

Committee on Community Services



LEGISLATIVE
ASSEMBLY

Equality Legislation Amendment (LGBTIQA+) Bill 2023



Report 1/58 – June 2024

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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Membership

Chair	Mr Clayton Barr MP
Deputy Chair	Ms Trish Doyle MP
Members	Ms Liza Butler MP Mrs Helen Dalton MP Ms Donna Davis MP Mrs Tanya Thompson MP Ms Felicity Wilson MP
Contact details	Legislative Assembly Committee on Community Services Parliament House Macquarie Street SYDNEY NSW 2000
Telephone	(02) 9230 3308
E-mail	communityservices@parliament.nsw.gov.au
Website	www.parliament.nsw.gov.au/communityservices

Chair's foreword

What is equality? Do we, as a society, have a common and shared view of the concept of equality? Is equality for all, in law, achievable?

The Legislative Assembly Standing Committee on Community Services has recently undertaken an inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

The Equality Bill had been introduced to the NSW Parliament by Independent Member for Sydney, Mr Alex Greenwich MP, in August 2023.

It was subsequently referred to the Committee on Community Services for inquiry by the NSW Legislative Assembly on 13 March 2024, with a requirement that the Committee report back to the Assembly by 3 June 2024.

During the inquiry the Committee received 66 written submissions.

The Committee also heard from 44 witnesses during 2 days of public hearings.

Views put to the Committee throughout the inquiry were quite polarised. The great bulk of participants either totally believed in, or were completely opposed to, the Equality Bill. By and large the 'middle ground' was vacant.

Views were informed by personal (organisational) belief systems and/or lived experiences.

The Equality Bill proposed amendments to 20 separate Acts of NSW Legislation, although submissions and testimonies from participants primarily focused on a very small number of the described changes. I note this to help readers make sense of the structure of this report, that dedicates quite a few pages to some matters and far less space to others.

On balance, some might find it odd to have just one recommendation and two findings stemming from this inquiry. But the real strength of the work undertaken was the opportunity created for a diverse range of views to be presented to the NSW Parliament for consideration.

It is important to note that some material, evidence and testimony caused hurt and harm to others. I sincerely hope that all of my colleagues, and public commentators, will be sensitive to that, as the Equality Bill is further contemplated.

Personally, I see an opportunity for the Member that introduced the Bill to the Parliament, Mr Greenwich, to continue his dialogue with other Members of Parliament around this concept of, and need for, advances in equality for all people in NSW.

In particular, given the length and detail provided in the NSW Government submission to this inquiry, I would urge Mr Greenwich and the NSW Government to further explore what can and cannot be agreed to.

I encourage Members of Parliament to contemplate this report and the details of what this Committee heard, as well as the work of the Legislation Review Committee (Digest No. 3/58 – 12 September 2023) to inform any contribution made during parliamentary debate on the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

It is essential to note the exceptional work of the Committee staff that not only supports, but makes possible the work of the Committee on Community Services. I know that in preparing this report, great care and consideration has gone into the important balance of its content. The people of NSW and all that participated in this inquiry are well served by this dedicated and diligent team.

And finally, I want to thank all participants that gave their time and energy to inform and assist the very nature of this inquiry. Without you, the people, we could not have so carefully considered the deeper nature and importance of the Equality Bill and what it will mean for so many.

Best wishes

Clayton Barr MP

Chair

Findings and recommendations

Recommendation 1 _____ 1

That the Parliament of NSW proceeds to consider the Equality Legislation Amendment (LGBTIQA+) Bill 2023, including stakeholder input into this inquiry.

Finding 1 _____ 1

There were diverse and conflicting views on the amendments proposed by the Bill and how they would operate.

Finding 2 _____ 62

There is a need for additional policy measures and funding to improve the safety and wellbeing of LGBTIQA+ people. These may be directed towards addressing issues like disadvantage, discrimination and poorer health outcomes experienced by LGBTIQA+ people.

Chapter One – The Equality Legislation Amendment (LGBTIQA+) Bill 2023

Recommendation 1

That the Parliament of NSW proceeds to consider the Equality Legislation Amendment (LGBTIQA+) Bill 2023, including stakeholder input into this inquiry.

Finding 1

There were diverse and conflicting views on the amendments proposed by the Bill and how they would operate.

