminalising the actions of parents bringing their children into the world is not in the best interests of children. I'm aware I have gone over my time for an opening statement. I'm sorry. I will hand over.

The CHAIR: It's all right. Everyone else is going to be super brief. Barbara or Lannen, would one of you like to make an opening statement on behalf of the Parents for Trans Youth Equity?

BARBARA TAYLOR: I would like to make some opening comments and then pass to Lannen to complete our opening statement. We are here today representing Parents for Trans Youth Equity, what we call PTYE for short. We are a volunteer group of parents and carers who seek equity for all trans youth. I acknowledge that PTYE has added our name in support to Equality Australia's submission on the bill and also to the open letter to the Premier. In our own submission and today, we draw on the lived experience of trans children and young people and their families. We have also published peer-reviewed research in partnership with Western Sydney University.

Overall, we welcome the bill, as it seeks to improve the lives of transgender community, and, with some further amendments highlighted in our submission, we think that New South Wales can be on the road to equity for trans youth. We are parents of trans youth. We have seen firsthand the incredible benefits of gender affirmation. Trans youth have significantly improved mental health once their gender is affirmed. This includes social affirmation and sometimes medical affirmation, where that's necessary. Not all trans youth need medical affirmation.

I want to be clear that, in New South Wales, to access gender-affirming treatment, multidisciplinary assessments occur to ensure that there's informed consent, assess whether or not the child is Gillick competent, and whether the medical team—and I stress "team"—determines what's in the best interests of the child. Our families have found this process takes years. It is not a quick tick-and-flick exercise that some people would have you believe. The positive impact on trans youth obtaining a birth certificate that reflects their identity cannot be overstated. We know this from the experience of families in other States. We advocate for trans adolescents to be able to update their birth certificate gender marker without parental authority from the age of 14 rather than 16 as proposed in the bill. I note that the ACT has recently revised their requirements to enable this from the age of 14. I'll now pass to Lannen to complete our opening statement.

LANNEN DONNELLY: As Barbara mentioned, PTYE is a volunteer group of parents. We're not paid and we receive no funding. This panel appears to be the only panel before this inquiry that is speaking from firsthand experience in raising trans kids. We can all attest to witnessing our own kids thrive when supported and affirmed. This morning I want to use my time to share Sally's and Marli's story that they generously allowed me to share with you. Their names have been changed for this inquiry. Sally is a proud Wiradjuri-Waluwin woman from regional New South Wales. She's also disabled and a single mum to Marli, a 16-year-old trans girl. Sally has witnessed her daughter experience more discrimination in this short time than most will experience in their lifetime.

When Marli shared with her mum and the world who she had always known herself to be, Sally could not believe Marli's faith-based school refused to accommodate her education anymore. Sally could not overstate the disruption this caused to Marli's education and her mental health. Marli's involvement in local sport was through the community dance school. Sally witnessed Marli's mental health deteriorate rapidly to the point of suicidal ideation as her daughter was again discriminated against and Marli was no longer welcome at dance classes with her friends. FACS became involved due to Sally's concerns and those of the local health department. Something wonderful happened, though, that thousands of parents across Australia have witnessed firsthand. Once Marli was able to access affirming puberty pausing medication, her mental health improved significantly.

As parents of trans youth, we can all attest to seeing the long-missed smiles and enjoyment by our kids once they are affirmed in the individual way that each needs. However, the discrimination has not ceased. Marli, like a lot of 14-year-olds, obtained part-time employment. Sally saw her daughter discriminated against again, due to Marli having to provide her New South Wales birth certificate identification to her employer. This birth

certificate does not reflect who she is, with an incorrect name and gender marker on it, outing her as trans. For this, she suffered harassment at 14 years of age. Additionally, Marli's ATO, superannuation, bank account—sorry—and school records details are all wrong because she cannot provide accurate identification. Marli's since changed jobs and is now, thankfully, with an affirming employer.

Marli's father does not acknowledge her for who she knows herself to be and has not seen her for five years. At age 14 Marli was able to undergo surgery unrelated to her gender identity without either parent's approval as she is Gillick competent. However, Marli's rights to bodily autonomy cease when it comes to gender-affirming medical treatment. Sally regularly tries to sell personal items to pay for travel so Marli can receive literally lifesaving medical affirmation via puberty pauses at the long distance city-based gender clinic. Sally is currently preparing for a court date so that Marli can receive the hormone oestrogen and finally go through puberty, which her peers mostly went through years ago.

Marli is now 16 years old and, despite being Gillick competent, despite the research demonstrating that puberty blockers and hormones did not impact permanently on fertility, and despite Sally, along with Marli and her medical team, confirming hormones are in Marli's best interests, Marli is still not allowed in New South Wales to access necessary hormones because her father, who has not seen her in over five years, will not provide his support. So Sally, a fellow parent, who is exhausted from raising an adolescent as a single mum anyway, is now straddled with trying to raise money to go to court so that her daughter can go through a puberty that aligns with who her daughter has always known herself to be. Marli's future is now placed in the hands of a judge she has never met. Sally now watches her daughter's mental health deteriorate again due to a system that currently ignores Marli's human rights. As parents who have been through this and in line with research, we know that Marli's mental health will improve significantly again once affirmed in the way that she needs.

There are many single fathers and mothers in the same situation as Sally. It is an increasingly common scenario. The changes PTYE has proposed in our written submission are best practice according to research and also align with our lived experiences, despite what some may allege. Anti-trans activism appears to be a social contagion, and it is harming our kids, our families and our community. As parents, we are all tired. However, it is nothing compared to what single First Nations parents of trans youth like Sally currently face. Most of us want to see children like Marli thrive, which can occur with the urgent passing of the bill and proposed amendments. This will go some way to stopping the repetitive legalised discrimination that our children like Marli face and that forces Sally to try to navigate complex legal barriers just to see her daughter thrive.

The CHAIR: Thank you. Dr Brook, would you like to make a short opening statement?

ELOISE BROOK: Yes, I will. I am Eloise Brook. I'm from the Gender Centre. I'm the Health and Communications Manager. The Gender Centre is an organisation that has existed for over 40 years now. We are the organisation in New South Wales, and almost the only one in Australia, that works with the community with the complex issues that affect trans people to do with homelessness, mental health issues and all of the complications that occur because of discrimination against trans people. We are also very privileged to work with families and children as well. We are, effectively, a bunch of scrappy social workers who are difficult and are put in a position to deal with complex cases. We often come out of working with our clients where they don't like us so much. They're angry with us, but we get them through. We see constantly—over and over and over—the complexity that involves a wraparound service, which we provide. When I say that the Gender Centre is a frontline service, I mean we are dealing with complexity every single day.

But there are a few things that are really, really evident that we do see. When you take a trans person, and you believe and support them, you open a door for them. You remove the barriers of mental health, stress and anxiety that build over time that lead towards members of our society and community who can't function or don't function so well. We get to see at the Gender Centre what a decade, a lifetime, of discrimination and violence leads to in the clients that we service. Then we get to see the families and the young people. We see the incredible work that families do. They never stop. They are frequently on suicide watch. They are frequently put in situations where one parent has to no longer work because their young person is at risk of taking their life, which we know from the research is 20 times the national average.

There is a family who is looking after a young person from three or four all the way through, and then beyond into adulthood, and they are there with them all the time. Then, you take one of those parents and they have to be a full-time carer, and the strain on the family—the stress breaks families but not the love for their young people. We are passionate about supporting families and young people. We get to work with or support over 1,000 New South Wales families, and it's really the same kind of story—support and love them, and create an environment where you can often untangle complexity and disagreement with children and parents, and that kind of thing. But at the end, if you build that loving support around that family, that 20 times the national average attempted suicide rate drops to the standard suicide rate amongst the general population. It is an extraordinary

kind of shift with so little effort required to do it, except, of course, the incredible effort of families. So it's a great privilege to be here.

I also would like to add, in terms of documentation, my own experience as a trans woman. Over a decade ago the Federal Government changed passport laws so that forms of identification, particularly a primary document, being a passport, was available to match how I appeared on the outside with how I was assigned at birth. That meant that not only could I travel overseas, of course, but it also meant that I could volunteer for sports. I became a scout leader for a while. I got to have that connection with my kids. My then kid, I should say, who's now an adult in the last two weeks. I got to do something that a lot, if not most, of my contemporaries never got—the way that these documents open doors of possibility and connection with families. When I hear these stories about trans children being pushed out of sports, being pushed out of those life-affirming, life-saving kinds of community connections, it reminds me of my own experience.

In going forward with the equality bill, I would like to say that these kinds of changes will improve people's lives out of sight. The families will have some slight relief in the stress and strain, but those children themselves will go on to have all of the things that we absolutely passionately want children to have. And, to finish, that means that me sitting at the Gender Centre and my team gets to see a young person go off and live their best life, knowing that I'm not going to see them in a decade or two—not that I'll be around for that long—the Gender Centre will see them at the other end when the system has failed them and they struggle to function in a meaningful way.

Mrs HELEN DALTON: Thank you for attending. My question is to all of you, really. Some stakeholders have expressed concern that the bill will impact on women's rights and privacy in single-sex spaces. What are your views on this? I might swing over to you.

ELOISE BROOK: To me?

Mrs HELEN DALTON: Yes.

ELOISE BROOK: It's a hard one to answer because what I think is being talked about is a trans woman who you are identifying as a trans woman. There's a significant portion of the trans population that is moving freely about, that is occupying women's spaces, and that are going about their lives and lived experiences. Often the trans people and trans women, in particular, who are singled out are the ones who are in the most need of complex support, and they are the most vulnerable. They are turning up and trying to use women's spaces, which is absolutely their right.

But the argument about how we might somehow segregate out the right type of trans women from the wrong type of trans women is deeply problematic and almost impossible. I go and use the women's bathroom. I use all of those things. I walk in. I have absolutely no problem. No-one looks at me twice. I go about my business. I take my kids in to get changed at the swimming pool. There is absolutely no problem. But to single out me or the types of trans women, as a mass, that are going to be unsafe is impossible to do. I'm not sure how, in any meaningful way, you could enact any kind of restriction along those lines.

BARBARA TAYLOR: Just to add to that, my understanding is that this bill doesn't change the current position, which is that self-identifying trans women go about their lives in public spaces, as Eloise has articulated. This bill doesn't actually change that.

ASHLEY SCOTT: I think creating spaces where people can be themselves and be their true selves is very important. I remember talking to one of your colleagues years ago, and they had a trans man who had been coming in and out for 10 or 15 years from Gender Centre services, and people kept sending that person to queer spaces. "Go and join this queer club. Go and join this queer group." It wasn't until someone said, "This person should go to the Men's Shed" that they never saw this person again because that man, that trans man found his people. He found his tribe, and he was able to be himself in the Men's Shed. And this is a gendered conversation, talking about the Men's Shed. The same thing would happen in a women's space as well. It's about saving lives for trans and gender-diverse people.

Mrs HELEN DALTON: Would you like to comment?

BARBARA TAYLOR: Lannen, did you want to add anything to what has been said?

LANNEN DONNELLY: No. Thank you so much. Barbara has addressed what our thoughts are, thank you.

Mrs HELEN DALTON: There are a lot of moving parts in this legislation, and, Ashley, you've mentioned that in some parts it doesn't go far enough. Do you think it's fair and reasonable that this bill has the overarching, I suppose, carriage of 20 different pieces of legislation?

ASHLEY SCOTT: I do think it is timely. I think there hasn't been enough reform over the past 10, 15, 20 years in New South Wales. We're lagging behind other jurisdictions, and I think it's great that we're able to get a huge amount of work done in one bill so that we can make New South Wales an incredibly inclusive space for all people, and particularly for LBGQTQ+ people.

ELOISE BROOK: I think the breadth of the bill is really essential. I don't know how you would distinguish any of the many components out from the other ones without realising that you are going to create disparity that was going to need to be returned to. I see this bill as an opportunity, as Ash basically said, to reset the way things should be, to kind of bring everything up to a basic standard and move on from there. So separating them out—I'm not sure how that actually works.

BARBARA TAYLOR: I agree with what has been said. I don't have anything to add.

LANNEN DONNELLY: I think that multiple amounts of work in one bill is necessary because these changes are so urgent and overdue. We don't have time to separate them out.

Ms TRISH DOYLE: Thank you all for being here today, and for your honesty and raw experiences and sharing that with us. Further to my colleague's first question, we have heard in some submissions and from people speaking to those submissions that they see a real conflict between gender identity and, in particular, women's rights in the proposed amendments to the Anti-Discrimination Act. Can you speak to some of those concerns, playing the devil's advocate, I suppose, and speaking to those very real concerns which we have heard about, that there's that conflict?

ELOISE BROOK: I guess I can speak to what I get to see almost on a daily basis. What I see is, especially with our trans girls and our trans women, young people, young adults and older who want to integrate. They want to kind of move out into society. They want to be included. They want to do it in a respectful way. They frequently encounter discrimination, and that erodes their resilience, their capacity to deal with stress and strain. All of us go through our lives managing our resilience as best we can. But for trans people, what might be a negative experience for most of us on a daily basis is often a couple of times a day, so it makes trans people raw, I guess, and often react in ways that is not to their detriment. But none of that translates to violence. None of that translates to taking away something from someone else.

As a woman, as a trans woman, who transitioned about 15 years ago, I have been adopted or brought into circles of other women and it has been an incredible pleasure to be included. I have come to that space as respectfully as possible to learn the things that I've needed to learn and all of the women that I talk to, younger women, are there for that as well and none of that involves moving anyone out of a space or violence or anything. It's, in fact, often or most likely the reverse, fleeing from violence, fleeing from discrimination. We just want a place to be included and to contribute.

Ms TRISH DOYLE: Is there anyone else who wanted to speak to that particular question? One example that we were given was the women's baths in Coogee. Lesbian women felt quite threatened by a transitioning male-to-female person who still had all of the characteristics of a male. What do you say to those sorts of claims?

ELOISE BROOK: I think the context is really important. The women's bath at Coogee, for over a century, has been this location where women could go. We're talking about women who have always existed on the fringes, whether that's to do with age, race, immigration status or trans women. Trans women have been there forever. Most of the work that was done to shift the Coogee bath back to its inclusive policy was done by a bunch of older cis women. The community of women in that area said, "This is ridiculous." They activated themselves, they formed a committee and they worked really hard. They said, "This is ridiculous. This is enough." They worked and got things changed, and they made sure that trans women could be included.

Trans women were asked to come back into the space by the wider community, by a large coalition of women. We were asked to come back and we did. We were so grateful that that happened. There is always going to be a small section that is going to be resistant to that, but they are such a minority, such a small group. We know within the statistics around lesbian culture that it's only about 4 per cent that reject trans women. The other 96 or so are incredibly inclusive. I know myself, moving into that space, I was incredibly frightened of the interactions I might have with the lesbian community. It was nothing but inclusive.

BARBARA TAYLOR: I would just like to briefly add that I'm a lesbian woman, and I am not afraid of people who are going through transition. It's very sad that some people are. I think that we should be adopting an inclusive approach that recognises the human rights of all people.

Ms LIZA BUTLER: Some stakeholders have expressed concern about minors not needing parental consent for medical decisions that they may regret when they are adults. Could you please give me your view on this? That's open to everybody.

BARBARA TAYLOR: I'm happy to start. I think there is a lot of misinformation about gender-affirming medical treatment. I want to say on the record that if this panel wants accurate information, you should probably talk to some medical experts who can verify what I'm about to say. I have heard people in this hearing talk about puberty blockers being irreversible. That is not the case. Puberty blockers are better referred to as puberty pausers. They do nothing other than pause and buy time for a child, their family and their medical and support teams to work out what is in the best interests of that child. There is also increasingly clear and emerging evidence that gender-affirming hormones are not irreversible. There's evidence of people who have taken gender-affirming hormones who are then subsequently able to have a child or birth a child. To allege that those things are irreversible and that people will regret them later is not necessarily accurate.

We also know that in this country we have a multidisciplinary approach to gender-affirming care. That is not the same as the approach in some other countries, notably the UK, which has had a completely different approach to what we do here in Australia. One of the other things that's really important to note is that, yes, there have been some people who have regretted decisions that they have made. But what we know from evidence that was published earlier this year—peer-reviewed evidence in appropriate journals—is that around 1 per cent of people desist, and the majority of those people who desist make that decision early in the process of gender affirmation. That says to me that what we do here in Australia helps young people and their families come to the decision of what is in their best interests and pursue that path. I hope that answers your question.

Ms LIZA BUTLER: Did anyone else have anything to add?

ELOISE BROOK: Yes, I'll just add something quickly. I think one of the best advocates, person or people to listen to—obviously, a review from NSW Health is really ideal. They can brief you. But I would also like to refer to Professor Ian Hickie of Sydney University who about a fortnight ago was interviewed by Norman Swan. Ian Hickie is one—if not the foremost—expert in this area. His words were effectively that what was uncovered by the NHS in England, we in Australia have got right. All of the stuff that was put forward in the recent Cass review points to the model that Australia uses as being exactly the right model to use—to find the balance, to be able to work with the multidisciplinary team, to monitor, to include the family, to do all of the steps that are essentially important over time to make sure that young person is getting exactly the right treatment that they need and the support that they need. We are the gold standard in Australia and in New South Wales.

Mrs TANYA THOMPSON: Several submissions have aired concerns that the bill conflates gender with sex in its amendments to the Births, Deaths and Marriages Registration Act. I would like to know what your views are on this?

BARBARA TAYLOR: I'm not a lawyer. I can't give you a legal view. But what I can tell you is that our kids—what they see is that they have a State-issued ID document that does not reflect who they are. We know from the experience of families in other States just how powerful it is in terms of positive support and the mental health benefits for young people to actually have a State-issued ID document that resonates with them and reflects who they are.

ELOISE BROOK: I think a lot of these conversations seem to be really quite academic and dry about definitions of gender, definitions of sex. From my experience and what I see, the practical reality of families and young people and the trans community, is they need an ID that works to allow them to connect with wider society. If we don't create the opportunity for someone to be able to easily access services or have some kind of ID, which means that they are outing themselves every time that they meet someone or have to engage with someone. If they're having to run the gauntlet of someone looking at that ID and going, "You don't look like what this ID says," you are then at the mercy of that person to either do the right thing or to do something that's not very nice every single time. If the ID doesn't work, if it doesn't give you that protection, then the mental health outcomes are terrible. Gender, sex—that's an academic conversation which I don't really want to get into or don't really feel like it's that helpful. I'm just interested in the practical ways that we can improve mental health, that we can save lives, because that's what it does.

Ms DONNA DAVIS: Thanks to all of you for attending today. You state that the bill permits discrimination against transgender adolescents from the ages of 13 to 18 in competitive sport. Can you elaborate on this point, please?

BARBARA TAYLOR: I think the bill does not protect the rights of trans adolescents from the age of 12 up to be able to participate in sports. We think that all children and young people in our State should have the right to be able to participate in sport without being discriminated against or precluded. I was here yesterday, and I heard the people from the Teachers Federation talk about the fact that it's a requirement from the NSW Department of Education that young people participate in school sport through to year 10. We need to make sure that our legislation enables and supports that so that young trans people can have that experience as

confidently and as freely as others. Sport should be about fun. It should be about community. It should be about getting together and creating bonds and about physical wellbeing.

ELOISE BROOK: I've just finished a tour of duty as a soccer mum. My 18-year-old has finally passed out of his soccer stage. For 10 years, in winter, I got to go to soccer fields all through Sydney, wet or dry or whatever. The takeaway that I have is that, in terms of trans people, Australian sport is here. It's with the kids and it's with our young people. It's about learning how to win, how to lose, how to work as a team and how to overcome big feelings. It has been the case for decades now that any unsafe practices on the field to do with different-sized bodies don't exist anymore. The fantasy about somehow, at the onset of puberty, you might have a tall, broad-shouldered trans girl playing some small cis girl—before you go anywhere near gender identity, clubs have in place policies and procedures to make sure that every field is safe and that nobody is getting crunched in any kind of way.

I sometimes think that people who come up with these arguments stopped playing sport in about 1986, back when sport was this thing that was so much more a boys' club, but sport changed itself about 10 to 15 years ago and became incredibly inclusive. Australia, and New South Wales, has one of the most inclusive sporting environments in the world. That is because sport said, "If we don't adapt and include families, we're not going to thrive," but they did and they have. That includes all bodies and all types, safely regulated and able to do all the things that we need our kids and young people to do on sports fields, which is to learn and to grow.

The CHAIR: I'm mindful of the time. I'm going to ask Mr Scott one very quick question. Does the bill in its current form leave any significant gaps in terms of supporting LGBTIQ+ families?

ASHLEY SCOTT: The bill is certainly a good start. I think there's a lot of other work to do. I wouldn't mind chatting briefly about the operational issues, which is in your terms of reference. Once, hopefully, this bill becomes law, there's a whole other stage of frontline staff from health, education and all those government employees understanding the changes and understanding how to best support LGBTQ+ people, whether they be children or whether they be individuals or parents. An example of this is NSW Health. When I tried to register my children when they were born to link in with the child and family health clinics, I was told that one of us needs to be the mother and one of us needs to be the father in their system. I explained, "We're a two-dad family and my child doesn't have a mum." She said, "I know, but our system says, "Mother", "Father."

The CHAIR: What year was this?

ASHLEY SCOTT: That was 2012 Stella was born. It's still the case now. That system hasn't been updated so, still, anyone that isn't a mum and a dad registers their child with NSW Health, whether they're born here or whether they're born overseas and done later on—in the NSW Health system I still come up as the mother on both of my kids' profiles. And that's just one example. I think the New South Wales Government, after this bill is introduced, really needs to do a thorough audit of systems across all different government departments to find out where these pain points are so that this law isn't just a tokenistic law of inclusion so that our families are actually included and feel able to access the government services that are provided to them.

I hear so often at our playgroups of people going along to a traditional new parents' group or the child and family health nurse, and the child and family health nurse misgenders, refuses to use pronouns and outright ignores the non-birth mother, for example. These families go along once and go, "That was a really awful experience. I'm never going back," so they then don't engage with NSW Health for the entirety of that child's life. The bill is a great, wonderful start but there's another huge piece of work in terms of the operational side of things that needs to be implemented afterwards.

The CHAIR: We are out of time. I thank you for coming in and being with us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions that have been taken on notice and any supplementary questions that may come from the Committee members over the coming days. We ask that you turn those around in about seven days, if that's possible, so that we can progress our work.

(The witnesses withdrew.)

Ms ZOË ROBINSON, Advocate for Children and Young People, Office of the Advocate for Children and Young People, affirmed and examined

The CHAIR: I welcome our next witness. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking videos and photos 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 photos and videos taken. Before we start, do you have any questions about the hearing process?

ZOË ROBINSON: No.

The CHAIR: Ms Robinson, would you like to make a short opening statement before we begin questions?

ZOË ROBINSON: Yes, please. I would like to start by acknowledging the traditional custodians of the land we are on today, the Gadigal people of the Eora nation, and my pay respects to Elders past and present—and, considering the work I do, the current and future leaders as well. As an independent statutory officer, my role here is to bring the voice of children and young people. This is an opportunity for young people to be heard on this matter. We know from our work that there are mixed experiences for young people in education settings and in the community.

You heard yesterday from Equality Australia and ACON, and they talked about that letter that was released yesterday and the organisations that supported the letter. I think it's useful to echo the words of my colleague Jain Moralee, the CEO of Twenty10. The proposed legislative changes in this equality bill will have positive and lasting impacts on the lives of young LGBTQI+ people in New South Wales, and their families and communities who support them. Creating safer, accessible and inclusive education and healthcare environments will contribute to the long-term health, mental health and wellbeing outcomes for so many young people and reduce harmful experiences of stigma and discrimination. All young people in New South Wales, regardless of their sexuality, gender or body, deserve this.

The United Nations Convention of the Rights of the Child sets out the rights of children, which is defined as those under the age of 18, and there are many that could apply here. But perhaps, reflecting on children and young people right now and what they say to us that they need, we should centre our conversations on article 6: All children have the right to a life of fullness. If we start with designing policy and ensuring that the environments children and young people are in are ones that encourage and support their fullness, whatever that means to them, then we see all children and young people thrive.

Ms DONNA DAVIS: The bill seeks to limit discrimination against students and staff at private and religious schools on the grounds of sexuality and transgender status. Do you foresee any issues with enforcing this?

ZOË ROBINSON: I think you've heard from people in the sector who are probably more focused on the impacts it will have in educational settings. I think that what we heard in the work that we did in our LGBTQI+ report is that children and young people want to feel included and safe in the schools that they're in. They want to be able to bring their full selves to school. I think that we've seen that there are amazing people who support and work with children and young people in the community who can make all of that possible. I imagine that we see success when we work together for the benefit of children and young people and ensure that they have the things that they need. I imagine that in implementing any of this, if we do that—like I said, thinking about what is best for children and young people—and we can do that well together in the community, then I think that we can achieve the positive outcomes that we're seeking to achieve under this bill.

Ms DONNA DAVIS: It appears to me, from listening to the different representatives that have been here, that our youth are absent. We haven't had a lot of our youth being able to speak, so it's great that you're here to be able to represent them. But do you feel that our youth have a much more fluid—many of them have a different interpretation and appreciation for gender and sex than many of us who are older and have more preconceived ideas from what we were brought up with. Therefore, how can we better engage with our youth so that our legislation reflects what they see as needed to be representative across the State?

ZOË ROBINSON: I think there are probably two parts to that. How do we make the process and the system more inclusive so you feel like you could come to a place like this and bring your whole self and feel comfortable in that space? This is answering the second part of it. I think the more that we sit with young people and hear from them directly—and I'm certain that it is not a surprise to anyone on this Committee or anyone who works with young people—the empathy, the kindness and the thoughtfulness that they bring to any of the work that we have done. They seek to talk about how they themselves can feel good in the environments they are in, but also how they can work with others to help them understand what a good environment looks like. Anything that is led by those that are the most impacted on, you will always see great change and you will see beneficial change.

My suggestion is always—I haven't done it today and that is unusual for our office, but it is also because I've had experiences in this space of bringing people who have diversity and how it has felt for them. I have to be aware about when it is the right time. But I think there are changes we can make. We can make government more

inclusive. We can make it feel different. We can go to the places like the organisations that you've just heard from and sit with young people and learn with young people directly, and their families. That is the best way to learn. Always when you are sitting with young people you will hear them think about not just themselves but others and how they can work with and teach others as well.

Mrs TANYA THOMPSON: Thank you for your submission and your involvement in this process. I note in your submission you've made mention of additional challenges for LGBTIQ+ individuals from other diverse backgrounds, from rural or culturally diverse communities. In what ways could these individuals' safety and wellbeing be improved?

ZOË ROBINSON: I certainly remember doing a consultation with a community that was talking about the fact that they couldn't get access to the things that they needed in that community and so had to travel far distances to receive that. I think that when you are working with providing a variety of supports in the areas where you find children and young people, you will see things work well. We have certainly heard as an example that if I'm in a community and the only response is to go to headspace, that is not necessarily the appropriate response.

When you are creating a space where we are all learning, where there are parameters around what you can and can't do as a practitioner, be it in a variety of spaces, and that means that you are working with the person who is in front of you, then that means that people don't have to travel an hour and a half to get the support they need. That means that they can start sitting in the spaces where they have always felt comfortable in their community and get the advice and the support that they need in that community. But also, with all of this, equity is important. If there are services available, if there are supports available, if there are communities available, we should make that available wherever children and young people are, and that includes regional areas and that also includes in the diverse spaces where children and young people are.

The CHAIR: Can I just add to that? What are the chances of somebody in regional, rural or remote New South Wales being able to access the services they need in these instances?

ZOË ROBINSON: Very limited. I would suggest none in the sense that when we sat with some of the young people they talked about the travel they had to do to come from regional areas into the spaces where it was. We always talk about equity in all of the work that we do, and it needs to look the same in whatever children and young people need.

The CHAIR: We just heard from the parents of trans youth. They've got to have a multidisciplinary team.

ZOË ROBINSON: Absolutely.

The CHAIR: In rural and remote New South Wales a basic doctor might be really hard, never mind a multidisciplinary team.

ZOË ROBINSON: Yes. Certainly, listening yesterday I heard lots of talk about teaching and training and all of those things. In our report we did a fact sheet that works with GPs about what children and young people themselves said would make a really good experience for them in coming. There are simple steps that we can take now that can be in every community and in every place where young people find themselves that assist people in those basic asks that young people have sought. But yes, absolutely, in terms of multidisciplinary teams you won't necessarily be finding that in regional communities.

Ms LIZA BUTLER: Your submission highlighted the need to address systemic discrimination experienced by LGBTIQ+ children and young people, and you've provided specific examples in your submission. Do you feel that the bill addresses these concerns when you're thinking of educational settings?

ZOË ROBINSON: I would echo the people who appeared before me in terms of saying it is a good start. We are having the conversations that children and young people themselves have wanted to see in those educational settings. I think that the work needs to be done broadly. I've said this in a number of spaces in terms of how we're working with community to understand what the impact is but also what is the outcome we're trying to achieve. I think we've talked a lot about impact and we know what that is. We know with the suicide rates that when we're talking about young people—we know that. Surely the outcome of what we're trying to achieve is that children and young people have access to education, which is a right, and that they have the ability to feel safe and included in that space. Let's build towards that outcome and I recognise people before me who have suggested that this is a good start, but there is work to be done.

Ms TRISH DOYLE: I'm just interested in the anecdotal, powerful, personal stories that you would hear as the advocate and that very privileged position that you're in to represent some of those stories, those voices that you've heard directly from young people. You speak generally about that in the submission. But are there any in particular that you would like to share with the Committee today as part of this inquiry? Those direct voices asking

us—you've mentioned outcomes. It's the outcomes we need to focus on. Obviously, we look at impacts—but the outcomes that they say they want.

ZOË ROBINSON: I think there's one that is particularly powerful when we did the LGBTQI+ report that very much sticks with me and it's a learning for ACYP in and of itself. We sat with a large number of students in a particular school in a regional area. Even the process of them coming out of class to participate in that meant that they had identified as being part of that community. Then the teachers made a decision to keep them in after the consultation because it was lunchtime and they thought it wouldn't necessarily be safe for those students to return to the playground. I don't think that's what anyone wants for any young person in a school community. I remember the line-up, which I'm sure is one of the beauties of my job that I have, where people just wanted a hug to say thank you for listening to us, thank you for this moment that we could share what had happened, which included a young person sharing about having rocks thrown at them as they travelled to school on their bike, having their bike stolen repeatedly.

But also the fact that the ultimate decision was that we needed to keep you in here because that was the safest place for you. We had to learn from a consultation perspective that we had actually made a choice that had probably not been a safe choice for those children at school. However, they wanted to participate and they wanted their voices heard. I think of those 40 young people who sat in a room and think of their bravery but also how much I just want them to be able to go to school and be their whole selves and have the benefit of what school is meant to be, but then also the people who have spoken in so many spaces about what a positive experience can be like for them. I was talking to someone about the ID and what that meant to them, and that is that opportunity to be your whole self, to be affirmed and that that can shift from being at home and not being able to participate in a community. And we heard Dr Eloise speak about that so beautifully—that importance of a community.

The moment that they could be that and they felt their community had affirmed them and their peers at schools could see them, it shifted their entire mental wellbeing, their health and the way that they participated in school. I think about the people sharing how important it was for them to feel seen. There are so many stories from that particular piece of work that sit with me, including the young person from a particular community who was sharing about the fact that they couldn't participate in the things they wanted to do in that community because of their faith and so had to go elsewhere to be their whole person but how much they themselves had shifted that and so it created a space in that community for others like them and so that people could find their place that they belonged and have their community there.

Mrs HELEN DALTON: Welcome. Nice to see you again.

ZOË ROBINSON: You too.

Mrs HELEN DALTON: Many are concerned with some aspects of this bill, and we heard some of the issues yesterday. Do you think that this bill will undermine the rights of young women and girls?

ZOË ROBINSON: Perhaps it is best for me to think about what they might say. We haven't spoken to them at length but, by and large, I understand that people feel like this will have such a positive impact on the community that, without having done a particular piece of work asking young girls and women about that, I feel like there is an outcome that is a positive outcome. I think we need to work towards that. If there are parts of the bill that we haven't really understood the full impacts of, then I think we're going to have to work through that as well. But I haven't heard, in the work that we've done, anyone raise concerns around that in terms of young girls and women.

The CHAIR: You were just speaking a moment ago about how sometimes young people of faith need to leave their space. This question is more broadly about the many faiths, the many cultures and the many nationalities that you get to work with in your role. The LGBTQIA+ question must be difficult and challenging in some of those situations more than in other situations, I'm guessing. Is that right, and how do we find a pathway forward to balance all of that out?

ZOË ROBINSON: It won't be a surprise to people who I've appeared before: I like to have a view on hope and the fact that I think we always can find a path forward. I think if we sit with them and listen, and we are respectful, we can find paths forward. Certainly, when we do our consultations and we do our best to reflect the demographics in community, and in children and young people, you will see the diversity participate in the work that we've done. I think that if we approached our work based on the business or the politics or other issues like that, then we would automatically be not including the diversity of children and young people.

Whilst that's probably not a helpful answer, what I'm saying is that, when we do our work, we come at it from providing all children and young people the opportunity to be heard about a particular matter. We will see that children and young people will choose to participate in that, and then we might have to deal with, potentially, some of it. You will have seen some of the quotes in our LGBTQIA+ report that talked about particular schools

and institutions where there might have been a different experience. We will then absolutely always work with colleagues about what we heard and how we can do well for the benefit of children and young people together.

Mrs TANYA THOMPSON: Can I ask a brief question? There have been some issues or concerns raised about parental consent and gender-affirming medical intervention and what have you. In your communications with youth, have you seen or have you come across both sides of this argument? Has it been mainly positive or negative, or both? Where do you sit with that?

ZOË ROBINSON: When we did that piece of work, again, a learning part for us is we had to have a conversation about what consent looks like in terms of participating in this particular consultation. You would appreciate that the consent laws require parental consent in some of it. We also recognised that, in seeking consent, we might have some people who couldn't participate as a result of that, and so that was hard for us to understand. When you're talking the about health and noting, obviously, what the people who were before me talked about with the multidisciplinary teams, and the time that goes into working and sitting with families and working through that, I think it demonstrates—cheekily, perhaps ending after Dr Eloise saying that we have the gold standard here in Australia means that we are doing a really wonderful job of working with young people and their families about what is needed.

I think that the parental issue in terms of children and young people—if they participated and they were over the age of 16—they did share some of their concerns about what they can be at school versus what they can be at home, absolutely. I don't say that to create any kind of secrecy or suggestion that there is us encouraging either/or. I think it's more saying that we need to work broadly with a lot of communities and people in terms of all of the things that we do. But also it was difficult because you couldn't necessarily go home and get consent. One of the young people talked about the fact that they were outed by their school because they had asked to be they/them at school and they were referred as that in their report card, and that was the moment they sat down and spoke to their parents about it. We can all learn in this space. I think children and young people being part of that team, being part of that conversation, is so incredibly powerful. When they are in those conversations and they have the opportunity to be heard, again, the outcome is a beneficial, positive outcome for the benefit of that young person.

The CHAIR: You're the advocate for young people. What's the final word on this particular bill to us as the Committee?

ZOË ROBINSON: I think you've heard from some remarkable people who've shared their own personal stories. You've heard from parents and you've heard from people who work in this space, and everyone in the space who sits with these young people hears about the positive things that can happen once we affirm and once we work with them about what they need. Obviously we are supportive of this bill, we are supportive of the steps it takes, and we are supportive of things that see children and young people be their whole selves and have an opportunity to thrive.

The CHAIR: Ms Robinson, thank you for appearing before the Committee today and thank you for the work that you do with our young people. 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 from the Committee that will be developed over the next couple of days. We ask that you turn those around in seven days, if that's possible, so that we can progress our work.

(The witness withdrew.)

Ms SARAH BEVAN, Principal at Sarah Bevan Family Lawyers, Surrogacy Australia, affirmed and examined

The CHAIR: I welcome our next witness. 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 pages. Please let the Committee staff know if you're not comfortable with having your photo and video taken. Before we start, do you have any questions about the hearing process that we are undertaking today?

SARAH BEVAN: No.

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

SARAH BEVAN: Yes. I appear in my role as a board member of Surrogacy Australia, which is a service that provides support to surrogates and intended parents who are either undergoing or thinking of undergoing a surrogacy journey. In my role I'm a lawyer based in Sydney specialising in surrogacy and fertility

law, practising nationwide, and I have been practising in this space since the Surrogacy Act 2010 commenced in 2011. Surrogacy Australia is well aware that there are quite heated views about the morals or ethics of surrogacy. Our submission is based on the practical reality that it's a safe assumption to say that surrogacy is here to stay and that there are ways that we should be looking at to make it safer and better for all involved, including the surrogates, the intended parents and, most importantly, the children.

The CHAIR: Ms Bevan, if I can ask a basic, fundamental question and ask you for a bit of a descriptor right from the start, please.

SARAH BEVAN: Yes.

The CHAIR: How does surrogacy currently work in New South Wales? What are the options available? What does that mean in real terms—in terms of the family getting established, birth certificates, identification, parental responsibilities et cetera?

SARAH BEVAN: That's a big question. I will try to do it quickly. In terms of intended parents who are lucky enough to find a surrogate domestically and able to undergo domestic surrogacy under New South Wales law—and I say "lucky enough" because it is quite rare, largely because there's lack of awareness of the ability of the surrogacy process and also the lack of compensation for the person who is undergoing surrogacy. Everyone else in the process gets paid but not the woman who literally is doing the labour. For those who are lucky enough to find a surrogate, whether it's a stranger through one of the forums or whether it's a known person, first of all, all parties have to go through the pre-conception process, which involves fertility counselling with a licensed fertility counsellor. That is the surrogate—if she has a partner, then that partner as well—and the intended parents, both of them if there are two. They have to get a surrogacy agreement drawn up by a lawyer and have legal advice on that. The surrogate and her partner also have to have legal advice.

Once that is all in place, then they can go about the conception, and that can be traditional in New South Wales. That means it can be the surrogate's own egg, or it can be through a clinic with a donor egg. At the end of the process—so once the child is born—there then needs to be an application to the Supreme Court which needs to be made between the child being 30 days old and six months old. It's an application to the court, which includes an affidavit of all of the parties—so surrogate, her partner and both intended parents; the lawyers who advised in the initial stages for the pre-conception stage. There also has to be an independent counsel's report that sees all parties to give recommendation as to whether it's in the child's best interest for a parentage order to be made. In addition, the surrogate has to undergo relinquishment counselling to ensure that relinquishing of the child is something that she has come to terms with.

Once that goes before the court, most of the time it's a relatively straightforward process through the court. There are various other bits and pieces that need to be done as part of the Act, but once it goes before the court, the order is made. At that point—I should have said at the point of birth, the surrogate and her partner go onto the birth certificate. That's a really difficult thing for a lot of people to get their head around. For that initial stage, until the order is made, the surrogate and her partner are the legal parents of the child—or just the surrogate, if she doesn't have a partner. Once the transfer of parentage order is made, the intended parents—or parent—become the parents, and then the Registry of Births, Deaths and Marriages issues a new birth certificate with the intended parents on it as the parents.