- 1.1 The Committee heard a range of differing views from stakeholders on the amendments proposed by the Bill. There were often opposing views from stakeholders who had very different perspectives on the issues raised by the Bill and how the amendments could operate.
- 1.2 The specific amendments and the views of stakeholders on each of those amendments are outlined in this chapter. The chapter is structured according to the alphabetical order of the 20 Acts that the Bill proposes to amend.
- 1.3 The Houses may wish to consider the views expressed by stakeholders when considering the Bill.

Anti-Discrimination Act 1977

The proposed amendments

- 1.4 The Bill proposes to amend the *Anti-Discrimination Act 1977 (AD Act)* to extend and strengthen protections against discrimination for LGBTIQA+ people and make some other related changes. Broadly speaking, the Bill seeks to:
 - change key definitions to broaden existing protections
 - remove and narrow exemptions that allow organisations to lawfully discriminate against certain people in specific circumstances
 - add two new grounds of discrimination: people with variations in sex characteristics and sex workers.
- 1.5 The AD Act has been referred to the NSW Law Reform Commission for review.¹ Following this review, the Law Reform Commission will report to the government with recommendations to reform the AD Act. Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, said that the Law Reform Commission's work is well underway with the next step

¹ NSW Law Reform Commission, [Anti-Discrimination Act review](#), viewed 10 May 2024.

being the issuing of a discussion paper.²

- 1.6 Noting that the AD Act is under review, Mr Alex Greenwich, Member for Sydney, stated in his second reading speech that 'the Bill will provide interim legislative protections within the current framework of the Act that we should introduce now to close loopholes that leave LGBTIQ+ people vulnerable.'³ However, some organisations opposed amending the AD Act before the Law Reform Commission completes its review, as it would pre-empt the review's findings.⁴

Amending definitions and forms

- 1.7 The Bill proposes to change several definitions in the Act, including by inserting a definition of 'sexuality', and providing that a transgender person is a person who lives as a member of 'another sex'.⁵
- 1.8 The Bill proposes to amend definitions in the Act to update existing protections for certain persons. For example, changing how a 'transgender person' is defined in the Act by removing the definition of 'recognised transgender person' and replacing it with a person who lives as a member of 'another sex'.
- 1.9 It also proposes to replace the definition of 'homosexual' with a definition of sexuality to broaden the types of sexuality that are protected by anti-discrimination clauses. Mr Greenwich said during his second reading speech that the Bill would 'replace [the] "homosexuality" protected attribute with "sexuality", to include homosexuality, bisexuality and asexuality'.⁶
- 1.10 The Bill also proposes replacing references to 'HIV infection' with 'living with HIV'. Finally, it proposes to insert a new part that regulates the way a public sector agency records a person's same sex relationship status and gender diversity.

Arguments against

- 1.11 Some organisations submitted that changing the definitions of 'transgender' and 'sexuality' are illogical and give rise to inconsistencies.⁷ Freedom for Faith argued that the definition of 'another sex' is incoherent.⁸ Jessica Pearson, Harvey Eastman and Michael Lowry similarly argued that changing the definitions blurs legal distinctions based on sex.⁹ Ms Janet Fraser, Women's Rights Network Australia, said the definitions are unworkable and make current legal protections

² Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, [Transcript of evidence](#), 1 May 2024, p 51.

³ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9145 (Mr Alex Greenwich, Member for Sydney).

⁴ [Submission 41](#), Catholic Archbishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 5; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 2.

⁵ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 1[1]-[8].

⁶ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9145 (Mr Alex Greenwich, Member for Sydney).

⁷ [Submission 28](#), Freedom for Faith, p 5; [Submission 52](#), Institute for Civil Society, p 3.

⁸ [Submission 28](#), Freedom for Faith, p 5.

⁹ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 11.

for women meaningless.¹⁰

- 1.12 Organisations also argued that broadening the definition of sexuality could affect the recognition of gay and lesbian people.¹¹ Viviane Morigan, Public Officer, Coalition of Activist Lesbians, said that it would erase same sex attraction as a distinct identity.¹² LGB Alliance argued that replacing 'homosexuality' with 'sexuality' could dilute protections for same sex attracted individuals.¹³
- 1.13 Groups who opposed these amendments submitted that they conflate sex with gender.¹⁴ LGB Alliance said that this could make women vulnerable to sexual harassment and violence.¹⁵