The CHAIR: What about if it's not happening within New South Wales?

SARAH BEVAN: The geographical limitation is that the intended parents have to live in New South Wales; it's a very common situation for the surrogate to be somewhere else in Australia. In theory, the surrogate can also be overseas, but then there are significant practical issues of how, if the surrogate is going to come to Australia to give birth, her visa to get into Australia and to stay for a long enough period, and then also how to get the child into Australia becomes an issue. Of course, for a parentage order to be made, the child has to be living with the intended parents. In theory, it can happen overseas. It doesn't. I'm not aware of any cases where it has happened, to date. But, in theory, the surrogate can be anywhere in Australia. If they are not able to find an altruistic surrogate in Australia, then people go overseas, and that's what the majority of people are doing.

The CHAIR: Let's say the baby is born overseas. The intended parents organise for a passport, I guess, from a consulate or an embassy?

SARAH BEVAN: Yes. It depends on the country where they're going to. People who go to America or Canada will travel back with an American or Canadian passport for their baby and then go about the citizenship by descent process once they're back in Australia. Argentina's a relatively new destination we've had a whole lot of issues with. It gained a lot of media attention, with other destinations. But with Argentina, for example, at the moment people are staying in Argentina to wait for the citizenship by descent and then the passport to come through, which can be a period of eight weeks, even longer. These people are in a foreign country with a foreign

language, isolated from their family and friends, isolated from their support networks, while they're waiting for all this to happen.

Mrs HELEN DALTON: Thank you for attending and for that description of what happens with surrogacy. Your submission is fairly lengthy. Do you think that surrogacy should be dealt with in its own specific bill?

SARAH BEVAN: To the extent that I would suggest there's more to be done about surrogacy reform, then a separate bill may well be warranted. But I guess I would fall back and say that the sooner it's made, the better, and here is the chance to be doing it. I guess, in simple terms, we'll take what we can get for now.

Mrs HELEN DALTON: From this bill, do you see unintended consequences for surrogacy—for instance, the commercialisation of it?

SARAH BEVAN: No. The ban on commercial surrogacy within New South Wales still exists. This bill isn't changing that. Of course, there's a concern that the messaging will be that commercial surrogacy is now allowed. I guess it's a two-stage process. The ban on commercial surrogacy within New South Wales is remaining in this bill. The removal of the mandatory requirement that it's an altruistic surrogacy agreement is suggested to be changed so that a parentage order can still be made if there are exceptional circumstances or, if the bill passes, it is in the child's best interests for it to be made, despite the agreement being commercial, which I would suggest is appropriate. But this bill isn't allowing *carte blanche* commercial surrogacy.

Ms TRISH DOYLE: Thanks for being with us today, Sarah. It's much appreciated, as are the efforts that you've put into the submission. I'm interested in what further changes you think could be made to the Surrogacy Act which would create better outcomes for parents and families in the LGBTIQ+ community.

SARAH BEVAN: We've dealt in the submission with two further suggested changes, one being the wording used. There are two reasons for the suggested change to the wording, that being "birth mother" and in some points "birth parent". The surrogates who enter into this sort of arrangement are doing it not to be a parent, and they often find it very offensive to be referred to as "parent", "birth mother" or "birth parent". In my agreements that I draft, I never use that language for that very reason. I define it that we are referring to her normally by name, sometimes as "surrogate", but never as "birth mother" or "birth parent", and by setting out that it is, by definition, the same as what is referred to as "birth mother" in section 5 of the Act.

Most agreements that I get from other lawyers—and there aren't a lot of us who do it—do use that wording and people find it really offensive and problematic. In addition, I haven't yet had anyone who is non-binary or who is trans who may not identify as a mother or a woman, so I've been using "she". But it entirely could be a person who is giving birth who is "they" or "he". If you're looking at the legislation and the opportunity arises, then language is very important. Changing it to "birth person"—I don't see why the issue of "surrogate" wouldn't be, on its own, a problem. But if not "surrogate", then "birth person".

One of the other issues that has arisen in practice on a number of occasions that has been really problematic—and these have arisen in my practice—is where the surrogate, for various reasons, has dropped out of the running at the last minute. What that means is that she may well have indicated her consent to the relinquishment counsellor and the independent counsellor but she may be refusing to sign off on an affidavit indicating her consent. The court can't currently rely on her expressions of consent to the independent counsellor or her relinquishment counsellor because that breaches the rules of evidence against hearsay. So the court can't rely on that, and the court cannot make the order without her consent.

One of the suggestions we have made is that section 31—I think it is—of the Act is amended in order to address that issue so that the court has the discretion to make a finding that they're satisfied as to her consent. That then means that the intended parents of this child, a large number of whom, of course, are LGBTIQI, will get the parentage order that they need in order to be properly recognised as a parent. The alternative will fill a gap, but it's certainly nowhere near up to the standard of having a transfer of parentage order.

Ms TRISH DOYLE: Thank you for elaborating on those suggestions.

Ms LIZA BUTLER: Thank you, Sarah. You've talked about the difficulty that adults face when they're going through surrogacy. Can you speak to the barriers that children born under commercial surrogacy arrangements currently experience?

SARAH BEVAN: As in the overseas surrogacy arrangements or, indeed, surrogacy here?

Ms LIZA BUTLER: Yes.

SARAH BEVAN: The main barrier is the uncertainty of their parentage. In a number of overseas destinations, their biological father—that's the donor dad—and the surrogate will be on the child's birth certificate.

That means this child has to forever go through life explaining away their identity. Every time it's required—and of course it's not on a day-to-day basis but it is something that may come up on a repeated basis for them—they have to make that explanation over and over again. I would say it goes very much to the heart of their whole identity and how this child is recognised. They may have one parent, who is the donor father. They may have even a mother who is using a donor egg. Or they have two parents, whether they're two men or a man and a woman or whatever make-up it is. They are the parents that the child recognises—not this unknown woman who appears on the birth certificate.

Mrs TANYA THOMPSON: Could you elaborate on any operational issues that might arise from changes proposed to the Surrogacy Act?

SARAH BEVAN: I think the only real operational issue that I've alluded to is the messaging—that it may well be interpreted that there's a free rein on commercial surrogacy with New South Wales. That's not an issue with the bill itself. I would say that we should be looking at—and when I was asked about reforms, we also very much support—the introduction of properly regulated commercial surrogacy within Australia and within New South Wales. Of course, there is potential for abuses of that, as there is with so many other areas of life. But it can and should be properly regulated. That's the only operational issue that I can identify with the current draft of the bill.

Ms DONNA DAVIS: Thank you for giving your time today. There have been organisations over the past two days giving evidence and raising concerns about international access to surrogacy potentially resulting in the exploitation of women, particularly due to socio-economic needs. What is your response to that? And the second part of the question is—you mention in your submission a lack of awareness about the opportunity for surrogacy in Australia. What could we do better to actually promote those opportunities?

SARAH BEVAN: I'll go to the first part first, which is about the concerns with overseas surrogacy. Those concerns are valid. Every now and then, we have destinations open up that raise red flags. For example, Uganda at the moment is a destination that's opening up. Most people would hear that and think, "That's a bit of a concern", and that's warranted. I think, when it first opened up in Columbia and Argentina, there were similar concerns, but there are agencies that are run appropriately in those countries and, I'm sure, agencies that are not run appropriately. So the concerns are valid. Those concerns can be mitigated by more people having access here. I think it would only open up in terms of numbers and surrogates available if it was properly compensated.

So again we return to the idea of women's labour being actually compensated properly. There's no money figure you can put on it for what a woman—or a person, I should say—is going to do to create another family. There's no money you can put on it. But we can go some way to appropriately compensating her, I think. In terms of awareness generally, that's not something that I think I can answer thoroughly, other than to say that there should be proper promotion of what the legislation is. At the moment, we're not talking about removal of the commercial surrogacy ban. But, like I said, I hope that would be the case in the future.

The CHAIR: Just for clarity—for my sake, I guess, Ms Bevan—at the moment, an international commercial surrogacy under New South Wales law is illegal, unlawful?

SARAH BEVAN: Yes.

The CHAIR: One of the amendments proposed specifically is that that be removed from the Surrogacy Act. So the parents at the moment who have children at home, that have become part of their family through an international commercial surrogacy arrangement—that's an illegal scenario, is it?

SARAH BEVAN: It is. Imagine the angst for all of these parents, who are just doing what the majority of people can do quite naturally, but they can't. And they can't find a surrogate. Adoption is virtually impossible. So the only way to create a family is to go overseas. And the vast majority of people that I speak with are very concerned to make sure they're doing it properly and ethically and the woman is looked after appropriately. Despite all of that, they face the concern in relation to being prosecuted if they return to Australia. Not only that—a lot of professionals operate under professional guidelines that say they must act lawfully. So, in theory, a teacher who is engaging in commercial surrogacy is breaching their ethical obligations—similarly with a lawyer. So it is extreme angst that so many people are suffering as a result of this threat of prosecution looming over their head. People have taken drastic steps to move to Victoria, to uproot their life and move away from their support systems and all that they know around them, at a time when they should be able to draw on those, in order to avoid that possibility of prosecution.

The CHAIR: So, at the moment, in New South Wales, if you've made your family through commercial international surrogacy—you spoke earlier about the complications for that child and that family at large going through life, having to constantly explain the birth certificate. If it wasn't unlawful, then parents could potentially

work through that process such that the birth certificate could ultimately be changed to reflect the New South Wales-based parents being the parents?

SARAH BEVAN: In order to avail themselves of a parentage order, so a transfer of parentage order, they would have to meet all of the requirements of the Act. So that's an extra step that they would have to go through. So people going to, for example, America and Canada where both parents are going onto their birth certificate and there's no mention of the surrogate, they likely wouldn't worry about that. There are still some very technical questions that I won't go into that have long-winded answers but very technical questions as to whether they really are the parent even though they're on the birth certificate. But for all practical purposes, they are. But for the people who are going to those other destinations, it would be very much beneficial to them and, more importantly, to the child, to then take these extra steps under the New South Wales law and apply, through the NSW Supreme Court in order to be able to obtain that transfer of parentage order, just like anyone who did it here was able to do so.

The CHAIR: If they don't have a parentage order in place, when it comes to questions around health decisions, surgery et cetera, how is a lawful decision made for that child as they're growing up when the parentage order isn't in place?

SARAH BEVAN: That's what I alluded to earlier in terms of there are gaps that can be filled but it's imperfect.

The CHAIR: Sorry, Ms Bevan, I don't do subtle. You're going to have to just slap me in the face with it.

SARAH BEVAN: People who had that, if you had a situation where you have a donor dad on the birth certificate and surrogate on the birth certificate, you have the donor dad who is able to go and enrol the child in school and make the health decisions.

The CHAIR: Gotcha.

SARAH BEVAN: What most people who go through this process then have to do is come back and apply to the Family Court for an order for parental responsibility, and they will then often also apply for leave to adopt—the step-parent adoption in theory—which is another process they then have to go through the New South Wales courts for. So these people have had to go off to a foreign country, go through all of that process, come back, go to the Federal Family Court and obtain an order for parental responsibility and leave to adopt, and then go back to the New South Wales court in order to obtain an adoption order.

The CHAIR: Then there are other parts of this particular bill which are talking about gender-affirming actions and needing to notify a parent or parents if it goes through an NCAT process. Again, if there hasn't been a parentage order, does your interpretation of that then mean that the NCAT process where the parent-parents have to be notified would then require the international foreign surrogate to be notified?

SARAH BEVAN: Yes, exactly. It's just like with an application for passports. There's a weird lacuna in our law that says the surrogate, regardless of the law in her country, retains parental responsibility for passports for the child. So every five years when the child's passport is being renewed, the parents have to either get her signature on the passport application or fill in a B9 and ask for exemption. That is a relatively simple process. But if these parents could come and get a parentage order so that they are properly recognised in every way, just like all other parents, then that would make a huge difference to their lives and the child's life.

The CHAIR: So one of the challenges I think with this particular bill, it has been described obviously as an omnibus bill. There are 20 pieces of legislation changing. One of the questions that has been posed in both directions is whether you can tease some of these things apart or whether they need to sit together. I think now in my mind I'm finally connecting surrogacy with something like gender affirmation and stuff like that, which prior to you being here I wouldn't have been able to do. Again, it was subtle; I missed it. Are there any other questions from the floor?

Ms TRISH DOYLE: No, you're handling them all, mate.

The CHAIR: I am very sorry. I have got to tell you, of all the pieces of legislation I've had to look at as a member of Parliament, surrogacy hasn't been one that I've spent too much time on. But I really appreciate your work. It's obviously very important work. For all the surrogate families out there, it's incredibly important. If there are no other questions, I'd like to sincerely thank you for appearing before us 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 today, of which I don't think there were any, but also any supplementary questions that the Committee may develop over the coming days. If we send you supplementary questions, we ask, if it's possible, for you to turn them around in seven days so that we can progress our work as well.

(The witness withdrew.)

(Luncheon adjournment)

Ms JUDITH HUNTER, Australian Representative, Genspect Australia, before the Committee via videoconference, affirmed and examined

Ms KAREN RICHARDSON, Representative, Genspect Australia, before the Committee via videoconference, affirmed and examined

Ms CATHERINE ANDERSON-KARENA, Executive Director and Public Officer, Active Watchful Waiting Australasia, affirmed and examined

Ms SARAH MORGAN, LGB Alliance Australia, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence and for making the submissions that we have from you. 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 the Committee staff know if you object to having photos and videos taken. Would you like to make a short opening statement? I'd like you to keep it to two or three minutes, if that's possible. Ms Morgan, we will start with you.

SARAH MORGAN: Mine is five minutes. Is that permitted?

The CHAIR: Speak fast.

SARAH MORGAN: I can do that. Thank you for inviting LGB Alliance Australia today. We were established to represent the same-sex-attracted community because our historical organisations no longer support or represent us. Since our formation, we have grown to over 2,000 active supporters. LGB Alliance Australia supports equality for all, with a particular focus on protecting everyone from workplace discrimination. However, this bill falls short of achieving universal equality. We anticipate that the NSW Law Reform Commission will recommend appropriate legal reforms to the New South Wales Anti-Discrimination Act. This bill is named the LGBTQA+ equality bill, yet not all LGB people—that is, same-sex-attracted people—identify as LGBTQA+. This acronym is a marketing concept driving a new part of the economy. It is not a grassroots civil rights movement. Gender identity is a belief-based movement that is well funded and offering abundant career opportunities. It is a globally coordinated activist strategy.

We use the term "LGB" or "same-sex attracted" to capture the group we represent. Our term is based on biological sex. Supporters of gender identity across the western world are compelling people to adopt this belief-based system which threatens to override the material reality of sex. If sex is erased, sex-based protections and same-sex attraction are undermined. Yesterday several organisations presented misleading statements around birth certificates recording gender. In fact, they record sex. Let's be very clear and honest: No piece of paper can override the innate human ability to determine an individual's sex in an instant through sight, sound and other senses. Lesbians and gay men often feel humiliated and unsafe when pressured to accept people of the opposite sex. This is happening with dating apps, social groups, bars and other areas of our lives. For example, lesbians are being coerced into accepting men who identify as women—colloquially referred to as "transbians", with what they call "girl dicks"—and face accusations of bigotry and transphobia if we refuse.

Our former gay organisations run campaigns that redefine gay men as "men who love men—cis and trans". This denies same-sex attraction and is the new homophobia and heteronormative conversion. This should be prevented rather than embedded in law. Lesbian spaces have always included trans-identified females based on their sex, not any claimed gender identity. Similarly, gay male spaces have always accepted trans-identified men. The difference here, and what this bill will achieve, is permitting heterosexual men known as autogynephiles—those are men sexually aroused by identifying as women—access to lesbian spaces when over 90 per cent retain their genitalia and the well-documented male patterned violence tendencies. A man identifying as a lesbian is no less of a threat to women than any other man. Allowing individuals to identify as the sex they are not destroys these boundaries and ignores the absence of our consent. Sexing people correctly is a basic human instinct, acquired over millennia, which this bill seeks to criminalise. Denying the right to correctly sex people ignores our same-sex attraction, erasing lesbians and gay men.

The bill's consultation process has been very weak with the same-sex-attracted community, and Mr Greenwich has actively avoided meeting with us. This bill represents the gender identity movement and its large body of falsehoods, mantras, ideological statements and thought-ending clichés—some of which were heard

here yesterday—and are often weaponised against us. In New South Wales, many careers depend on promoting gender identity, often at the expense of same-sex-attracted people. Gay and lesbian youth are encouraged to transition to fit heteronormative gender norms—a deeply homophobic process highlighted by the recent Cass review. This path can lead to medicalisation, sterility, and loss of sexual function and pleasure.

Other countries are moving away from sex self-ID and the rhetoric of inclusion based on gender. For saying we are homosexual, we are called slurs such as right-wing bigots, fascists, TERFs, genital fascists and Nazis. Politicians are ignoring us, and straight people talk over us and tell us to "be kind." The notion of "no debate" has made civilised dialogue in this space impossible. For example, ACON and this movement have changed the definition of lesbians and gay men without our consent. According to ACON, a lesbian is now a person who identifies as a woman and is sexually and/or romantically attracted to other people who identify as women. It is neither fair nor just that legislators could force more of this on us in the name of progress. Genderists say sex self-ID is innocuous. It is not. There are international examples that evidence the harms. Our sex-based rights are not for anyone to give away and we reject sex self-ID in New South Wales law and policies.

The CHAIR: Ms Anderson-Karena, would you like to make an opening statement briefly, please?

CATHERINE ANDERSON-KARENA: Yes. I'm sorry, but I'm following the rules that I was sent. This proposed equality bill fails to protect or advance the rights of all New South Wales citizens, especially children. It privileges a select few at the expense of the many—undermining basic human rights rather than ensuring them. Far from combatting discrimination, this bill risks increasing the vulnerability of women to male violence and exploits children in distress for commercial gain. Firstly, this bill proposes to shift our legal norms away from recognising biological sex—fundamental for ensuring fairness and safety—to embracing subjective, unproven concepts of gender identity. This undermines critical protections for women, children and the very structure of family rights, and erodes safe spaces designed specifically for the most vulnerable among us.

Secondly, by prioritising self-identification and internal perceptions of gender, the bill fails to consider the medical, societal and practical implications of such a policy. It neglects the necessary balance between the individual rights and societal needs, leading to serious harm to the groups it seeks to protect. Moreover, this bill, in its current form, risks advancing the rights of one marginalised group at the considerable expense of other groups, particularly women, children and the homosexual and bisexual community—the LGB.

This creates a paradox where the pursuit of inclusivity for gender identity minorities results in a regression of rights for other historically marginalised groups. These outcomes not only contradict the principles of fairness and equality but will embed systematic discrimination against these groups, thereby rolling back decades of progress in sex equality and sexual orientation. The Committee must undertake a rigorous and commonsense review of the bill to ensure that advancing the rights of one community does not unjustly infringe upon the women, children and the same-sex attracted. It is imperative that any legislative changes preserve the protections based on biological and evidence-based realities, uphold rights to privacy and safety and maintain the integrity of the law in representing and protecting all citizens of New South Wales equitably.