Arguments in favour

- 1.14 Several organisations supported amending the AD Act to ensure all members of the LGBTIQ+ community are protected against discrimination.¹⁶ Equality Australia, in explaining their support for the amendments, said discrimination and disadvantage experienced by LGBTQ+ people contributes to health disparities and overall poorer health outcomes.¹⁷
- 1.15 Kingsford Legal Centre argued that the definition of homosexual in the AD Act is 'outdated and restrictive' and is not consistent with modern understandings of gender and sexuality. It also supported replacing 'opposite sex by living' with 'another sex by living' so that the law reflects contemporary concepts of gender identity.¹⁸
- 1.16 Ms Mel Smith, Acting General Secretary, Australian Education Union, NSW Teachers Federation Branch, argued that strengthening definitions about who is included in the AD Act is important as people with diverse sexuality or gender identities such as non-binary or bisexual are not included.¹⁹
- 1.17 LGB Alliance Australia supported amendments to language used to refer to HIV, as it would address stigma and prejudices affecting people living with HIV, such as gay men.²⁰ HIV AIDS Legal Centre and Positive Life NSW also supported changes

¹⁰ Ms Janet Fraser, Women's Rights Network Australia, [Transcript of evidence](#), 1 May 2024, p 10.

¹¹ Ms Fraser, [Evidence](#), 1 May 2024, p 11; [Submission 32](#), LGB Alliance, pp 9-10.

¹² Dr Viviane Morigan, Public Officer, Coalition of Activist Lesbians, [Transcript of evidence](#), 1 May 2024, p 8.

¹³ [Submission 32](#), LGB Alliance Australia, p 9.

¹⁴ [Submission 35](#), Australian Christian Lobby, pp 5-6; [Submission 37](#), Australian Feminists For Women's Rights, p 6; [Submission 34](#), Plunkett Centre for Ethics, p 2.

¹⁵ [Submission 32](#), LGB Alliance Australia, p 9.

¹⁶ Mr Alastair Lawrie, Director of Policy and Advocacy, Public Interest Advocacy Centre, [Transcript of evidence](#), 30 April 2024, p 18; [Submission 39](#), Equality Australia, p 2; [Submission 47](#), Greens NSW, pp 2-3; [Submission 57](#), New South Wales Nurses and Midwives Association, pp 3-4; [Submission 56](#), headspace National and the Black Dog Institute, pp 3-4; [Submission 50](#), Twenty10, pp 2-3; [Submission 60](#), Catholics for Renewal, p 3; [Submission 48](#), Australian Lawyers for Human Rights, pp 2-3; [Submission 15](#), Kingsford Legal Centre, p 2; [Submission 7](#), ACON, pp 3-4; [Submission 45](#), Rainbow Families, p 3; [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 2.

¹⁷ [Submission 39](#), Equality Australia, p 5.

¹⁸ [Submission 15](#), Kingsford Legal Centre, p 2.

¹⁹ Ms Mel Smith, Acting General Secretary, Australian Education Union, NSW Teachers Federation Branch, [Transcript of evidence](#), 30 April 2024, p 2.

²⁰ [Submission 32](#), LGB Alliance Australia, p 11.

to language referring to HIV, saying that it will be more inclusive and enabling for people living with HIV.²¹

- 1.18 Parents for Trans Youth Equity supported changes to government forms, but suggested an additional amendment to allow a person to list their preferred name and pronoun on those forms.²²

Two new grounds of discrimination: sex workers and variation of sex characteristics

- 1.19 The Bill seeks to introduce two new grounds of discrimination, for people with variations in sex characteristics, and sex workers. The new grounds would mirror existing protections for other groups under the AD Act.

- 1.20 The Bill proposes to insert a new part into the AD Act to provide protection against discrimination and vilification for a person who has 'a variation of sex characteristics'. That includes a person with an innate variation of primary or secondary sex characteristics. This part would make it unlawful to discriminate against a person who has a variation of sex characteristics in areas including work, education, accommodation and goods and services. People with variations of sex characteristics are often intersex people.

- 1.21 The Bill also proposes to insert a new part into the AD Act to introduce provisions protecting sex workers from discrimination and vilification. This part would make it unlawful to discriminate against sex workers in areas including work, education, accommodation and goods and services.

Arguments against

- 1.22 Women's Rights Network Australia opposed including new types of discrimination in the AD Act, particularly for sex workers.²³ Australian Feminists for Women's Rights questioned why sex workers would be protected, but not other categories of workers.²⁴ Emeritus Professor Patrick Parkinson AM suggested there was no specific need to protect sex workers and people with variations of sex characteristics from discrimination.²⁵ Women's Rights Network Australia also said that it is unclear why sex workers are the only protected occupation and questioned how this would advance equality for LGBTIQ+ people.²⁶
- 1.23 LGB Alliance Australia expressed concern about ambiguity in adding variation of sex characteristics as a ground of discrimination. The organisation argued instead for the inclusion of a medically grounded definition as a way of preventing people from identifying as the opposite sex.²⁷

²¹ [Submission 23](#), HIV AIDS Legal Centre and Positive Life NSW, pp 2-3.