We have many concerns with this bill, not the least that it reflects international, financial and political collaborations rather than the wants and needs of the general Australian people. Firstly, we are concerned that the findings from the Cass review are being ignored. The Cass review prompts a crucial reconsidering of how gender-affirming care is approached, particularly in legal and medical contexts—this is pertinent to sections 2, 3 and 16. The Family Court's rulings in Australia, notably *Re Jamie* (2013) and *Re Kelvin* (2017), carved out exceptions for gender affirmation treatments. These decisions recognise that gender-affirming treatments would carry significant risks and consequences for minors, including sterilisation. They deemed this necessary, told that this would prevent severe distress and risk of suicide.

The Cass review undermines the justification for gender affirmation—i.e., puberty blockers, cross-sex hormones and surgery for distressed minors. One, there is no evidence of suicide risk. Two, puberty blockers are not safe or irreversible. They are not a pause. We're not tape recorders; we can't pause puberty then go on. Three, there is no robust evidence that gender-affirming treatments provide substantial benefits to children. Four, their critique of the Australian Family Court's reliance on the Diagnostic and Statistical Manual of Mental Disorders, fifth edition—DSM-V—by the American Psychiatric Association for diagnosing gender dysphoria was deemed inadequate. Lastly, the focus on Gillick competence, which assesses a child's ability to consent to medical treatment, has been too narrow. The Cass review emphasises that informed consent must also consider the quality of information provided to patients, ensuring they are fully aware of the potential risk and outcomes of the treatment.

I'll comment that the exposure of the WPATH files on March 5 show that medical members of the association know all too well that minors are incapable of informed consent. Gender-affirming treatments for minors is seen now as the world's biggest medical scandal. With sections 3 and 2 the government—you—are

actively participating in this scandal because you're removing roadblocks and pipelining minors to gender clinics. We urge you not to dismiss these concerns as mere moral panic or part of a culture war. The stakes are too high. Every stakeholder's concerns must be considered in good faith. Trans rights, women's rights, children's rights, parents' rights and LGB rights are all human rights and none should be compromised or diminished by this bill. I'll make note that our organisation has transsexuals, detransitioners, parents of trans children, trans children, psychologists, doctors and teachers galore. We are a mixed cohort and we decided we'd be a mixed cohort so we could get a 360 on these issues. Thank you.

The CHAIR: Thank you very much. Would somebody like to make a short opening statement on behalf of GENSPECT?

JUDITH HUNTER: I will start for GENSPECT. Thank you for inviting GENSPECT and for considering our submission today. GENSPECT is an international alliance of parents, professional groups, transgender people, and detransitioners who support a non-medicalised approach to gender dysphoria. We number in our thousands.

We have an active group of Australian clinicians and parents committed to developing a healthy approach to sex and gender in medicine, education and law. Collectively, the proposed changes in the equality bill pose a significant threat to the human rights of women and children. They aim to obscure the binary nature and the reality of sex; seek to compel female security staff to stripsearch males who identify as women; seek to privilege transgender individuals in government sectors by way of diversity quotas and provision of funds for gender-affirming care; and, in reality, will lead to less protections for females.

Regarding schedule 2, we provided evidence that sex is binary and immutable, and believe that the legal class of sex, like other legal classifications, does not exist to validate or invalidate anyone's feelings. Some may say that social transitioning, such as changing sex on a birth certificate, improves mental health outcomes, but such an observation was not supported in the recent Cass review and should not be used as a driver to change laws. It is important to emphasise that the legal class of sex is founded upon objectively verifiable characteristics, and it exists to identify sex-based rights and protections. These biologically objectively verifiable characteristics ingrained within an individual are fundamental to research that guides health and medical practices that are essential for improving life outcomes for all members of society. To change or remove sex from a legal record such as a birth certificate can and will have serious implications for individuals and society as a whole. The birth certificate will no longer be a document that can be trusted and relied upon as a verifiable source of information.

Our submission emphasised the important need for sex-based health and medical research, specifically in females, due to current research failing the needs of females due to a male bias. In December 2023 the FDA issued an article titled "Sex as a Biological Variable". The article states that research has shown that biological differences between men and women may contribute to variations seen in the safety and efficacy of drugs, and that understanding the mechanism of sex differences in drug development is crucial for regulatory decisions and optimal treatment outcomes. Changing the law to allow legal change of sex on birth certificates, and hence medical records, will result in a loss of confidence in data validity, reliability, rigour and applicability. This will lead to less international funding and fewer international partnerships and opportunities with overseas organisations.

Failure to disclose one's biological sex is counterproductive to health institutions providing best medical care and can place individuals at high risk of medical injury. Our submission provided examples of such medical incidents. The wellbeing of transgender individuals will be improved by expressing their identity how they wish, but embracing their legal biological sex will ensure that physical health and medical wellbeing are catered for. Further, we hold concerns regarding the safety of girls and women. How can females differentiate between a male predator identifying as a woman versus a genuine trans person? It is impossible, and because it is impossible the State is paving the way for disingenuous and predatory males to occupy female spaces, and we are seeing this happen from Spain to the UK to the USA.

Other Australian States say it is not happening because there's no reported evidence, but it is happening. Already, at our local shopping centre, young males enter the female toilets claiming to be girls and harass the girls in the toilets. The girls don't complain, so it's not reported and therefore is not evidence. And when a mother dares to try to talk about it on social media, she is called a transphobe and a bigot. How will the Government protect girls and women from this type of harassment? We believe the Government is ignorant to the silent shift in female behaviour.

In confidential conversations, some women admit to working from home so they do not need to deal with inclusive issues in the workplace. More are shopping online to avoid sharing change rooms with males who identify as women, and many are self-censoring and avoiding expressing discomfort in case of repercussions. Girls are leaving or being removed from sport by their parents when they need to compete against males who

identify as girls. The bill is not a solution to equality issues and will only serve to decrease the quality of life for women and girls.

Regarding schedule 3, we wish to strongly reiterate our opposition to giving minors adult-like responsibilities in medico-legal consent and believe this is especially relevant given the rising numbers of minors requesting puberty blockers and cross-sex hormones. Genspect supports the recent bans on prescribing puberty blockers in other countries to children experiencing gender dysphoria and hopes that Australia will heed the warnings from overseas and follow suit. Genspect believes the proposed amendments are driven by the concerns and wishes of a small section of society. However, it is clear that the wider impact on society at large, along with the unexpected and unpredictable consequences, have not been critically evaluated. Our recommendation is that the Government cast its net wider and listen to voices from medical or scientific research bodies and industries that will review this bill critically and practically.

The CHAIR: Thank you all very much. We have limited time left. Ms Dalton, will you ask a short, brief question, please?

Mrs HELEN DALTON: Thank you all for attending and for your comprehensive submissions. Do you think this ominous bill is an acceptable way of dealing with discrimination?

CATHERINE ANDERSON-KARENA: No.

KAREN RICHARDSON: No, I think we've all said that quite clearly in our submissions.

CATHERINE ANDERSON-KARENA: Can I answer that question?

Mrs HELEN DALTON: Sure.

The CHAIR: Yes, sure.

CATHERINE ANDERSON-KARENA: There were so many amendments in that, it was just ridiculous trying to go through all of them, because it was such a big issue. Every one was a big issue, even the topic of gender identities. In the kind of area that we deal in, we deal with schools and we deal with teachers. That one thing, identities—I don't think you've looked at the practical implications. I'll give you an example. When we looked at just one week last year, which was the week of Wear It Purple, we just made a note of all of the stories that we got from all the parents in that one week. In that one week—I'm not a lawyer or anything; I tend to deal very practically and just how it impacts people—in Wear It Purple 50 children were suspended for removing LGBTIQ+ posters and flags from John Edmondson High School in Western Sydney.

At another high school—I'm not going to name it, but you can get the names, if you need this information, from me and the people who witnessed it for yourself because I kept them private—one parent reported that a teacher reported a 13-year-old girl to the hate unit of the New South Wales police after she expressed anger towards the notion of identifying as a cat or dog. She was in a maths class. The teacher said, "Imagine identifying as a cat or dog," and she said, "I'd like to be a calculator," because she loves math. The teacher said, "You can't. That's ridiculous. You can only be a cat or a dog." She said, "You can't be a cat or a dog, so you might as well be a calculator." Then she got very angry and the teacher did what she did.

At an ACT school a child has been suspended two times for misgendering. In that particular week, they complained about the noise of the squeaky toy used by a boy who identified as a dog and they were, again, suspended for a day. Then at Shenton College in Western Australia a relief teacher was informed and another teacher has confirmed that one in four students at the school identified as trans. In a Victorian Catholic school—and I'm telling you, I've got people who can talk to you directly about this—

The CHAIR: Sorry, Ms Anderson-Karena, the question was about the omnibus nature of the bill.

CATHERINE ANDERSON-KARENA: What I'm saying is that on any one of those topics, we have case studies on the impact of that. You've squished everything into tiny little pieces and you expect us to take that on board. That is just ridiculous. You do not know the full impact. I have fresh evidence to this Committee that you haven't heard as yet, and I have listened to all your talks. There is so much that you haven't covered because there is too much that you're trying to cover. The bill needs to be broken down into different segments. You already have anti-discrimination for supporting transgender, but some of these things are just—it is just a big conglomeration of stuff that needs to be taken apart and done rationally and commonsensically.

The CHAIR: Do either of the other witnesses have something to say in answer to Ms Dalton's question?

SARAH MORGAN: I would say that it brings in a new form of discrimination, which I think I outlined in my opening statement, which is lesbian, gay and bisexual people, if we erase sex in law—it goes for heterosexual people as well—we become kind of meaningless. We're already experiencing a significant type of

new discrimination and homophobia. Even though sex self-ID isn't in law yet, it's in policy and we are not able to exclude people of the opposite sex who claim to be our sex from our spaces. That goes for, as I said, dating apps, bars, all kinds of walks of life. We are facing a new kind of homophobia, which is clearly discrimination, which we are meant to be legally protected from. This bill kind of overturns that and brings in a different kind of homophobia for us.

The CHAIR: Did GENSPECT want to respond?

KAREN RICHARDSON: My understanding is that a lot of the discrimination is already covered under the current Anti-Discrimination Act and that changing sex on a birth certificate is not really going to solve any discrimination problems for transgender people.

Ms TRISH DOYLE: My question is to Ms Morgan. Can you expand upon the point that you make in your submission that women's health generally could be harmed by the bill's proposed change to allow a person to alter their registered sex to female, male or another sex descriptor?

SARAH MORGAN: When you say "expand on" it, in what sense do you mean "expand on"?

Ms TRISH DOYLE: If you wanted to talk to your view that women's health will be harmed by this bill's proposal—so Alex Greenwich's bill. How? Do you have some examples about how women's health could be harmed? Do you want to extrapolate on that point that you made?

SARAH MORGAN: Men identifying as women in healthcare roles—that's an issue. In wards and so on, women being not able to get same-sex care. I think the pharmacy industry—I've worked in a pathology company. The pharmacy industry and pathology is very clear about what's male and what's female, and we can't just break away from that in an instant. We have to make sure that we stick to the way that sex is organised in a healthcare setting. Excuse me, I wasn't expecting that question.

Ms TRISH DOYLE: That's all right. You talk about women's health being harmed and I just wondered if you had some examples or people who have raised that with you that you could share with us.

KAREN RICHARDSON: Ms Doyle, I'd be happy to take on that question if you allow me to. This is my industry—if that's okay.

Ms TRISH DOYLE: Yes, go for it. Of course.

KAREN RICHARDSON: My background—I've actually got 25-plus years experience in the clinical research industry and pharmaceutical drug development. As part of that—and that was the point that was made in ours, was that at the moment our research is very biased towards males. When we do clinical drug trials, usually we start off in males and then expand out to more females with our populations, unless it is a specifically female-oriented trial, such as ovarian cancer or something like that. Our trials are usually based on pooled results, and hence our statement that the FDA has recently come out with their statement requesting more data using females so that we can understand better how drugs and products are metabolised in females, not just males.

Your question—how does changing sex on birth certificates impact females? If you have females that identify as males and males that identify as females, then the definitions of males and females become meaningless in a clinical trial context. Instead of being able to segregate data into males and females, we can't do that, because now, by definition, females can turn into males so we are just continuing on with pooled data. So we are just continuing on with poor data. This is no longer helpful for us. We need honest, biological data in order to collect relevant data to help women's health. I actually have an example of a women's health survey that's to do with women's pain. This was issued by the Victorian Government, and I'm just trying to find my wording so I can explain it. It's to do with women's pain and it says:

What sex were you assigned at birth?

- Female
- Male
- Intersex
- Another sex (please specify below)
- Prefer not to say

This is to do with women's pain. I believe that the women's and girls' pain is referring to females. If you have biological males completing the research, then that is no longer going to be relevant to females. Additionally, in my own research looking at the adverse effects of testosterone use in females for masculinising therapy—and, vice versa, oestrogen use in males for gender dysphoria—as I was searching through the serious adverse effects databases, I could no longer rely on just using the search term "female testosterone" because I only ended up with

about a third of the cohort. I had to actually go through and search "female", "male" and "unspecified". I could tell by the treatments that were being taken that they were all females, of course, using testosterone for gender dysphoria. But I had to go through now because the sex is no longer reliable as a data characteristic.

The CHAIR: Thanks for those examples. I'm very mindful of time. We are down to just the last handful of minutes now and we still haven't heard from most of our Committee members with a chance to ask questions. Ms Butler, over to you, please. If we could keep our answers brief, that would be fantastic.

Ms LIZA BUTLER: My question will be very direct. Are there any elements of the bill that you would like to see passed as written or passed with amendments?

SARAH MORGAN: Who are you talking to?

Ms LIZA BUTLER: To anybody who would like to answer.

JUDITH HUNTER: No.

KAREN RICHARDSON: No, we don't.

CATHERINE ANDERSON-KARENA: No, absolute no. It needs to be taken apart.

Ms LIZA BUTLER: So you reject it in its entirety?

CATHERINE ANDERSON-KARENA: Yes.

Ms LIZA BUTLER: You wouldn't accept any amendments. Is that what you're saying?

CATHERINE ANDERSON-KARENA: No, it needs to be taken and done more thoroughly than what it's done. The intent is good; I'm sure the intent is good. But there are so many things and it's much bigger. It needs to be taken apart and taken a bit more seriously than what it is, too, if you're going to service people.

The CHAIR: Ms Morgan, do you have a view on that question?

SARAH MORGAN: Yes, our submission on page 11, the amendments to living with HIV. We would welcome those.

The CHAIR: Genspect, do you have a view? Is there anything in this bill that you do agree with and support?

KAREN RICHARDSON: Not that is relevant, certainly, to us. As a whole we oppose the bill. But as the others have said, it's so wide and far reaching, it was impossible to go through every little nitty-gritty bit.

Mrs TANYA THOMPSON: My question is directed to Genspect. The bill requires NCAT to notify the parents of a child under 16 who submits an application to alter their sex unless it adversely affects the child. Can you expand on your concerns about NCAT determining if a child is adversely affected? It's on page 4 of your submission.

KAREN RICHARDSON: Sorry, our concerns if a child is adversely affected?

Mrs TANYA THOMPSON: Yes. NCAT must notify the parents of a child under 16 who submits an application to alter their sex unless it adversely affects the child—notifying the parents would adversely affect the child. Do you have concerns around NCAT determining if a child is adversely affected?

KAREN RICHARDSON: Well, how would "adversely affected" be defined?

Mrs TANYA THOMPSON: Thank you, that's my question.

KAREN RICHARDSON: I'm putting that back on you. Can you tell me how that is defined?

Mrs TANYA THOMPSON: NCAT would define if a child is adversely affected—so if there's not a good relationship between the child and the parents, per se, or the parents don't agree with the decision by the child if they're a minor, NCAT ultimately would make that decision.

KAREN RICHARDSON: Parents don't agree with children about lots of things, so I would not say that that was a reason to state that the child is adversely affected because the parents don't agree.

Mrs TANYA THOMPSON: You've made comments about this in your submission.

KAREN RICHARDSON: Yes.

Mrs TANYA THOMPSON: I'm asking you to comment on that.

KAREN RICHARDSON: You're asking me to comment if the parents—

Mrs TANYA THOMPSON: On page 4—

KAREN RICHARDSON: I understand what you're asking me, but I'm asking for the definition of being adversely affected.

Mrs TANYA THOMPSON: What's your definition of being adversely affected?

KAREN RICHARDSON: I don't know. I'm not a lawyer. We've said that parental rights are undermined by allowing NCAT to approve name and sex change of children aged under 16 against the wishes of parents.

Mrs TANYA THOMPSON: So that's your concern?

KAREN RICHARDSON: I'm putting to you that if it's undermining parents then I don't understand. You're the one that needs to come up with under what situations—I'm not understanding—it adversely affects the child.

Mrs TANYA THOMPSON: If a child is making a decision to alter their sex through medical intervention if they're under the age of 16—so they've made an application to NCAT—

JUDITH HUNTER: They're not old enough to make that decision.

KAREN RICHARDSON: But they're a minor. We're opposing the fact that children should be able to do that.

Mrs TANYA THOMPSON: I was asking for your views and you've shared those, so thank you. Does anyone else want to speak on that matter?

CATHERINE ANDERSON-KARENA: I want to speak about that "adversely affected" too. In our group we've got Tess, who's run Rapid Onset Gender Dysphoria For Parents for about nine years. As I said, we get about four to five parents calling us every week. I've actually asked her to document for about a year exactly how many calls are parents crying because the State has come in to take their child. The reason why the State can take their child is because there's an ideology that if you do not gender-affirm a child, that child will commit suicide. That's leveraged to have those kids do things like mastectomies, puberty blockers and cross-sex hormones.

Despite what you've heard—and we will provide the data for it—these are irreversible treatments and these are dangerous treatments. It's natural for any parent to want to say, "Well, what does this mean? What is the consequence for my child?" That's the job of a parent. "Adverse" historically has been anyone who's opposed to automatically affirming a child and putting them on a medical pathway. I would say to you isn't it the job of a parent to explore all ramifications of those decisions, particularly in this age of social media and the social contagion of the influencers? Tess's case was that they had a TransFolk lobby member come in pretending to be one of the departments to take her child away to a glitter family and then called her abusive because she didn't know what was going on.

Bernard Lane had a case in Western Australia in 2020 when the parents got a knock on the door. There were two policemen there. They asked the parents for their daughter. They were wondering, "What the heck is going on?" The police said, "We'd like to take her outside and talk to her." Then they picked her up, put her in the car—the parents had no idea what's going on—and drove her straight to the gender clinic. Not too long ago she had mastectomies. They haven't seen her in four years. This is not a rare case. We've got hundreds of reports of this. We've got things like the Family Court, because it's gone along with this. You may look and nod your head, but you are not in the shoes of our parents and our families with those kinds of experiences—to lose your daughter or child by the State because you've got this fallacy, you've got this lie, that it's wrong to be against someone automatically affirming a child and putting them on a medical pathway.

Ms DONNA DAVIS: My question is for if anyone has anything else to add. How would you suggest that the bill could be amended to provide better protections for transgender, non-binary and intersex individuals? You may feel that you've already relayed that, but if there's anything else—

SARAH MORGAN: My understanding is that people who hold the belief that they are of the opposite sex are already protected in New South Wales law. The NSW Law Reform Commission is currently reviewing the 2024 suitability of the anti-discrimination laws in the State. Anti-discrimination laws should obviously protect all people against discrimination in housing, employment, daily life and so on. Homosexuality is protected under the ADA, which includes lesbians and gay men. Where there are gaps, the New South Wales Law Reform Commission should be recommending changes. I think what I would say is that trans and gender-diverse people's safety—just like lesbians, like gay men, like other women—is a men's violence issue. This is a national problem, as borne out by the fact that the Prime Minister has chaired National Cabinet this morning on violence against women. We don't believe that there is any special case to be made in that regard.

CATHERINE ANDERSON-KARENA: I think you need to get rid of this idea of a transgender child. I think that's an absolute fallacy. What we've found is most of these children are distressed children. Most of them are LGB, have internalised homophobia, autism, eating disorders, distress, been raped et cetera. What we've seen has happened is that these children in all of this distress have a one-size-fits-all solution which is affirmation, which ignores all the other harms. I have spoken to 52 transsexuals—and we're talking transsexuals, not transgender—asking them, "Gender-affirming care, is there any good about it? Can we look after all kids, not just the majority? What can we do for those kids who will become transsexual and things like that?" They said that the gender affirmation doesn't work because of two things. One, you have to be grounded in reality, because it's such an extreme thing.

The CHAIR: I'm going to have to interrupt you there. We've gone past our designated time. If you have any additional comments—

CATHERINE ANDERSON-KARENA: What I would like to do is put that thing on notice, I think it is. I would like to provide evidence. I would like to provide the testimonies of these transsexuals and their experiences and the experiences of the parents, because these stories, these evidences—you haven't heard.

The CHAIR: Okay. Thank you.

JUDITH HUNTER: I would just like to say that my daughter announced out of the blue that she was transgender after three years of very poor mental health. I spoke up and said I didn't think putting her immediately on testosterone as a teenager was wise, considering she had a very poor mental health record. I was put down by the medical staff. I was called bigoted and hateful, even questioning and trying to slow the process down, and she was put immediately on testosterone against our wishes. A couple of years later, she regretted it. She told me she wanted to kill herself because she can't undo the irreversible changes that testosterone has made to her body. Her mental health is a hundred times worse than it was before they put her on testosterone, and right now I don't even know where she is or whether she is alive, and my story is not unique. As Cat has said, there are thousands and thousands of parents I'm in contact with in Australia and all around the world, who have seen their kids rushed down this medical pathway and their lives destroyed.

The CHAIR: Thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email to you any questions that you may have taken on notice and any supplementary questions that the Committee may send to you. Thank you again for appearing.

(The witnesses withdrew.)

Emeritus Professor PATRICK PARKINSON, AM, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witness. 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 pages. Please 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 that we're undertaking today?

PATRICK PARKINSON: No, thank you.

The CHAIR: Excellent. Would you like to make a short opening statement before we throw to the Committee for questions?

PATRICK PARKINSON: Thank you very much. I'll just make a brief opening statement. I'm here as a lawyer and as a child protection expert. From a legal point of view, I think there are aspects of this bill which are, frankly, purposely confused, particularly the interrelationship between the transgender provisions and the Anti-Discrimination Act. In terms of the impact on children and young people, I think this bill is, frankly, dangerous. When I say that, I mean dangerous to transgender and gender diverse children and young people, and I mean dangerous to children and young people who will eventually grow up to be lesbian/gay adults. I've dealt with that in some detail in the submission.

To explain that very briefly in terms of confusion, it would appear that the drafters of the bill want to include non-binary, agender, genderqueer people within the scope of the Anti-Discrimination Act. Well, that's fine, but I don't think they do that. I don't think they do that because other parts of the Act talk about male and female only—do not give a third alternative—because the language of the Act is about sex whereas those who've

said they're non-binary or genderqueer are making statements about gender. At the very heart of this bill is very serious conceptual confusion.

Most important, though, I would suggest that the Parliament must be clear about the legal consequences for other people of someone identifying as transgender or non-binary or something similar. What obligation does that impose on the rest of us? That's the key question. I quoted on page 2 section 38B (1) (c) as it will be amended, if the bill goes through. I challenge any member of the Committee, with respect, to try to even understand such complex language. It's extraordinarily convoluted. When you write legislation for the whole population, it has to be clear. It has to be simple. If you're writing legislation just for accountants, it can be quite technical but when you're giving a message to the whole community about how they treat others, then it has to be as simple as a speed limit of 60 or 50. It must be clear, and this bill fails that very basic test.

What I think section 38B (1) (c) says is that you discriminate against somebody if you do not treat them as the sex with which they identify. There's no requirement that you register to alter your sex in order to come within that, so the effect of the bill is to require the rest of the people of New South Wales to go along with whatever someone says their gender identity is. That could be quite fluid. It could be quite changeable. It often is. It's also a civil rights issue. I don't mind in the slightest how people identify, but where it affects my rights is when I'm told by the law that I must treat them as what they believe themselves to be, or they wish they could be.

Nowhere in the bill is there any clarity about how the proposals intend to balance the rights of males who identify as transgender or gender diverse with the rights of women to bodily privacy and dignity in single-sex spaces. I'd imagine you have heard a lot about that. I want to make one simple point: The Parliament can decide whatever it wishes on that. You are the Parliament. It can say that trans rights trump lesbian rights. It can say that trans rights trump women's rights. That is a matter for Parliament. But it must be clear and transparent about what it is doing, and I don't think this bill is.

If I give the example of women's gyms, could a women's gym exclude male-bodied persons who have registered as female? I don't think that they could after this bill was passed. What if they're not registered legally as having changed their sex? Again, I think the answer is no—a women's gym could not exclude them if they say they are female. But whatever the law is going to be, the Parliament must make that crystal clear and, with respect, I think it's as clear as mud.

My final points are all about children and young people, which is what I've spent 40 years caring about in terms of child protection. I am really seriously concerned about some of the impacts of this bill on children and young people. To raise two issues briefly, the first one is this: If you say that somebody has a legally protected gender identity, at what age do they acquire that? Is it four years old? Is it 13 years old? Is it only after a doctor makes a diagnosis of gender dysphoria? What is it? If we're unclear about that, then we have a lack of clarity that affects every school in New South Wales.

Secondly, the changes to the law about consent to cross-sex hormones and puberty blockers are, in my view, dangerous, because if children and young people are not treated with puberty blockers or cross-sex hormones, the research shows that most of them will grow up to overcome their gender incongruence. Most of those will grow up to be gay or lesbian adults. We create grave risk if we lock children into a gender identity that may be a transient one for them. I think, in a fairly short period of time, we will move to a position where we ban these treatments entirely outside of a carefully regulated research program. That's the position that is emerging in England, Scandinavia and elsewhere. For now, the Parliament and the Government is risking an ever-increasing compensation bill. It should not make it worse by the passing of this aspect of the bill.

Ms DONNA DAVIS: Thank you very much for attending today. How could the wellbeing of gender-diverse young people and children be improved?

PATRICK PARKINSON: Thank you for the question. My answer may be a bit surprising, but I think it is best for the law to stay out of it. I think what we need to do is to trust the adults in schools and others to have the wellbeing of the child first and foremost in their minds, without feeling they are constrained by the law to do one thing or another. Let me give you an example, and that is the issue of social transition. A girl at 11 enrolls in a school as a boy. That's not going to make any difference at 11. But once she starts developing breasts, and once she continues to have a female voice but others her age do not, that can become an enormous trap for her. She may be driven down the path of medical transformation, but this is really not what she wants or needs. I think it's best for the law to stay out of it and to trust in the wisdom of adults and that most of us are really concerned to promote the best interests of children.

Mrs TANYA THOMPSON: Thank you for your time and your submission. Your submission references case law and how the bill may conflict with the Federal position on requiring both parents to consent to the use of puberty blockers and hormone therapy. Would you mind elaborating on this point for us, please?

PATRICK PARKINSON: It all comes back to a decision of the High Court of Australia in a case called *Re Marion*. This was about the sterilisation of intellectually disabled girls. The High Court said that in many situations the parents have no legal right to consent to the sterilisation of an intellectually disabled girl. It needs the approval of the court. That has been applied to children who identify as transgender or gender diverse.

The current law is a case called *Re Kelvin*, where the Full Court of the Family Court has said, "Given the risk of sterilisation—in fact, the likelihood of sterilisation—this needs court approval unless both parents consent and the doctors consider it's in the best interest of the child." Now, this bill tries to change that. I'm not sure it succeeds, because Federal law overrides State law, but it tries to say that it's lawful for a child of 16 to give his or her own consent and also that a doctor could, without the parents' knowledge, approve treatment of a child under 16. That conflicts with the Federal position, and I don't think it would be a successful attempt. But, in any event, I would say it's a dangerous thing to do, given that most of these kids have other psychiatric problems. We are engaged in a very, very risky enterprise in NSW Health at the present time in places like Maple Leaf House and elsewhere.

Ms LIZA BUTLER: Could you detail any inconsistencies arising from the proposed changes to the Anti-Discrimination Act? In your submission, you talked about the exemption for private schools and religious organisations. How could these inconsistencies be addressed?

PATRICK PARKINSON: Well, there's a range of problems identified in my submission. But, to deal with the issue of private schools first, I would acknowledge that the exemption given to all private schools from anti-discrimination law provisions is too wide. Most schools don't want that and don't rely on it. But as you would have heard, I'm sure, earlier in this hearing, there are Christian schools, there are Jewish schools, there are Islamic schools which do have very strong positions on these issues. This is a matter which is being debated federally. It's a matter which is under consideration by the NSW Law Reform Commission. I would just say, with respect, I think the Parliament should wait on those processes and not try to jump the gun. These are complex issues of conflicts between rights, and they are particularly complex in a multicultural society. We welcome refugees. We welcome migrants. But we should not be saying to them, "You must leave your religion on the boat," and we are at risk of doing that, I think, in the way the law is changing.

What I would like to see on that issue is a nationally consistent approach to the issue of conflicts between LGBTQ rights and those of faith communities, and also the conflicts within the gay and lesbian community. Let's resolve them on a national basis and not have piecemeal State laws all inconsistent with one another and conflicting with one another and creating a lack of clarity. I think that's the way forward. And the way forward on that is, I think, to allow freedom of association. Say to the lesbian groups, "You are free to associate with other lesbians." Say to the theologically conservative Christian groups, "You are free to associate with theologically conservative Christians and run schools in the way that you feel is consistent with your faith." If we allowed more freedom to everybody, then we would not have the conflicts which you have, I think, spent a day and a half hearing about around LGBTQ rights.

In terms of the other inconsistencies, there are huge issues, as I'm sure everybody is aware, of conflict between the rights of women and girls to bodily privacy and dignity, and the rights of trans-identifying males. I say this recognising that there are people in our community who are trans-identified. We've always known that. We've always known that from very early years. There are little boys who, for whatever reason, identify as female. The law has tried to create a good balance in the current anti-discrimination laws about that by saying that if they are recognised transgender people—if they've gone through the surgery, that's signed off by the doctors and they are now, as far as they can be, identifying and living as females—then women's rights must be displaced to that limited extent.

Under the bill you are now considering, there would be a revolution in the way these matters are handled, and anybody, as you know, self-identifying as female could not lawfully be excluded from women's single-sex spaces, and that really does raise very significant issues around bodily privacy and dignity. I don't know it raises issues about safety, but I don't know it doesn't. And, again, I think these complex issues are best left to the NSW Law Reform Commission to try to come up with a very considered and sensible view. Tom Bathurst is leading that inquiry. He is an eminent judge, and I'm sure he has a good team around him.

Ms TRISH DOYLE: Emeritus Professor, you say that there are too many problems with this bill to enact it and no minor amendments that the Committee could propose to salvage it. In your view as an expert in child protection, how do we better protect individuals from discrimination, then, if you cast aside this proposed legislation—those individuals that identify as non-binary, gender diverse or intersex? What do you say to one of our witnesses who described a life yesterday of being born exhibiting ambiguous genitalia, having multiple surgeries, being left out of decisions made about them in terms of who they were, who says they now identify as non-binary? What do you say in terms of the protection and freedom from discrimination?

PATRICK PARKINSON: The question really focuses on those who identify as intersex. We call those disorders of sex development. That's the more common term in the medical literature these days. They are of many different kinds. Some people can be identifiably, visually, clearly female, clearly male, yet have a disorder of sex development. The sort of person you're referring to—and I didn't hear his or her evidence. That's a rare but tragic situation, and the question is what does the Parliament see as the need to change things legally. If the issue is should we not perform surgery, wait until the young person is 18 to make up his or her own mind—that's a perfectly rational view around that issue—then let's amend the Public Health Act.

Ms TRISH DOYLE: With all due respect, how do we protect those people from discrimination?

PATRICK PARKINSON: The first question I'd want to ask is do they experience any. Largely, disordered sex developments are invisible. But, if discrimination law is the right tool to pick up, fine. I've got no objection whatsoever to changes to the law around intersex people, and in other States they exist. I'm just asking the question is this the right tool for that.

Mrs HELEN DALTON: Thank you for attending. Is it fair and reasonable that 20 pieces of legislation be addressed in one omnibus bill? And has this ever occurred before in legal circles, where you're throwing in everything, where there's a sort of a knock-on effect to these other issues?

PATRICK PARKINSON: This is a very, very complex bill. And, yes, of course, we have other complex bills, which are almost invariably Government initiated and for good reason, because all these conflicts and issues which arise around different pieces of legislation need the most careful thought and study. The Attorney General's department is well equipped to do that sort of work, and I'd expect, for a bill of this complexity, an explanatory memorandum of no less than 400 pages, which teases out very, very carefully what the bill is meant to achieve and mean. What we have is a private member's bill, which has a very brief and unhelpful explanatory memorandum. No, this is not a good process for making such major changes—and major changes which affect the entire community.

It's one thing to have a law which appeals to people in Paddington and Glebe and Kings Cross but it's another thing for a law which can be understood and accepted by the entire multicultural population of New South Wales. This bill just doesn't conform with the population's understanding of how this issue should be dealt with. Go to the pub and ask some of these difficult issues about women's gyms or women's facilities what people think and I think you'll get a very clear answer. Beyond that, as I pointed out, this particular bill is very, very poorly drafted, and so it could not go through, in my view, even if, in other situations, we would be comfortable with a private member's bill making such radical and vast changes to the law.

The CHAIR: Professor, I want to specifically ask you a little bit more about the Family Court matter involving Kelvin, and where we sit constitutionally with Federal law, as I understand it, taking precedence and overpowering State law where there's an inconsistency. Is that roughly correct?

PATRICK PARKINSON: Yes. Mr Barr, I have real difficulty answering your question from a legal point of view because we don't have a situation where Federal statute clearly overrides the State statute or potential State statute. We have a situation where the High Court has said certain decisions are outside of parental power, and then we have New South Wales, if this bill were to pass, saying, "No, no, some things can be decided by the young person himself or herself," which is currently the case under the Minors (Property and Contracts) Act of 1970.

I think my view remains that if a doctor were to act without both parents' consent in New South Wales were this bill to be passed, they would have no concerns from the New South Wales courts under New South Wales law but they would still be in breach of the Federal law. I think that's probably the best answer I can give to your question. There would still be a breach of the Federal law. What does that mean legally? It might mean their insurance is null and void. It might mean they have no real defence were they to be sued federally in some way or another. But the bottom line is it would make the law an incredible mess and be very hard to advise anybody what the position is.

The CHAIR: I think that last part is the crux of what I was getting to. I really appreciate your time with us this afternoon, Emeritus Professor, and I know it has been informative for me and I'm sure for my colleagues. Thank you for appearing before us 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 today and any supplementary questions from the Committee that may be developed over the coming days. We appreciate, if that's possible, for you to turn those questions around, if they come your way, within seven days so that we can progress.

(The witness withdrew.)

Dr HELEN PRINGLE, Nordic Model Information Network, sworn and examined

The CHAIR: I welcome our next witness, Dr Helen Pringle. 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. If you have any concerns about the taking of those photos or videos, please let the Committee staff know. Before we start, do you have any questions about the hearing process?

HELEN PRINGLE: No.

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

HELEN PRINGLE: Thank you very much for asking me to give evidence. I imagine that you have acknowledged country earlier today, if I could add my recognition of the land on which we stand. In this context, as you'll see from my evidence—because I want to place this question within the question of violence against women and girls, including sexual violence—I wanted to also add an acknowledgement of the violence against women and children that accompanied colonisation in Australia, which is rarely acknowledged even now. I know that the member for Myall Lakes would know a little bit about a trial that was held there—one of the few trials in which white men were held responsible for the murder of black men. In that same incident, a woman and a child were raped repeatedly during the night and have never been held responsible or even recognised. It doesn't appear in most histories of that incident or of the incidents of the colonisation of Australia. We have a history in this country, and it's against that history that I'm speaking as well.

In this particular case, I want to make clear the limits of my evidence. I am not going to be speaking to the whole of the bill. I acknowledge this point very well. To the question that was being asked about the usefulness of an omnibus bill like this, in another hat that I'd be wearing in my capacity as a political scientist, I think it does short-circuit the deliberative process and doesn't lead to optimum outcomes, as it hasn't done in a similar omnibus bill in Queensland. I also noticed that Mr Greenwich has expressed the view that, perhaps, some of these questions would be better served at a later point with further investigation, so I take heart from that. I'm appearing now only to address the questions about the prostitution system which are covered in the reforms proposed for the Summary Offences Act and the Anti-Discrimination Act.

The organisation that I'm appearing for is the Nordic Model Information Network. I must also acknowledge my partner in writing and research, Simone Watson, who is acknowledged in the appendix to my submission on a submission we made to the Commonwealth Government on the questions of consent, in which we argued that too often the question of violence against women doesn't include women in prostitution and that it should do, otherwise it will leave women behind. The organisation that I'm speaking for is a global network of researchers and teachers. I'm a researcher and teacher at the University of New South Wales. These, of course, are my views; they're not the views of the university. My views have been claimed to bring my university into disrepute by Professor Basil Donovan, so I should warn you of that in passing. I don't believe that they do.

The global association that we have was formed in 2014. It was formed at the time of resolutions passed by the European Parliament by overwhelming majorities and by the Parliamentary Assembly of the Council of Europe. I think everybody probably knows what the European Parliament is and that England no longer belongs to it. But, in fact, England still belongs to the premier human rights organisation in Europe, which is the Council of Europe, which was founded in part by Churchill. So there is a reluctance—a certain justified reluctance, I think—for England to leave the Council of Europe, and they haven't yet done it.

At that time both the Parliamentary Assembly of the Council of Europe and the European Parliament passed similar resolutions—not identical—in which they called for serious consideration to be given to implementing the Nordic model as an approach to prostitution and trafficking in Europe. The European Parliament, in fact, stipulated that prostitution and forced prostitution were forms of slavery. So that was the gravity and the framework within which they put this question. They weren't mucking around with summary offences. In 2023, the European Parliament also passed another resolution, by an overwhelming majority again, along similar lines, but they changed a few things here. We were in support of those resolutions, and hopefully I think we can say that we played some small part in the passing of those resolutions.

Since that time—it's a fairly loose association, because it's global, of course, but we managed to put together various submissions, as well as our academic research. It is a research network, but we do have close links with survivor groups. We believe that any consideration of prostitution in this Parliament or elsewhere should—and must, in fact—include survivors' testimony. That's one of the things that I would recommend you do before you pass those summary offences Acts. We can see very well the point of reform. We think that the Summary Offences Act provisions and also the provisions in the Crimes Act could do with a reformulation, as

well as the Anti-Discrimination Act. We don't think that they're satisfactory. We think that there is an urgent need for reform, but not piecemeal reform as in this bill.

We see the reform necessary as a human rights issue. It's not a question of morality. It's not a question about public disgust or feelings, or any of those older understandings of prostitution. That is not the game we are playing. It's not a game, but it's not anything to do with what we are talking about. For example, when we talk about public place offences, our view is not that prostitutes—which is not a word you will hear again from me in the course of this hearing—make the streets dirty or do some other things that offend the moral sense of people. That's not our view.