²² [Submission 10](#), Parents for Trans Youth Equity, p 6.

²³ [Submission 38](#), Women's Rights Network Australia, p 13.

²⁴ [Submission 37](#), Australian Feminists for Women's Rights, p 7.

²⁵ [Submission 1](#), Emeritus Professor Patrick Parkinson AM, pp 7-8.

²⁶ [Submission 38](#), Women's Rights Network Australia, p 13.

²⁷ [Submission 32](#), LGB Alliance Australia, pp 10-11.

Arguments in favour

- 1.24 Many organisations expressed the view that the AD Act needs reform as LGBTIQ+ people continue to experience discrimination in areas such as health and education, and supported expanding protections to include intersex people²⁸ and sex workers in the AD Act.²⁹ Mr Nicolas Parkhill, CEO, ACON, said the Bill will strengthen protections for LGBTIQ+ people and sex workers in NSW and that they are desperately needed.³⁰
- 1.25 Scarlett Alliance supported including sex work and sex workers in the Act on the basis that sex workers continue to experience discrimination in many aspects of life including work, education and accommodation.³¹ Sex Workers Outreach Project said that sex workers continue to experience stigma and violence and need protections against discrimination.³² Ms Joanna Megan, CEO, Sex Workers Outreach Project NSW, referred to a 2020 study by UNSW that found 91% of sex workers had experienced discrimination in health services.³³ Mx Mish Pony, Chief Executive Officer, Scarlett Alliance, said that the Bill should explicitly include definitions of both 'sex work' and 'sex workers' as the definitions go 'hand in hand' in anti-discrimination protections and supported the definitions in the Bill.³⁴
- 1.26 Kingsford Legal Centre stated that protecting people against vilification and discrimination on the grounds of sex characteristics is essential.³⁵ Pitt Street Uniting Church also supported adding protections for people with intersex variations.³⁶
- 1.27 Intersex Human Rights Australia welcomed the inclusion of variation of sex characteristics as a protected attribute. However, the organisation suggested that the definition be amended to include the word 'innate' before the words 'variation of sex characteristics', to avoid conflating people with innate variations and people with acquired variations.³⁷

Exemptions from discrimination protections

- 1.28 The Bill proposes removing some existing exemptions in the Act that allow a person or organisation to lawfully discriminate against another person. This

²⁸ [Submission 18](#), Intersex Human Rights Australia, p 24; [Submission 17](#), Public Interest Advocacy Centre, p 3; [Submission 30](#), Anti-Discrimination NSW, p 1.

²⁹ [Submission 42](#), Pride in Protest, p 11; [Submission 7](#), ACON, p 4; [Submission 39](#), Equality Australia, pp 2-3; [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 3; [Submission 33](#), Sex Workers Outreach Project, p 8; [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 4; [Submission 6](#), Professor Nicole L Asquith and Dr Justin Ellis, p 1; [Submission 30](#), Anti-Discrimination NSW, pp 1-2.

³⁰ Mr Nicolas Parkhill AM, CEO, ACON, [Transcript of evidence](#), 30 April 2024, p 9.

³¹ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 3.

³² [Submission 33](#), Sex Workers Outreach Project NSW, p 10.

³³ Ms Joanna Megan, Chief Executive Officer, Sex Workers Outreach Project NSW, [Transcript of evidence](#), 30 April 2024, p 42.

³⁴ Mx Mish Pony, Chief Executive Officer, Scarlett Alliance, Australian Sex Workers Association, [Transcript of evidence](#), 30 April 2024, p 44.

³⁵ [Submission 15](#), Kingsford Legal Centre, p 3.

³⁶ [Submission 16](#), Pitt St Uniting Church, p 3.

³⁷ [Submission 18](#), Intersex Human Rights Australia, p 24.

includes removing the following exemptions for private educational authorities:

- discriminating against a person on the grounds of their marital or domestic status
- discriminating against an employee or applicant, or student or applicant on transgender grounds
- discriminating against an employee or applicant on the ground of disability
- discriminating against an employee or applicant, or student or applicant on the grounds of sexuality
- discriminating against a student or applicant on the ground of age.

1.29 The Bill also seeks to narrow the existing exception for sport that allows discrimination on the grounds of sex. It proposes to narrow it by making it lawful to exclude a transgender person from participating in a sporting activity for members of the sex the person lives, identifies with, or seeks to live, if:

- i the person is over the age of 12
- ii the sporting activity is conducted as part of a competition
- iii the strength stamina or physique of a person competing in the competition is relevant, and
- iv the exclusion of the person is reasonable and proportionate in all the circumstances.

Arguments against

1.30 Several organisations opposed removing the exemptions to the AD Act that apply to private educational authorities, such as religious schools.³⁸ Mrs Vanessa Cheng, Executive Officer, Australian Association of Christian Schools, said that faith-based schools need the exemptions as they expect staff to uphold and practice the ethos and values of the school.³⁹

1.31 The Australian Christian Lobby opposed the amendment related to sport, arguing that it could undermine safety and fairness in women's sports.⁴⁰ The organisation noted that there would be debate about how to define key terms such as 'strength, stamina or physique' and whether the exclusion of a person is 'reasonable and proportionate'.⁴¹ Jessica Pearson, Harvey Eastman and Michael Lowry were also concerned that the amendments would disproportionately

³⁸ [Submission 28](#), Freedom for Faith, p 2; [Submission 35](#), Australian Christian Lobby, p 7; [Submission 26](#), NSW Council of Churches, p 3; [Submission 36](#), Faith NSW and Better Balanced Futures, p 3; [Submission 27](#), Australian Association of Christian Schools and Christian Schools Australia, p 3.

³⁹ Mrs Vanessa Cheng, Executive Officer, Australian Association of Christian Schools, [Transcript of evidence](#), 1 May 2024, p 5.

⁴⁰ [Submission 35](#), Australian Christian Lobby, p 18.

⁴¹ [Submission 35](#), Australian Christian Lobby, p 19.

impact female athletes.⁴²

- 1.32 The Catholic Women's League Australia, New South Wales said that the amendment to the sport exception would discourage women who may be intimidated by trans women from participating in sport.⁴³

Arguments in favour

- 1.33 Several stakeholders commented on the need to remove the existing exemptions under the AD Act.⁴⁴ Mr Alastair Lawrie, Director of Policy and Advocacy, Public Interest Advocacy Centre (PIAC), said that removing exemptions for religious schools would make NSW law consistent with other jurisdictions, and noted that this change has not had a detrimental impact on the ability of religious schools to operate in other jurisdictions.⁴⁵ Kingsford Legal Centre said that discrimination in education currently permitted by the AD Act violates Australia's obligations under international human rights law, including the *International Covenant on Civil and Political Rights* (ICCPR).⁴⁶
- 1.34 Emeritus Professor Patrick Parkinson AM said that exemptions applying to private schools are too wide.⁴⁷ Ms Mel Smith, Acting General Secretary, Australian Education Union, NSW Teachers Federation branch, also supported removing the exemptions for private educational authorities that received NSW and Commonwealth government funds. She said they should be held accountable in the same way as public institutions are, and that they should be required to comply with legislation prohibiting discrimination.⁴⁸
- 1.35 While Parents for Trans Youth Equity supported the Bill and removing the exemptions, Ms Barbara Taylor said that the Bill's proposed changes do not protect the rights of adolescent trans people 12 years and older to participate in sport.⁴⁹

Changing religious exemptions

- 1.36 The Bill proposes to modify the exemption for religious bodies so that a religious body can only lawfully discriminate against a person if it:
- i is reasonable and proportionate in the circumstances
 - ii conforms to the doctrines of the religion, and

⁴² [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 12.

⁴³ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 2.

⁴⁴ [Submission 21](#), AEU NSW Teachers Federation, pp 2-3; [Submission 57](#), New South Wales Nurses and Midwives Association, p 3; [Submission 10](#), Parents for Trans Youth Equity, pp 4-5; [Submission 56](#), headspace National and the Black Dog Institute, p 4; [Submission 50](#), Twenty10, p 2.

⁴⁵ Mr Lawrie, [Evidence](#), 30 April 2024, p 21.

⁴⁶ [Answers to questions on notice](#), Kingsford Legal Centre, 15 May 2024, pp 2-3.

⁴⁷ Emeritus Professor Patrick Parkinson AM, [Transcript of evidence](#), 1 May 2024, p 39.

⁴⁸ [Submission 21](#), AEU NSW Teachers Federation, p 2; Ms Mel Smith, Acting General Secretary, Australia Education Union, NSW Teachers Federation Branch, [Transcript of evidence](#), 30 April 2024, p 4.