Our view and our perspective is that of human rights and equality of women and men, completely—and we will not work with anybody who doesn't have that perspective. At the University of New South Wales I teach in human rights of women and girls, in particular, and teach one of the two biggest courses in my school, which is on human rights and women. I just reassure you that I encourage disagreement; I love it. So please don't think I am teaching students my particular perspective, but I will raise it with them. We have some great arguments, deliberations, conversations and disagreements, which I enjoy thoroughly.

We can see the point of the reform but the Summary Offences Act provisions that are under consideration contain very old formulations, and they bear the marks of that older moralistic type of view of prostitution. For example, in their use of the word "prostitute". We never use that word. We use the word "woman in prostitution" or "a prostituted woman". But, fundamentally, our focus is on who does the prostituting, and that's the buyers, and who does the harm to women, and that's the buyers. The language and the formulations are things that we would change. However, our submission doesn't agree with calling women or men in prostitution sex workers. We believe for various reasons that this is a misleading term—not just the wrong word to use, but a misleading term because it leads us into thinking that being exploited is a job. We don't think that exploitation is a job description. It is what it is: exploitation.

Secondly, we want to see a different framework for any provisions on prostitution. We don't want this treated in the framework of an omnibus bill; it needs its own framework. That framework that we see as important is the framework of violence against women and equality between men and women. If I could recommend this to you, we believe that the Parliament should consider having a comprehensive reform of the laws on prostitution overall, within that framework. We believe that that framework that treats sex buyers and who they buy—anything that treats those two categories equally we think is discriminatory because there is no equality between sex buyers and those who they buy.

We would put this question in the framework of what Sweden did when it first brought in what is now called the Nordic model in 1999 and 2000. They brought in the Nordic model approach to prostitution as part of a violence against women bill. That's what we would like to see happen. We would like to see prostitution have an Act of its own, in a way. As I said, we don't believe this is a job like others but that it involves important questions of exploitation and coercion. Instead of chipping away at what few protections of women in prostitution remain, we believe that we should have a comprehensive framework with completely different consideration structuring its basis—no longer moralism but no longer exploitation either. I might stop there and then I can talk about anything that you'd like to ask about.

I can also talk a little bit about some—we would see that there are some measures that you can take straightaway, right away, today. The police could adopt a different approach to policing of prostitution. This is set out in one of the handouts that I've sent around, which is a hearing in England at which the superintendent of the Suffolk Constabulary, Alan Caton—who can be easily reached in Australia because his daughter lives here so he comes here often. He'd be happy to explain it to you. He took up that position in the wake of the Ipswich murders by a savage murderer—all murderers are savage, I suppose—of young women in prostitution. We also believe that a small reform to the consent provisions in the Crimes Act would do a world of difference, and that you can see in the appendix to my submission. We would argue that as an interim approach and that you should take steps towards the Nordic model framework for prostitution as exists in Sweden and other Nordic countries, but since then also in France, which, to me, is extraordinary that that has happened in France—

The CHAIR: Dr Pringle, I might just interrupt you there so that we can get to some questions, otherwise we're going to completely run out of time. We will run out of time as it is, no doubt.

HELEN PRINGLE: Of course. Sorry.

Ms DONNA DAVIS: Thank you very much for being here today. Some proponents of the bill, including sex workers, argue that pimping and abuse of sex workers can be more effectively prevented when sex work is decriminalised and there is transparent regulation. What is your view on this?

HELEN PRINGLE: In States where prostitution is decriminalised—I'll just give you a quick example from part of my research at the moment. Because I'm an analyst rather than a—I don't take surveys. We use the material and the evidence that's collected, at UNSW in particular, by people who are in support of sex work, in terms of that phrase. My research at the moment focuses on prosecutions of sex buyers for violence against women in prostitution. We find that it's almost impossible to get a successful prosecution, no matter what you try. That seems to point to a really—it's not just the question of taking off all the protections but in fact would actually probably involve more protections. So, no. We don't find any evidence of differential rates of what is being complained of there, rightfully, but we don't find any between decriminalisation and others. Murder rates are the same, if not higher, in decriminalised places like Germany, for example.

Mrs TANYA THOMPSON: This bill proposes to remove part 3 of the Summary Offences Act. Do you have any suggested amendments to this change to better protect the wellbeing and safety of sex workers? I note in your submission a bold line where you say, "Prostitution can only be made safe through abolishing it." I just wanted to hear your thoughts on that.

HELEN PRINGLE: I think I mentioned that there are worthy proposals in the list of things to be addressed. In particular, we would say that the first of those is the decriminalisation of soliciting—or, as it's called in France, *racolage*. That was the first act that took place in the implementation of this model in France, the abolition of that, and, in effect, the decriminalisation of women from doing what they are doing. It was shifting the burden onto the buyers as the criminals, because criminals exploit others. Exploiting others is a criminal act. If the European Parliament is to be accepted and we say that prostitution and forced prostitution are forms of slavery, that slavery is a criminal act.

We would say that it's shifting our focus away from women. I don't see a problem with saying that if women are victimised they are victims, but I know a lot of people don't like the language of "victims". But if you are victimised, that's what you are. There is no hiding it behind saying, "I don't like to be called a victim." Those who are victims of crime, those who are victims of exploitation, those who are victims of violence and coercion should be given support and not be put in prison. We say that the only way it can be made safe by abolishing it is by addressing the demand side.

Mrs HELEN DALTON: Thank you for attending. Do you think there is a link between drug addiction, slavery, money laundering, gambling and prostitution?

HELEN PRINGLE: Who is arguing that it isn't?

Mrs HELEN DALTON: You said you like to argue.

HELEN PRINGLE: Yes, I do, and I don't think that there is anybody who disputes that. But the Scarlet Alliance and other groups like that would say that there is that link because of the criminalisation. Their view is that if you decriminalised—and they say that we have, in New South Wales, decriminalised but not as much as we should in order to free us from that. It is a past that New South Wales has, that Sydney has in particular, and I think it shows all of those things and how they are connected. Throw in the abortion provision with those as well. Yes, their view is that they are connected because the industry—the prostitution system, as we call it—is criminalised. We say that if you are committing those crimes, then you should be criminalised. That's how we would address it. But if you want more argument, just give me a call.

The CHAIR: Dr Pringle, is it possible for people within the Nordic model to accept that some people, whether they are male or female, want to work or participate or be active in this space?

HELEN PRINGLE: Of course.

The CHAIR: Are they victims?

HELEN PRINGLE: I think the problem here or the difficulty in answering that question is that we are talking here not about individual transactions. When I was an undergraduate, for example, we tackled this topic as a philosophy topic, and the topic was "Does a man have a right to buy a woman? Can a woman sell her body for sex?" It's not how the system works. This is a global industry. It's associated with pornography. It's associated with surrogacy, we know. It's associated with all those other criminal elements and so forth that we're talking about, and it's associated with trafficking. And so to say, "Here is a person who enjoys what they're doing", what I would say is "That's great. Fine. I'm not coming for you. My approach isn't coming for you in that sense." What we are coming for you is the way in which this system is built such that it's a system of coercion and exploitation.

Now, obviously, even in a slave system some people are relatively privileged. If you see any of those slave movies from Hollywood—and, in this, they're accurate—there are house slaves. We think of slaves as working out in the hot sun and the fields and so forth. There are also house slaves who were relatively privileged, who didn't bear the brunt of hard labour. They bore the brunt of—how shall I put it? I know how I would put it,

but I can probably expurgate my explanation. They bore the brunt of the master. There was sexual exploitation there. Now, you can live in a gilded cage, but it's still a cage.

The CHAIR: That's the slavery model. The reason I asked my first question specifically was because— is there sexual slavery in Australia at the moment? Yes. Is it unacceptable? Yes. Slavery in all of its forms is unacceptable. But we had some witnesses here yesterday who—their own language is that they are sex workers, which I appreciate is not comfortable for the Nordic principle proponents.

HELEN PRINGLE: Accurate, yes.

The CHAIR: Sorry, did you say "accurate"?

HELEN PRINGLE: Well, you said "comfortable" and I meant it's not so much my sense of comfort with that but my sense of its accuracy.

The CHAIR: Well, that's their term. That's the term they use to describe what they do.

HELEN PRINGLE: It is, yes.

The CHAIR: Okay. If I understand the Nordic model correctly, it's about decriminalising the activity of the people who are, I guess, offering their own body in service but making it criminal for the people who are willing to pay for that.

HELEN PRINGLE: Correct. Or who are organising that.

The CHAIR: Sure. So organising's separate from—

HELEN PRINGLE: Yes. It's connected, but yes.

The CHAIR: Well, I would suggest that there's a whole bunch of people who pay for sex activities that are not organisers of it. Is that right?

HELEN PRINGLE: I'm not quite sure what you're getting at, but if you're saying that there are people who don't organise brothels but nevertheless frequent brothels, yes, that's true.

The CHAIR: Yes. Okay. Part of the evidence yesterday was that because the criminality shifts to the person who is paying money for the service, that then forces it to be more underground, to be less identifiable, to be more in dark corners and for the worker—I'm going to use the term because they did—to be more exposed and in a more dangerous setting and, in their words, to take jobs that they otherwise wouldn't have taken had they known the identity of the person, but the persons are not willing to give up their identity because they're now the criminal, or more so the criminal. I mean, that's their view.

HELEN PRINGLE: It is.

The CHAIR: They would suggest, and they did suggest to this Committee yesterday, that that actually made what they do more dangerous. The Nordic model made what they do more dangerous.

HELEN PRINGLE: There's no evidence of that in the countries where the Nordic model has been implemented. In fact, there's been, whether it's in Sweden and the Nordic countries, or Northern Ireland or Ireland or France, there is evidence to suggest that the level of violence against women decreases. As long as you have a system in which people pay to violently exploit the bodies of others, then it will never be safe. Brothels aren't safe. It's all very well to say, "Well, in brothels people are safe," but much of the crime that reaches the courts is in brothels. There's been no suggestion that brothels somehow wave the magic wand and everything is safe.

If you are working in a brothel and you complain about a client who doesn't do things that he's supposed to do, like wash himself, for example—and I'm thinking here of a recent Canberra case—and then attacks people with a chair because he's being asked to wash himself. The person who he was attacking wasn't defended properly by the brothel operators at that time—she doesn't work in a brothel any more. She has PTSD, as most former women in prostitution do. I just want to be really clear about this. This is not my statistic. This is a statistic of my colleagues at the University of New South Wales who work in this area and who are in favour of sex work—and their study was among street women but there's no evidence to suggest it's any less in brothels—that PTSD rates were as widely spread and as high as Iraqi and Afghani war veterans. How are they safe? This is in a largely decriminalised State.

The CHAIR: I think the point that you made earlier, which was also a point made yesterday in testimony, was that the challenge of getting police to act, to take it seriously, to enforce the law as it currently is against some of these brutalities et cetera is a problem. Hence, that goes to the final question I want to pose, which is the people who are active in this space told us yesterday that they want to see the amendment as proposed in the bill enacted because they feel like it will make them better off.

HELEN PRINGLE: Mr Barr, did you speak to any operators of brothels?

The CHAIR: No, we only had the two witnesses yesterday and I'm not sure if they're operators, active participants or employees or whatever the case is, but they identified themselves as sex workers and they're the two that we spoke to yesterday.

HELEN PRINGLE: You're right. You wouldn't be sure of that because the Scarlet Alliance wants to redefine the term sex worker so that it includes not only women who are paid but also their term sex worker would include the operators of brothels as well—if you read their submission.

The CHAIR: You and I have a different reading of their submission, I guess. I thought that they were pretty clear in how they were trying to define who a sex worker was.

HELEN PRINGLE: Such that it includes not merely who we would understand as a sex worker. I'll have another look.

The CHAIR: That's okay. I can do that too. Again, I just want to go back to the point. We got distracted there by brothel owners or operators. But they were saying that they endorse the proposed amendment. You're saying that you don't support the proposed amendment.

HELEN PRINGLE: Correct.

The CHAIR: Because you'd prefer this model, which they don't endorse or support.

HELEN PRINGLE: They don't endorse. Survivors' groups around the world endorse this model.

The CHAIR: I'd have to take your word for that.

HELEN PRINGLE: I'm sorry about that. I did ask Simone if she could be present but she's in Western Australia at the moment. But we have ample studies of what other people believe. But one thing I would add—and I'm sorry, I know I've taken all of your time.

The CHAIR: No, we've still got another minute and a half. Go ahead.

HELEN PRINGLE: Very good. One thing that I would add is that I think that we need to again put this in the context of a system where it's a system that is related to violence against women. People often say—and I've written a paper about this expression "Nothing without us". It comes from disability language, "Nothing about us without us." Sorry. It's a good slogan. It means something. It's not just an empty slogan, but it means that you must consult those who are affected. Women at present working in prostitution are directly affected; they must be heard. But women who are not in prostitution must also be heard on this. Women who have survived prostitution must also be heard. So when you talk about the prostitution system, "Nothing about us without us" includes nothing about us women without us as well.

What do we believe when we see a certain group of women who are marked off? I often hear the discussion not merely about underground, but people say to me, "If you ban prostitution or abolish prostitution, or if you make it go underground"—and I don't know where that is, but anyway—"then women will be unsafe". My ears sort of go full extent; my eyes pop out. I realise what they're saying is—and I have to explain this—there are a certain group of women who are being treated as the rejects, the debris. The rest of us women are going to be safe as long as—we're not anyway; it doesn't work. We're going to be safe from sexual assault; we're going to be safe from rape. This is an old nineteenth-century view put forward by a historian called Leckie, firstly, that we're somehow made safe by prostitution by creating a group of people who are unsafe and who will never be safe while prostitution remains. I'm not as directly affected as women in prostitution, but I think I have a voice too. I think I'm affected. I think it's about us.

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 to you any questions taken on notice from today and/or any supplementary questions from the Committee that will be developed in the coming days. If you receive any questions we do ask, if it's at all possible, to get it back within seven days so that we can continue our work. The Committee will now take a short break and return at 3.30 p.m.

(The witness withdrew.)

(Short adjournment)

Mr ALEX GREENWICH, Member for Sydney, before the Committee

The CHAIR: I welcome our next witness. Thank you for appearing before the Committee today to give evidence. Before we start, do you have any questions about the hearing process?

Mr ALEX GREENWICH: No questions.

The CHAIR: Alex, would you like to make a short opening statement before we throw to questions?

Mr ALEX GREENWICH: Absolutely. Thank you very much, Chair. At the start I'd like to thank Committee members and all the Committee staff for taking the time to participate so actively in this inquiry, as well as all the organisations and individuals who have made submissions to the inquiry. The New South Wales Parliament has a strong and proud history of redressing LGBTQIA+ law reform in a bipartisan way. At the heart of my equality bill is that LGBTQIA+ people exist and should be recognised and protected in law and allowed to thrive.

Unfortunately, as you have heard throughout this inquiry, our laws treat LGBTQIA+ people as second-class citizens, facilitating discrimination and stigma and refusing to affirm their experiences. The NSW LGBTQIA+ Health Strategy shows us that chronic exposure to discrimination and stigma is leading to poor health and wellbeing among LGBTQIA+ people. We should be especially worried about young people who are struggling and at risk of lifelong mental health concerns as a result.

I draw the Committee's attention to data from the headspace and Black Dog Institute joint submission about young LGBTQIA+ people and mental health. LGBTQIA+ young people are overrepresented amongst headspace users, and their proportion is growing. The Black Dog Institute Future Proofing Study revealed stark disparities in clinically significant health symptoms between LGBTQIA+ students and their non-LGBTQIA+ peers, including for depression, anxiety and suicidal thoughts. They had double the rates of bullying at school and feel significantly less safe there. The New South Wales Mental Health Commission identified that 80 per cent of homophobic bullying in Australia happens at school. These findings are the lived experience of young people we all represent, and I believe it is unconscionable for us to stand by and let the status quo continue.

New South Wales is far behind the rest of the country in LGBTQIA+ law reform. This bill provides an opportunity to not just treat the symptoms of discrimination but fix the causes. The bill is not radical. Essentially, it extends discrimination protection to include all LGBTQIA+ persons in more settings, including students in private schools; ensures that trans and gender-diverse people can access accurate and consistent State documentation so they can get on with their lives; removes remaining offences that criminalise sex work; makes threatening to out a person's LGBTQIA+ status a form of domestic abuse; ensures children born out of commercial surrogacy arrangements can have their parents recognise if it is in the child's best interest; protects the dignity of trans and gender-diverse people in body searches; and encourages LGBTQIA+ employment in the public sector. These small changes will make a big difference to the lives of LGBTQIA+ people and make very little difference to anyone else.

Before closing, I want to address the claims from some witnesses that removing the surgery requirement for trans and gender-diverse people to get accurate State documentation is a threat to women and to safe women's spaces. I draw your attention to the very clear statement from Domestic Violence NSW's submission that the bill will have no impact on the way DV services deal with trans and gender-diverse people. Refuges already have policies to ensure safety. And, as DV NSW's submission highlights, because transgender people are 2.2 times more likely to be victims of physical intimate-partner violence, refuges have been accommodating transgender women for many years. My consultations with DV NSW and women's refuges confirm that the claims of threats to women, as provided by some organisations, are based on misinformation, fear and prejudice against trans people, and serve nothing more than a very dangerous distraction from the very real threat women, including trans women, experience from gender-based violence exerted by men.

I would also add that several organisations you've heard from yesterday, and especially today, essentially expressed the view that trans people don't exist. While they are entitled to their own opinions, they are not entitled to their own facts. New South Wales, Australian and international law make it clear that trans people exist, and my bill will simply allow them to get on with their lives. As I said in my submission, I will continue to work with the Government and all colleagues on this bill. I have been through the Government submission and see lots of room for further cooperation.

I've already been working productively with the Government to address operational impacts and, following discussions with NSW Health, I intend to withdraw the provisions on the regulation of gender-affirming care by legislating Gillick competence. The removal of these provisions, which is schedule 3 [2], is due to potential unintended consequences and impacts with the framework in place with gender-affirming care in

New South Wales. I'll await further advice on whether amendments are needed to ensure Corrective Services NSW can continue to determine the appropriate accommodation for trans and gender-diverse detainees on a case-by-case basis.

Mr Chair, while I respect the Government has begun a review of the Anti-Discrimination Act, I believe submissions of both supporters of the bill as well as the very concerning contributions of some opponents of the bill yesterday and today clearly show an urgent need to protect LGBTQ students and teachers from targeted discrimination, bullying and harassment that is legally allowed to proliferate today in New South Wales. I provide the Committee with a copy of *Dismissed, Denied and Demeaned* on the experience of LGBTQ people in private schools. Dr Karen Pack, who, as Equality Australia highlighted, was sacked by Dr Ross Clifford, who appeared yesterday, has asked me to provide further information to the Committee about her experience, which I will also provide to Committee staff for tabling, and I indicate she is willing to meet with the Committee to share her experience directly. Mr Chair, feel free to ask me anything.

The CHAIR: Thank you, Alex. Can I ask you, just that last little comment there, do we need to consider anything from Dr Karen Pack in confidence?

Mr ALEX GREENWICH: No, she's happy for the document to be provided on the public record.

The CHAIR: Thank you. I'll throw over to questions.

Mrs HELEN DALTON: Thank you for attending. Do you think that many aspects of your omnibus bill should be dealt with alone, as separate, and in more detail?

Mr ALEX GREENWICH: I thank you very much for the question, Member for Murray. I know that opponents of the legislation have said this bill is too big and it's too complicated. A little bit of background: The bill was announced well over two years ago, in 2022, when an open consultation process began. The legislation was introduced in August of last year, and my office continued to receive a great deal of feedback and engagement with New South Wales government agencies and other stakeholders. And now we are dealing with a parliamentary inquiry into all aspects of the legislation, where you've received a great deal of submissions.

There has been a great deal of consultation and a great deal of work that has gone into this legislation, and it deals with a lot of overdue law reform. While it does amend a number of Acts, essentially it does one thing, which is that it gets New South Wales up to speed with the rest of the country on LGBTQ rights and allows LGBTQ people to get on with their lives. That's the one thing that the bill does. As you know, it can be frustrating waiting for governments to take action on reforms that are important to communities that you represent. That's what I have done with this bill. It has been a very open and public process, with updates to the public and parliamentary colleagues along the way.

My community doesn't want to see those mental health stats go up. My community doesn't want to see teachers and students continue to be treated poorly in schools. My community doesn't want to see trans and gender-diverse people continue to be denied access to identification that helps them get jobs, insurance and access their superannuation. I'm not going to wait for people who are going to continue to oppose every aspect of this bill to be happy before I proceed with it, because they're never going to be happy. As I said, we're dealing with a cohort of people who for decades have discriminated against the LGBT community. I believe New South Wales and this Parliament has moved on and wants to see our community treated equally and allowed to thrive.

Mrs HELEN DALTON: Do you agree that you will have to have extra resources, either manpower or womanpower or financial backing, if this bill goes through?

Mr ALEX GREENWICH: Support for this bill is included in my budget submission to the Treasurer, where I indicate this is something that's not going to cost the Treasurer anything. We know he is looking for ways to save money but also deliver progress. This reform is about changing a few words in a few Acts, which makes lives a lot easier for LGBTQ people. What it will do, we hope, is by removing the discrimination and stigma that LGBTQ people face and the negative health and mental health consequences that stem from that, ultimately, save the State funding, because we know when people are supported in their environment and when people are allowed to be who they are, they rely less on government services.

Mrs HELEN DALTON: I just think it will continue to centralise services to bigger towns and cities. In my electorate, we have 2½ times the suicide rate of Sydney already now, which is just a terrible statistic, and we have the hollowing out of services for the last 30 years and is continuing to do so. We don't get the support and help for that.

Mr ALEX GREENWICH: This reform does not seek to take anything away from any geographical region of New South Wales, but for LGBTQ people who reside right across New South Wales, it seeks to make their life a lot easier. It shouldn't impact on government services or the provision of government services. It should

just make the lives of LGBTQ people easier, regardless of where they live. We do know that because discrimination happens across the State but we know the inner city is seen as a really safe and welcoming place, that people can centralise around the inner city. We want to make sure the LGBTQ people feel comfortable to live and stay in their communities, including in rural and regional New South Wales, to continue to contribute. One way to achieve that is to remove areas and ways in which they are discriminated in their areas they reside and move from.

Ms TRISH DOYLE: We have heard a number of stakeholders. We have read a number of submissions where concern has been expressed in a variety of ways about this bill allegedly conflating gender with biological sex. Some witnesses and submissions have suggested that gender be recorded separately to sex in government records. Are you able to respond to some of those concerns?

Mr ALEX GREENWICH: Yes. Thank you very much. I would draw your attention to the contribution of Ghassan Kassisieh from Equality Australia. He highlighted that the law already conflates sex and gender in anti-discrimination laws, protecting trans people regardless of whether they have a registered change of sex or their transition experience, whether it's social or otherwise. In everyday life, most people don't pay attention to whether they are talking about sex or gender. A gender document would continue to force trans and gender diverse people to out themselves whenever they have to prove their identity. It's basically asking a certain part of the community to have a different form of documentation for them.

To the member for Murray's question, that would create extra administrative burden and cost, the creation of a new type of document which would entrench discrimination, and would be greatly costly to the trans and gender diverse community but also to the State. I think we can easily get distracted in the sex or gender debate when the law kind of uses them interchangeably. But getting back to my bill, in terms of sex and gender my bill works within the existing New South Wales legal framework and removes the outdated and dangerous requirement that a sex organ needs to be surgically removed before an individual is able to correct or update their sex on a birth certificate to ensure it is accurate. In terms of what this bill does when we're talking about sex and gender, that's what it does.

Ms TRISH DOYLE: Thank you for elaborating on that.

Ms LIZA BUTLER: Good afternoon, Alex. Thank you for joining us. We've had a very interesting couple of days. Some stakeholders have said that the bill endangers single-sex spaces for women and for LGB people to socialise and feel safe in. What is your response to this?

Mr ALEX GREENWICH: My response would be just to draw your attention to the Domestic Violence NSW submission and my opening remarks. Trans people exist. They are operating in spaces that they feel safe in. Women's refuges deal with trans people all the time because of the large rates of intimate partner violence that they experience. There is this furphy and this fearmongering that unfortunately exist around trans people for a political purpose to target a very vulnerable group. I think most of us in this society, most of us in this Parliament, want everybody—whether you are gay, straight, trans—to participate equally in life and to not be closed off from spaces and places.

Trans people exist today. They go to the gym today. They go to the bathroom today. They will also, when the bill passes—and it's not going to inconvenience anyone. It's just going to make their life experience a bit easier because the only thing that my bill does is it just provides them with accurate identification. A trans person can update their passport without the need for surgical intervention, without the need for a sex organ to be removed, and many do. But when they are trying to access insurance, superannuation or apply for a job and provide different forms of ID, suddenly they have inconsistent documents because one is incorrect by not reflecting their accurate identity. That's all the bill does. It's not going to impact any way in which people access spaces today versus when, hopefully, the provisions in the bill pass.

Ms LIZA BUTLER: In regards to women experiencing violence, one of the submissions said that this is a way for men to infiltrate women's spaces, which is gyms or culturally safe spaces. What's your response to that?

Mr ALEX GREENWICH: Again, in developing this bill, and also in my job as a local member, I've worked with a great deal of stakeholders. I work with a great deal of women's refuges, for example. They have the ability to refuse access to the refuge to anyone for any reason. This bill won't change that. What it will do is help a trans woman in a refuge get out of that refuge and potentially get a job and access other supports because they will have identification that is accurate and consistent.

I would also draw the Committee's attention to a lot of the stuff in the NSW Health strategy about the trans community. We want to ensure that the trans and gender-diverse community feel welcome to participate in everyday life—in sport, to go to the gym. We know these things are good for people's health and mental health.

Excluding people from these spaces will continue to increase the rates of self-harm, increase the rates of suicidal ideation and increase the rates of discrimination and stigma. Again, the bill does not change any of the status quo; it just allows people to have accurate identity documents. That's all the bill does when it relates to the issues that you're raising.

Mrs TANYA THOMPSON: We heard today that some groups, being the Feminist Legal Clinic, CoAL and the Women's Rights Network Australia, felt that they were left out of the process to meet with you and to talk with you about the bill and how it was put together. Can you provide some detail on the consultation process to inform the bill and whether it did incorporate a diversity of all views, please?

Mr ALEX GREENWICH: Yes, absolutely. As I said, the consultation process on the bill opened in 2022. The bill is a bill to advance LGBTQ rights and progress and reform in New South Wales. I was willing to hear from any stakeholder on how to achieve that. The organisations that you referenced provided, and have continued to provide, my office with information that seeks to increase discrimination, increase stigma and pull progress further back for my community. When I'm drafting legislation to move my community forward, when someone is providing me with a submission that achieves the exact opposite, it would be inappropriate for me to include that in the legislation. It goes against the aims of the legislation.

Listening to their contribution today, it is quite clear that they do not feel there is enough discrimination against the LGBT community and that they want it to go even further. That's not the purpose of the bill. However, I welcome this Committee process. I did the suspension of standing orders to refer my bill to this Committee so that there was an open, independent committee process that could hear all stakeholders and address all their concerns. For the purposes of me drafting the bill, which was to move my community forward to remove existing discrimination, I think it's understandable that I wouldn't include in it provisions that would increase discrimination. But at the same time, I welcome the fact that there is this Committee where they have been able to put forward their views and Committee members have been able to consider that appropriately.

Ms DONNA DAVIS: Sorry, I have two questions. The first one is, some witnesses, including the NSW Nurses and Midwives' Association have drawn on—sorry, the NSW Nurses and Midwives' Association was in relation to another question. This was the Teachers Fed. They agreed with a proposal that all children under 12 years of age have the right to equal participation in sport. However, the federation is concerned that the proposed amendments limit access to sporting activities for transgender people over 12 years of age. Is that something that you would like to expand on as something that you may consider amending?

Mr ALEX GREENWICH: I really appreciate that question and the work that the Teachers Federation has done and their support for the legislation. I share the concern and agree that sport needs to be inclusive for all young people. What the bill seeks to do is mirror the Federal provisions as a minimum step because New South Wales allows discrimination against children under 12. Attempting to bring New South Wales up to the lower standard and going further should be looked at by the Law Reform Commission. I would look forward to the Law Reform Commission looking into that exact concern.

Ms DONNA DAVIS: The other question is would you consider amendments to include protections for people born with an intersex genetic variation so they are not subjected to irreversible surgeries prior to them reaching an age when they can be part of that decision-making process?

Mr ALEX GREENWICH: Yes. Again, I really appreciate that question. The initial remit and consultation for this legislation included consideration of those provisions on how we can provide a human rights framework for infants with intersex variation so surgery is not performed on them without their consent. To look at the ACT, which has already embraced this model, and the feedback received, I engaged in a great deal of consultation with intersex human rights advocates and also with NSW Health and came to the conclusion that NSW Health and those advocates, along with the Victorian Government, who are embarking on reform in this process, were best placed to work together and to look at standalone legislation to achieve that.

When I actually gave notice of this bill, we had provisions drafted to achieve that very outcome, but it was on the advice of intersex advocates that we did not proceed with it because they felt further consultation with NSW Health was required to get them to a point where both sides could be happy. It is a long-overdue area of law reform, and I'm committed to continuing to work on it. My understanding is NSW Health and their counterparts in Victoria are looking at consistent models, are looking at the ACT model, which is in effect now, but it is something that I strongly support. Had I had the support of intersex advocates to include my proposals in the legislation, I would have. I just did not feel it appropriate, without their imprimatur, that I could proceed with it.

The CHAIR: Thank you very much, Alex. I've actually got lots and lots of questions, but we've only got a couple of minutes. I wanted to touch on the government sector Act proposed amendments. We did hear from some of the witnesses that that might put staff into a position of needing to declare or out themselves in their

workplace for the sake of someone catching a statistic somewhere. Did you happen to hear that testimony by any chance or do you want to offer a comment on that concern?

Mr ALEX GREENWICH: Yes. I really appreciate that. Those parts of the legislation were drafted at the recommendation of the PSA and particularly their LGBT taskforce. The legislation does not mandate that quotas be put in place. It provides it as an example of something that could, particularly if it was quite clear that there was a government agency where the LGBTQIA+ community was either indirectly being discriminated or not a significant part of the workforce. But I totally acknowledge that some people would not want their LGBTQIA+ status to be disclosed.

As I said, the bill does not mandate it but does give the Public Service Commissioner the power to introduce them if appropriate. LGBTQIA+ people have poorer health, welfare and economic outcomes, and participation and inclusion in the workforce can obviously help that disadvantage. That is the outcome that the provisions provided as an example seek to address, but certainly not seeking to mandate it for reasons that were raised by the nurses and midwives.

The CHAIR: There was also some evidence given by the sex workers about the police and probably a culture or attitude or lack of education amongst our police. I guess this goes back to something Mrs Dalton was saying about implementation. I think you touched on it in your opening remarks, as well. If this bill goes through, there will be a necessity to help our public sector workers in particular to rethink their position, their role and their responsibility in their workplace. Would you agree with that?

Mr ALEX GREENWICH: Absolutely, and I think all workplaces should always be addressing and looking into best practice for their organisations to ensure that discrimination against any group is dealt with. I know that the police are continuing to go through a process of education when it comes to all sorts of different groups. Obviously I would like to see greater engagement between sex workers and the police. What the proposals towards sex work seek to achieve is, basically, removing the duplication of offences, which could risk targeting sex workers since we have agreed that in New South Wales sex work is going to be decriminalised. Obviously we need to constantly be looking at reforming government agency practices to include best practice. If my bill helps facilitate that, then that's something I certainly welcome.

The CHAIR: In closing, I want to thank you for bringing the bill forward and giving this Committee the opportunity. A lot of the focus has been caught up in the LGBTQIA conversation part of this but there are proposals around the Mental Health Act about what is and isn't mental illness, and the fact that religious schools still have a capacity to discriminate against a person with a disability. The surrogacy question is one that many members of Parliament probably wouldn't have contemplated in the past as well. Its head title "Equality Bill" I think is entirely apt.

Mr ALEX GREENWICH: With your indulgence, Chair, can I raise two quick points, which I know have been raised a lot?

The CHAIR: Please go.

Mr ALEX GREENWICH: We have had a great deal of reference from some organisations about the Cass review and gender-affirming care in New South Wales. I think it's important to note that the Cass review looked at the NHS, which is the UK's health system. Many people in the UK would say their health system is flawed in many ways. Indeed what the Cass review recommends looks a lot like the framework for specialist trans and gender diverse service for people under the age of 25 in New South Wales.

In New South Wales, we have a 50-page legal framework for the provision of gender-affirming care, and for under-18s at the heart of that are processes around parental consent. My proposed legislation does not change that at all. It is my belief that when we are talking about gender-affirming care it is best a conversation between health practitioners, people getting a caseworker and psychosocial support, the families and, of course, the person seeking gender-affirming care, and I know those were the points that were raised by the Gender Centre and others.

Indeed, in terms of the issues around surrogacy, in no way, despite the contributions of some submissions, does my legislation seek to decriminalise commercial surrogacy in New South Wales. It seeks to deal with the reality that people have engaged in commercial surrogacy arrangements where it is legal in an overseas jurisdiction and it seeks to ensure that if it is in the best interests of the child that that child's parents, including in many cases biologically related parents, can be seen legally because currently in New South Wales we have a situation where kids born out of commercial surrogacy arrangements would have the surrogate and potentially her boyfriend seen as the legal parent and guardian and not the people who are raising them. So I'm not seeking to change anything other than ensure that there is an "in the best interests of the child" test applied when parentage orders are provided.

The CHAIR: Alex Greenwich, member for Sydney, thank you 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 you any questions taken on notice—I don't think there were any—and any supplementary questions that might come from the Committee in the coming days. We ask that you return answers to those in seven days if possible.

(The witness withdrew.)

Mr MARK FOLLETT, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, New South Wales Government, affirmed and examined

Ms THERESA FAIRMAN, Registrar, NSW Registry of Births, Deaths and Marriages, Department of Customer Service, New South Wales Government, affirmed and examined

Mr STEPHEN BRAY, Director, Civil Justice, Vulnerable Communities and Inclusion, Policy Reform and Legislation Branch, Law Reform and Legal Services Division, Department of Communities and Justice, New South Wales Government, affirmed and examined

The CHAIR: I welcome our next set of witnesses. Thank you for appearing before the Committee today to give evidence. Before we start, do you have any questions about the hearing process?

MARK FOLLETT: No.

The CHAIR: Would any of you like to make a short opening statement before we begin the questions?

MARK FOLLETT: Just a very quick one, Chair, if that's okay. It's useful to point out, as Government representatives appearing in front of this Committee, that, as stated in the New South Wales Government's submission, the New South Wales Government's submission to the Committee is not a statement of government policy. It provides a preliminary analysis of the proposed amendments for the Committee's information. The Government has noted it will formulate a position on the equality bill following the conclusion of the Committee's work, with careful consideration of the Committee's findings and recommendations.

The CHAIR: Can I ask about the timing for the Law Reform Commission's work on the Anti-Discrimination Act? I'm not asking you to commit to something concrete, but do you have a rough estimate of the time line? That's a really big chunk of the bill and, as it turns out, it has been a big part of the inquiry.

MARK FOLLETT: I wish I did. The Law Reform Commission, as you'd understand and appreciate, is independent of government. The terms of reference didn't specify a time frame, although I think—

The CHAIR: That's part of the question. We didn't give a time frame to the Law Reform Commission?

MARK FOLLETT: Correct. That is the practice of references to the Law Reform Commission. They generally don't have a time frame. The Government made some statements around its keenness to receive a timely report. I know that the Law Reform Commission is well underway. I think they've received 95 submissions or thereabouts, and they are shortly to proceed to a discussion paper. Two important things to appreciate around the likely task in front of the Law Reform Commission for this Act review is that it's substantial and significant, and it's very important that all stakeholders are heard and that the difficult choices that the commission has to grapple with are given due consideration. In terms of the practice for references, I should say that the Law Reform Commission secretariat sits in the branch where Stephen and I work. Our experience is that allowing the commission to follow the submissions and explore the issues is a really important part of the independence of the commission so that the Government can get the best advice possible.

The CHAIR: Could I ask about NCAT? There are no page numbers so it's roughly at about page 12 of your work. It talks about the process for NCAT potentially being involved in disputed applications. In the Government's response it talks there about where the dispute could go—"An alternative approach would be to allow another court with jurisdiction over such matters. For example, the District Court." My rough, loose understanding of NCAT is to get away from the cost and expense of courts and lawyers and things like that to get it into a more free-form exchange of ideas without that expense and difficulty. Do I understand the purpose and intent of NCAT—roughly, loosely—correctly?

MARK FOLLETT: I believe so. That is correct. I think the observations in the Government's submission there in relation to which jurisdiction may be best placed for a dispute is really about alignment with the current legislation in the births, deaths and marriages Act, in which the District Court, as I understand it—and Theresa may be able to add to this—is the forum for disputes of change of name. So currently if—I think it is two parents—there is a dispute over a change of name, that goes to the District Court. The Government's submission

is not so much saying that NCAT is necessarily inappropriate; it's about does it align appropriately with the current architecture in the BDM Act. I don't know if you want to add to that, Steve?

STEPHEN BRAY: No, you've covered it.

The CHAIR: In that regard and in that context, is it your view that the wording of the bill that we're contemplating at the moment correctly and accurately proposes a new framework to get it to NCAT instead of the current framework, which is to get it to the District Court?

MARK FOLLETT: That's a little difficult to answer because there's a couple of nuances in terms of the types of avenues that the bill seeks to establish to have recognition of a sex marker change, which are quite unique, and I think would just require—from a policy perspective, having two different dispute resolution forums for a name change and a dispute over a gender change might be unwise in the sense that you would hope that those two dispute forums would be aligned.

The CHAIR: Earlier, on the births, deaths and marriages, your submission made the point:

The NSW Government has identified a number of areas in which the proposed amendments to the BDMR Act do not align with other provisions of the BDMR Act, pose operational issues or may allow for exploitation ...

What you just described to me a moment ago, is that relevant to that concern raised here?

MARK FOLLETT: Yes, the observations there go to some of the processes that occur in relation to change of names to check for fraud and various other—I think Theresa may be able to speak more to that. But essentially the bill appears to create, potentially, a back door with which a name change could be made without going through those security checks, for lack of a better—

THERESA FAIRMAN: Changes of name can be an avenue for fraudulent activity. The current legislation has particular protections against fraud in that context that don't apply to a change of sex. For example, there's a lifetime limit of three name changes, there's a residency requirement where you have to be a resident of New South Wales for three years and there's a requirement to disclose a criminal record. There's also a possible criminal record check and there are also requirements for restricted persons. Those provisions don't apply to change of sex now, and probably don't need to. If we bring the change of name together with the change of sex, then there are some discrepancies in those two areas. It would almost raise the identity security bar for change of sex. A name is really important for identity security. Sex doesn't have that same weight.

The CHAIR: I think matching ID, though, is one of the phrases that has been talked about strongly here, where in shifting from male to female or the other way, or whatever the case is, you might end up with two IDs. It sounded to me like, number one, that was very difficult for the people in their lives, but it sounds to me also like, number two, that must be difficult for government departments and agencies to deal with when people, because of the current laws, are forced to live with, essentially, two identities or potentially more.