⁴⁹ Ms Barbara Taylor, Parent Representative, Parents for Trans Youth Equity, [Transcript of evidence](#), 1 May 2024, p 20.

iii is necessary to avoid injury to the religious susceptibilities of the religion's adherents.

- 1.37 The Bill also proposes to limit the exemption so that it would not apply to:
- i employment and education by religious education institutions, or
 - ii employment and provision of goods and services by religious bodies providing goods or services to the general public.
- 1.38 The Bill also seeks to remove an exception for a policy or practice of a faith-based organisation related to providing adoption services.

Arguments against

- 1.39 Most of the Christian organisations that the Committee heard from opposed removing exemptions in the AD Act that allow private educational institutions and religious groups to lawfully discriminate against people, as it could impact freedom of religion.⁵⁰ Bishop Michael Stead, Chair, Freedom for Faith, said that exemptions are needed to maintain the religious character of an institution.⁵¹ Better Balanced Futures and Faith NSW gave examples of Jewish and Muslim practices that would be impacted by the Bill, such as separate prayer areas for men and women.⁵²
- 1.40 The Australian Association of Christian Schools and Christian Schools Australia said religious freedom is protected under the ICCPR and the amendments would narrow protected religious freedoms.⁵³ Mr Mark Spencer, Director of Public Policy, Christian Schools Australia, said that removing the exemption would undermine the rights of parents to choose an education consistent with their values and beliefs.⁵⁴
- 1.41 The Australian Christian Lobby opposed removing the exemptions, arguing that it 'would compromise the exercise of religious freedom for communities of faith.'⁵⁵ The Catholic Women's League Australia, NSW, opposed removing the exemption allowing faith based adoption agencies to discriminate on the basis of sexuality, arguing that this would limit the decision making of the mother.⁵⁶ The NSW Council of Churches said that requiring faith based services to provide counselling

⁵⁰ [Submission 27](#), Australian Association of Christian Schools and Christian Schools Australia, p 3; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 9; [Submission 35](#), Australian Christian Lobby, pp 7-9; [Submission 36](#), Faith NSW and Better Balance Futures, p 3; The Most Reverend Anthony Fisher OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, [Transcript of evidence](#), 1 May 2024, p 2; [Submission 28](#), Freedom for Faith, pp 2-3; [Submission 26](#), NSW Council of Churches, pp 2-3.

⁵¹ Bishop Michael Stead, Bishop of South Sydney and Chair, Freedom for Faith, [Transcript of evidence](#), 30 April 2024, p 27.

⁵² [Answers to supplementary questions](#), Better Balanced Futures and Faith NSW, 22 May 2024, pp 2-3.

⁵³ [Submission 27](#), Australian Association of Christian Schools and Christian Schools Australia, p 3.

⁵⁴ Mr Mark Spencer, Director of Public Policy, Christian Schools Australia, [Transcript of evidence](#), 1 May 2024, p 1.

⁵⁵ [Submission 35](#), Australian Christian Lobby, p 8.

⁵⁶ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 2.

or fostering services to same sex couples is a breach of religious freedom.⁵⁷

- 1.42 Some groups expressed concerns about the qualification of 'reasonable and proportionate', suggesting that this would be open to interpretation and require courts to interpret religious doctrine.⁵⁸ Faith NSW and Better Balanced Futures were concerned that the changes would result in judges interpreting religious doctrine, which would impact religious groups' ability to practice their faith.⁵⁹ It also said that this change would be asking the judicial system to become highly detailed experts on all religions in NSW, in order to be able to judge this fairly, which would be an unreasonable expectation.⁶⁰ Bishop Stead stated that he was concerned about legal judgements being made about whether certain Christian or Muslim beliefs are reasonable and proportionate.⁶¹

Arguments in favour

- 1.43 Many organisations supported removing religious exemptions, particularly to better protect LGBTIQ+ people from discrimination.⁶² Ms Anna Brown, OAM, CEO, Equality Australia, strongly supported removing religious exemptions, noting Equality Australia's work documenting the harm caused by discrimination in religious contexts, particularly for employment and religious service provision.⁶³
- 1.44 PIAC supported removing religious exemptions, arguing LGBTQI+ students in all schools have the right to learn free from discrimination.⁶⁴ Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia, said that the Bill has the right balance in terms of religious freedoms and protecting people from discrimination.⁶⁵ Mr Warren Talbot, Pitt Street Uniting Church, similarly said that religious freedoms, like all freedoms, are not absolute and it is a question of balancing freedoms. He said the Bill is a very good attempt at striking this balance and better acknowledging the human rights of LGBTIQ+ people.⁶⁶
- 1.45 Kingsford Legal Centre said that ICCPR articles protecting freedom of religion are not absolute as they can be limited and must be balanced with other fundamental rights, including the fundamental right to equality and non-discrimination.⁶⁷ Dr Aileen Kennedy, Australian Lawyers for Human Rights, noted that, in taking a human rights approach to balancing competing rights, the right

⁵⁷ [Submission 26](#), NSW Council of Churches, p 4.

⁵⁸ [Submission 26](#), NSW Council of Churches, p 3.

⁵⁹ [Submission 36](#), Faith NSW and Better Balance Futures, p 3.

⁶⁰ [Answers to supplementary questions](#), Better Balanced Futures and Faith NSW, 21 May 2024, p 4.

⁶¹ Bishop Stead, [Evidence](#), 30 April 2024, pp 25-26.

⁶² [Submission 42](#), Pride in Protest, p 12; [Submission 17](#), Public Interest Advocacy Centre, pp 5-6; [Submission 7](#), ACON, p 4; Ms Anna Kerr, Principal Solicitor, Feminist Legal Clinic, [Transcript of evidence](#), 1 May 2024, p 12; Mr Warren Talbot, Member and Secretary of the Uniting Church in Australia's national apology to LGBTIQ+ Australians Task Group, Pitt Street Uniting Church, [Transcript of evidence](#), 30 April 2024, p 39.

⁶³ Ms Anna Brown OAM, CEO, Equality Australia, [Transcript of evidence](#), 30 April 2024, p 11.

⁶⁴ [Submission 17](#), Public Interest Advocacy Centre, p 5.

⁶⁵ Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia, [Transcript of evidence](#), 30 April 2024, p 22.

⁶⁶ Mr Talbot, [Evidence](#), 30 April 2024, p 39.

⁶⁷ [Answers to questions on notice](#), Kingsford Legal Centre, 15 May 2024, p 2.

to express a religious belief does not trump the right to be free from discrimination.⁶⁸ She said that the religious exemptions are too broad and continue to negatively impact LGBTIQ+ people. Several other inquiry participants shared this position.⁶⁹

- 1.46 Ms Emma Golledge, Director, Kingsford Legal Centre, said that the religious exemptions are broad and unbalanced and the Bill improves the balance of those religious rights with other rights.⁷⁰ Mr Ashley Scott, Executive Officer, Rainbow Families, said that religious exemptions in adoption services have been a constraint on LGBTQ+ people seeking to start a family.⁷¹
- 1.47 In noting that the religious exceptions permit discrimination across protected attributes including race, sex, marital status, homosexuality or transgender status, PIAC stated that removing the religious exception is a high priority to bring the Act in line with community standards.⁷² Mr Craig Gross, NSW Teachers and Midwives' Association, said that if public money is going to private religious providers, they should be consistent with public providers in being subject to the AD Act.⁷³
- 1.48 Ms Anna Kerr, Principal Solicitor, Feminist Legal Clinic, said that religious exemptions to discrimination legislation harm women, lesbians and gay people.⁷⁴ Professor L Asquith and Dr Justin Ellis said that removing religious discrimination exemptions is critical law reform that helps ensure human rights for people in NSW.⁷⁵
- 1.49 Catholics for Renewal noted that the Catholic Church is failing to align religious doctrine with scientific evidence and are prioritising past doctrinal positions over a pastoral commitment to the welfare of the Church's followers.⁷⁶ While noting that the State is not competent to interpret matters of religious doctrine, the organisation also said that it is obliged to protect the human rights of its citizens.⁷⁷

Operational issues

- 1.50 The NSW Government said that they will consider changes to the AD Act following the NSW Law Reform Commission's review.⁷⁸ The Government indicated that changes to the AD Act on grounds of discrimination are significant

⁶⁸ Dr Aileen Kennedy, Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights, [Transcript of evidence](#), 30 April 2024, pp 17-18.

⁶⁹ Mr Ashley Scott, Executive Officer, Rainbow Families, [Transcript of evidence](#), 1 May 2024, p 15; Mr Ghassan Kassisieh, Legal Director, Equality Australia, [Transcript of evidence](#), 30 April 2024, p 10; [Submission 7](#), ACON, p 4.