THERESA FAIRMAN: In practice, people usually change their name beforehand. Also, you can change your name without a change of sex, and a lot of people will choose to do that as well.

Ms DONNA DAVIS: Can you expand on why, from an operational view, the threat of outing someone is more appropriately linked to intimidation under the Crimes (Domestic and Personal Violence) Act?

MARK FOLLETT: I think it would capture more relationship contexts. The threat to out a person—I think the proposition in the submission really goes to, at the moment, where the bill seeks to put that outing a person would protect—I think it's within intimate relationships. I would have to double-check that.

STEPHEN BRAY: Domestic relationships.

MARK FOLLETT: It's in domestic relationships—thank you, Stephen—whereas it may not be in a domestic relationship context that that threat occurs. I think the idea proposed in the Government's submission to put it within the concept of intimidation would still allow you to then have the framework of APVOs—I think I have that right. You could have, essentially, intimidation as a part of that, not necessarily being in a domestic relationship.

Ms DONNA DAVIS: We had witnesses that gave examples of students that had been outed to their parents in their school report. What you are saying is that by considering it under a different Act, then that—

MARK FOLLETT: I think we are saying in the same Act but under a different part so it captures a broader contextual situation.

Ms DONNA DAVIS: Can you explain how the amendments to the Sheriff Act that relate to the Anti-Discrimination Act and personal searches may conflict with the need to ensure safety and good order? What are the specific operational conflicts that could arise?

MARK FOLLETT: I may have to take aspects of this question on notice to get an operational answer from the Sheriff's Office, which I think would probably assist the Committee more, but essentially it goes to search powers and identification—essentially the exercise of particular powers within the Sheriff Act. I think the Government's submission is really suggesting that a more thorough analysis—and potentially through the Law Reform Commission's consideration of the anti-discrimination framework—is more appropriate to go through whether inserting that provision in the bill would create some operational challenges so that the functions that the sheriff has to perform are not curtailed by another legislative framework beyond thorough consideration. But I will take that on notice and I'm sure the sheriff will be happy to provide an example.

Mrs TANYA THOMPSON: Would repealing part 3 of the Summary Offences Act mean that New South Wales has completely decriminalised sex work? If not, what other laws or provisions would need to be repealed?

MARK FOLLETT: I don't know the answer to that. Sex work is decriminalised in New South Wales. I think the proposition that is in the Government's submission in relation to those part 3A offences is: Are there any protective factors that are within those provisions in the Summary Offences Act that are worth essentially retaining? To put it another way, potentially, would the repeal of those provisions undermine the current landscape in New South Wales that sex work is decriminalised?

Ms LIZA BUTLER: How do you foresee changes to the Surrogacy Act potentially leading to an increase in international commercial surrogacy?

MARK FOLLETT: Essentially it would change the current position. I understand and had the benefit of listening to Mr Greenwich before talk about the clear objective here is to provide recognition for those arrangements that have been entered into internationally. Fully accept that, but I think changing one of the preconditions could have the impact anyway of encouraging, whether directly or indirectly, international commercial surrogacy arrangements.

I think the Government submission really seeks to put the proposition to the Committee that surrogacy really needs to be considered holistically and a change that is proposed in the bill—I think it's rather clear the objectives. I think we fully understand and appreciate where those objectives are coming from, but what I think is important to understand is whether there would be any detrimental—essentially undermining of a fairly consistent position across all jurisdictions, I believe, around international commercial surrogacy and the risks that I think that poses in terms of exploitation et cetera.

Ms TRISH DOYLE: I have been reading through schedules 12 and 13 and I'm wondering if you can expand on your reasoning in the submission, which states that the amendments to the Government Sector Employment Act are not legally necessary. Further to that, you talk about undertaking further enhancements of the PMES survey. How?

MARK FOLLETT: Ms Doyle, we might have to take that one on notice. Apologies, but I wouldn't want to—the Public Service Commissioner and Cabinet Office and Premier's Department would probably want to respond directly to that one.

Mrs HELEN DALTON: Is this bill compatible with Commonwealth law?

Ms TRISH DOYLE: There's a question for you.

MARK FOLLETT: We don't really identify any clear incompatibilities from a constitutional perspective—if that's what you mean, Ms Dalton. Sorry.

Mrs HELEN DALTON: Well, from any aspect really. Because the Commonwealth can override the State anyway.

MARK FOLLETT: Yes, that's right.

Mrs HELEN DALTON: So you'd hope to be working with the Commonwealth.

MARK FOLLETT: There is an aspect in the births, deaths and marriages changes that would provide the registrar with an ability to alter a marriage certificate, which may be inconsistent with Commonwealth law.

Mrs HELEN DALTON: So it would add to complexity?

MARK FOLLETT: Yes, that aspect, I think, would.

Mrs HELEN DALTON: Anything else in the bill that would add to complexity? Surrogacy?

STEPHEN BRAY: I wouldn't say incompatibility, but I think there are certainly interactions between the New South Wales regulation of surrogacy law and how the Commonwealth deals with surrogacy where the

child is born overseas and required to be brought back into the country, whether that's by virtue of the issue of an Australian passport or a visa.

Mrs HELEN DALTON: So it could just be another minefield, with two different laws for potential parents to navigate?

The CHAIR: Sorry, Ms Dalton, can I just ask—Professor Parkinson earlier talked about gender affirmation requiring both parents' signatures at a family law court level but the proposed bill requiring just one parent's signature. I think that was identified as a complexity—or are you talking more broadly than just that one example?

Mrs HELEN DALTON: More broadly. I'm just taking a helicopter view of the world.

The CHAIR: Sorry, Ms Dalton.

STEPHEN BRAY: In relation to surrogacy, I wouldn't say the amendments put it in a place of competing laws; it's simply that the laws interact. They already interact with Commonwealth law, so those considerations will need to be taken into account. Another area where I think you need to consider the interaction with Commonwealth law is in relation to the amendments to the Anti-Discrimination Act. Under the proposed amendments there are various exemptions provided to primarily religious institutions and also private educational bodies. There are quite broad exemptions in the New South Wales Act. They exist under Commonwealth law, which operates concurrently with New South Wales law. From an institutional perspective, they have two different laws they have to comply with. If there were amendments to the New South Wales law, you'd want to look at how those changes would align with changes at the Commonwealth level.

On that front, I think we've identified in the submission that the Australian Law Reform Commission has very recently examined the exemptions under its anti-discrimination legislation, which is in various Acts, and so the consistency—and that has made recommendations in terms of how those exemptions should proceed. I would think any changes to this would need to be considered in that context of Commonwealth and State law operating together, which really goes towards the note in the submission that it's a very complex system, anti-discrimination law, with those two schemes operating in parallel. That is the task that the NSW Law Reform Commission is currently undertaking.

Mrs HELEN DALTON: That leads me to the next question. This a very complex bill and you've already flagged in your submission that surrogacy is a complex issue. Should the bill deal with some of these issues as standalone? There's prostitution and surrogacy and birth certificates, and it's a lot. What's your view?

MARK FOLLETT: Far be it from us, I think, to advise the good Parliament on what to do.

Mrs HELEN DALTON: But what's your view?

The CHAIR: Sorry, can I just interrupt you. As they're public servants, we have to be careful. It's not for them to answer an opinion or to delve into what the Government might be thinking. It's a clinical interaction with us. If you want to take that question and do your best with it, Mr Follett.

MARK FOLLETT: Yes, thanks, Chair.

Mrs HELEN DALTON: Are you bailing him out?

The CHAIR: No, I'm not. I'm just clarifying for us that we need to be careful about what we're asking of our public servants because the Government, politically, doesn't necessarily—anyway, I don't know what I'm trying to say.

Mrs HELEN DALTON: Do your best.

MARK FOLLETT: Perhaps it might be helpful to answer the question this way, Ms Dalton. The New South Wales Government submission suggests a number of different pathways for the discrete elements of the bill, and they do align with election commitments. But, for example, as Mr Bray pointed out, the Law Reform Commission's consideration of the Anti-Discrimination Act—so one sort of aspect there—the review of the Surrogacy Act itself as a separate element, as well as the consideration of the specific part 5A changes to the Births, Deaths, and Marriages Act—I think that is kind of a segmented approach that is looking at those aspects discretely. Perhaps that is somewhat helpful in terms of carving out at least those three aspects.

Mrs HELEN DALTON: There's also, I guess, the issue of education and health—all those women and girls and all those issues that come forward. I know it's trying to be simplistic and cut through, but there's just so much in all of this that will impact society, and not always for the best. The intention is there, particularly with discrimination—I think that's something we should never tolerate—but the rest is just so complex. A lot more work needs to be done to get it right.

MARK FOLLETT: I might just add in terms of the pathways for considering different elements. Chair, apologies. I should have mentioned this before. The Law Reform Commission's consideration of the Anti-Discrimination Act is that also there is a separate reference around 93Z—so the vilification Crimes Act offence, which this bill seeks to make changes to as well. When we talk about the Law Reform Commission's work, that is really in two parts: the Anti-Discrimination Act in its totality as well as section 93Z of the Crimes Act, which is sometimes referred to as the hate speech offence but the vilification offence within that. Again, Ms Dalton, that's another avenue of separate analysis from an aspect of this bill.

Ms TRISH DOYLE: I asked about the Government Sector Employment Act, and you've taken that on notice. On page 3 of the introduction in the Government's submission there are four noted potential complexities, potential unintended consequences, that the proposed amendments may introduce. Are you able to speak to some of those, because that might assist us in addressing some of the other issues that have been brought up by other submissions and witnesses in the last couple of days?

MARK FOLLETT: Yes, sure. Do you want to speak to that?

STEPHEN BRAY: Can I just confirm: You're referring to the four bullet points in the middle of page 3, I think you referred to, the first one being the Children and Young Persons (Care and Protection) Act—

Ms TRISH DOYLE: Yes, that's right.

STEPHEN BRAY: —the Government Sector Employment Act, the Interpretation Act and the Summary Offences Act?

Ms TRISH DOYLE: Yes, particularly one and three.

STEPHEN BRAY: Is it the first bullet point that you're seeking to focus on?

Ms TRISH DOYLE: We've covered off four and I've asked about two, which you've taken on notice. So one and three.

STEPHEN BRAY: Point three unfortunately will fall into the same bucket as point two, in that it's not a piece of legislation that our department advises on.

MARK FOLLETT: I might just add to that that Mr Bray is entirely correct. I think the reason for including that in the Government submission is that the Interpretation Act has such a broad impact on the entire New South Wales statute book. We would want to really understand it. As Stephen said, it's not legislation that we advise on but it obviously impacts a lot of—the DCJ portfolio has a huge swathe of legislations, and the Interpretation Act hits all of that.

Ms TRISH DOYLE: Yes.

MARK FOLLETT: The concern there is that if the changes, albeit subtle, have not been worked through in terms of what they might mean for each individual functional element of each individual Act on the New South Wales statute book, that could have a really, really significant impact. Hopefully that assists.

STEPHEN BRAY: In relation to the first bullet point, the equality bill proposes to amend the Children and Young Persons (Care and Protection) Act to do three things: to extend existing principles to be considered when making a decision about a child or a young person's care to include the child's gender identity and variations of sex characteristics; inserting a new provision that provides that a young person, being 16 to 17 years old, can make a decision about their own medical or dental treatment as validly and effectively as an adult; and to make clear that approval of special medical treatment by NCAT is not required where a court, such as the Federal Court of Family Court, has already approved the treatment.

The concerns raised in the Government's submission in relation to that aspect are that currently a person under 18 years of age can consent to a medical procedure if medical professionals have formed the view that they have sufficient maturity and understanding to give valid consent to the procedure. That's a longstanding principle known as the Gillick competence test. There were some concerns raised that the provisions would, effectively, set aside that test in place of this provision. I do understand from Mr Greenwich's submission that he is intending to withdraw that amendment, on the basis of advice in discussions with NSW Health.

The CHAIR: Ms Fairman, I have a question for you about the marriage certificate issued under section 34 of the BDMR Act. Could you please clarify for me, does a marriage certificate carry an indication of the gender of the persons or the sex of the persons being married?

THERESA FAIRMAN: Bride and groom—so, yes, it does.

The CHAIR: Right, bride and groom. Thank you.

THERESA FAIRMAN: I would have to check whether that's required under Commonwealth law or whether it's a matter of policy for us, but I can come back to you if I need to.

The CHAIR: In the instances of obviously same-sex marriages, it still is listed as bride and groom?

THERESA FAIRMAN: You can have both. You can choose.

The CHAIR: You can have bride and bride, groom and groom?

THERESA FAIRMAN: Yes.

The CHAIR: But typically—hang on, where is it listed as bride and groom? Is that in the actual Commonwealth Marriage Act?

THERESA FAIRMAN: That's what I need—I will take that on notice.

The CHAIR: Or on the certificate?

THERESA FAIRMAN: It's on the certificate. I'm not sure if it's a particular in the Commonwealth Act that is required to be there, but I'll take that on notice.

Ms DONNA DAVIS: My question is about schedule 20, which is the last section in your submission. How could the proposed repeal of section 67A (2) of the Workers Compensation Act potentially impact historical claims?

MARK FOLLETT: We may have to take that on notice.

STEPHEN BRAY: I can answer to some extent. If there are further questions, you can let me know and we can take it on notice, because it is a different department that advises on that piece of legislation. The legislation is currently drafted—the section that's proposed to be repealed refers to a repealed subsection. I can understand the rationale behind wanting to delete that reference, but the advice we have received from the department, which advises the Minister on that, is that that change itself could affect historical claims that were made in relation to circumstances that existed before that now-repealed subject then existed. That's the advice we've received.

Ms DONNA DAVIS: If you could provide some further information, that would be good, please.

STEPHEN BRAY: Yes, we will seek that.

The CHAIR: Are you taking that one on notice?

STEPHEN BRAY: Yes, happy to do so.

The CHAIR: Thank you. Mr Greenwich is there. HIV infection used to be sort of terminal and now it's not. Is that right, Mr Greenwich?

Mrs HELEN DALTON: You live with it.

Ms TRISH DOYLE: Yes, you live with it rather than die.

The CHAIR: From a workers compensation's perspective, I think that would be important to have that clarified. Are there any other questions? Come on, we've got this esteemed group here and we've got an hour set aside.

Ms DONNA DAVIS: Yes, I've got a question. This morning we had—I think it was this morning; it has been a long day—we had a witness talking about their personal experiences with surrogacy. They were stating their concerns around—we were all quite surprised about the fact that even if they had a birth certificate issued overseas, here the birth certificate still required—obviously, they couldn't reflect that both fathers for this particular person were on there. Is this something that Births, Deaths and Marriages has already been looking at altering? I know that the member for Sydney has brought forward this bill, but have you actively already been looking at these changes and how they impact? Given that we've had marriage equality for a significant period of time now, it seems quite interesting to me that it's not something that the bureaucracy hasn't considered to bring forward as a legislative change itself.

THERESA FAIRMAN: Are you talking about the parents listed on the birth certificate of a child born through surrogacy?

Ms DONNA DAVIS: Yes.

THERESA FAIRMAN: We need a court order. It's part of the Surrogacy Act.

Ms DONNA DAVIS: Yes, I understand that, but this morning the experience that was being relayed—I might need help here. I just felt that, to me, it seems that our legislation is lagging behind what's actually

happening in reality for people. My question is what do you do in terms of bringing forward these proposed changes to reflect the societal changes?

THERESA FAIRMAN: In practice, my colleague's policy agency administers the law, but we do have a very close relationship with DCJ. As these matters come up more frequently, we talk on a monthly basis and sort of put those issues on the table and work through them, so when there is an opportunity for change, that can happen.

MARK FOLLETT: I think that's spot-on. The Government's obviously committed to review the Act and I think the stories, the submissions—a number of submissions made to this Committee, I think, are very relevant to that consideration. Even in my experience in advising on surrogacy, it has been the subject of quite a lot of policy consideration over the past—recently, anyway, because I think they're incredibly complex and difficult issues, particularly as it comes to commercial surrogacy arrangements and the extraterritorial aspect and whether there's exploitation involved, or the potential detrimental impacts to the birth mother. There's quite a lot to consider. I think the Government's commitment to look at the Act and the opportunity for the findings of this Committee, as well as the stakeholders' submissions and the stories to be considered as part of that consideration as to whether the framework still makes sense in 2024, I think will be really, really important.

Mrs TANYA THOMPSON: Do you think it's too complex to include in this piece of legislation? Do you think it needs its own separate bill, as such?

MARK FOLLETT: I think the contention in the New South Wales Government's submission is that it should be subject to a specific review in accordance with the election commitment. There is significant complexity.

THERESA FAIRMAN: If I could just add to the surrogacy issue, it's not always a problem. If people have engaged in surrogacy overseas and wherever they were has issued a birth certificate for the child with those people listed as parents, if they live in New South Wales, intend to live in New South Wales and have always intended that, we simply issue a birth certificate to that effect. It will note that there was also a birth certificate from the Ukraine or wherever it may be. But in many countries the Australian parents will get a birth certificate that lists them as the parents. In those cases, it's not problematic. We issue another birth certificate when they get back here. I have dealt with a few of those myself. It is always complex, but it's not necessarily an issue.

STEPHEN BRAY: Can I just ask a clarifying question? With the issue that you're referring to, currently the law is that, following a registration of a parentage order following a surrogacy arrangement, once that parentage order is obtained for the court, that is provided to the Registry of Births, Deaths and Marriages. It can then issue a New South Wales birth certificate that lists both of those parents as the legal parents. There is no indication on the birth certificate that the child was born of a surrogacy arrangement. I'm not sure of the evidence that you're referring to, but I suspect that what you're referring to is the current provision in the Surrogacy Act that states that if your surrogacy arrangement was a commercial surrogacy arrangement, you're not eligible to apply for a parentage order, in which case you wouldn't be able to avail yourself of the current scenario. That's the concern.

Ms DONNA DAVIS: That's right. Yet these people are living in families for a decade and—

STEPHEN BRAY: In that case, if you're in the situation where you have availed yourself of the commercial surrogacy arrangement and are therefore not eligible to apply for a parentage order, the primary avenue that people use in order to act as the parents of the child that they have taken into their lives is to apply for a parenting order from the Family Court. It doesn't give you a new birth certificate, but it gives you parental rights, I suppose. The issue around whether it being a commercial surrogacy arrangement should remain a precondition of applying for a parentage order is what the contention is in Mr Greenwich's bill.

Presently, in every jurisdiction, that is a prerequisite—that it can't be a commercial surrogacy arrangement in order to obtain a parentage order. In the ACT, there's currently a bill before them to remove that requirement. That's the only example I've heard of recently of law reform in that space. Again, to Mr Follett's point, they are complex issues that involve the balancing of the rights of the birth parents, the rights of the intended parents and the best interests of the child that's born to these that requires that careful balancing of consideration which is intended to be subject to the Government's review of the Surrogacy Act.

The CHAIR: We're going to call it a day. Ms Fairman, Mr Follett and Mr Bray, thank you so much for appearing before us today. You'll be provided with a copy of the transcript of your evidence for correction. Committee staff will also email any questions taken on notice today—I think there was one or two—and any supplementary questions that the Committee may develop over the next couple of days. If you get questions, we ask for you to turn it around in seven days, if that's at all possible, so that we can progress our work. That concludes our public hearing.

I thank all witnesses who appeared today and yesterday. I also thank the Committee members, Hansard, the staff of the Department of Parliamentary Services and the Committee staff for their assistance in this important work. Thank you all so much.

(The witnesses withdrew.)

The Committee adjourned at 16:50.