⁷⁰ Ms Emma Golledge, Director, Kingsford Legal Centre, [Transcript of evidence](#), 30 April 2024, p 22.

⁷¹ Mr Scott, [Evidence](#), 1 May 2024, p 15.

⁷² [Submission 17](#), Public Interest Advocacy Centre, p 6.

⁷³ Mr Craig Gross, Professional Officer, Professional Services, NSW Teachers and Midwives' Association, [Transcript of evidence](#), 30 April 2024, p 4.

⁷⁴ Ms Kerr, [Evidence](#), 1 May 2024, p 12.

⁷⁵ [Submission 6](#), Professor Nicole L Asquith and Dr Justin Ellis, p 1.

⁷⁶ [Submission 60](#), Catholics for Renewal, p 3.

⁷⁷ [Submission 60](#), Catholics for Renewal, p 2.

⁷⁸ [Submission 13](#), NSW Government, p 7.

and likely to be contentious.⁷⁹

- 1.51 Anti-Discrimination NSW submitted that the reforms are complex and that there are overlapping jurisdictions in the area of discrimination. The organisation said that amending the AD Act while it is being reviewed by the Law Reform Commission may undermine what is currently a comprehensive and well-structured Act and add further complexity to it.⁸⁰ The Law Society of NSW expressed similar concerns about piecemeal reform of the AD Act, while acknowledging the significant benefits in many of the proposed amendments.⁸¹

Additional ways to improve safety and wellbeing

- 1.52 BlaQ Aboriginal Corporation supported the amendments to improve protections against discrimination, but suggested that the new protections would need to be accessible and effectively communicated if they are to be effective in protecting Aboriginal people.⁸²
- 1.53 ACON said that appropriate resourcing and mechanisms to monitor compliance are important to ensure the proposed discrimination protections operate effectively.⁸³ Domestic Violence NSW said there must be funding support for LGBTIQ+ people for program delivery and community care.⁸⁴
- 1.54 Mr Murray Norman, CEO, Faith NSW and Better Balance Futures, said that religious or faith groups should make their faith and beliefs clear in codes of conduct for employment situations. This will help make it clear for people about which institutions share their ethos so they can make decisions based on this understanding.⁸⁵

Responses to survey question

- 1.55 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Anti-Discrimination Act 1977* were:
- 82.79% opposed
 - 13.11% supported
 - 1.18% supported with amendments
 - 1.38% neutral-undecided

⁷⁹ [Submission 13](#), NSW Government, p 7.

⁸⁰ [Submission 30](#), Anti-Discrimination NSW, pp 2-3.

⁸¹ [Submission 54](#), Law Society of NSW, pp 1-2.

⁸² [Submission 2](#), BlaQ Aboriginal Corporation, pp 6-7.

⁸³ [Submission 7](#), ACON, p 7.

⁸⁴ [Submission 5](#), Domestic Violence NSW, p 2.

⁸⁵ Mr Murray Norman, CEO, Faith NSW and Better Balanced Futures, [Transcript of evidence](#), 30 April, p 34.

- 1.55% did not respond.⁸⁶

See Appendix 3 for more details on the online survey.

Births, Deaths and Marriages Registration Act 1995

Proposed amendments

- 1.56 The Bill proposes to amend the *Births, Deaths and Marriages Registration Act 1995 (BDM Act)* to change the way that a person's sex is recorded and acknowledged under the BDM Act. The main proposed change is replacing Part 5A, which is the Acknowledgement of Sex.⁸⁷
- 1.57 The Bill proposes to change the process for a person to alter the way their sex is recorded on their birth certificate. Mr Greenwich explained that it would replace current limits on altering records of sex to a person who has undergone surgery, by enabling alteration with affirming documentation.⁸⁸
- 1.58 Currently a person can only apply to Registrar of the Births, Deaths and Marriages to alter the record of their sex if they have undergone a sex affirmation procedure.⁸⁹ The Bill provides two new pathways for a person to alter the record of their sex, one for a person 16 years or older and one for a person under 16 years. It lowers the age a person can apply to alter the record from 18 to 16 years. The Bill proposes to insert a definition of 'sex descriptor', allowing a person applying to alter the record of their sex to indicate their sex as 'male', 'female' or 'any other descriptor of sex'.
- 1.59 The Bill proposes to amend the Act to enable a person aged 16 or over can make an application to the Registrar that must comply with the following requirements:
- inclusion of a statutory declaration that the person identifies as being of the sex specified in the declaration and lives or seeks to live as a person of that sex
 - inclusion of a statement of support by an adult who has known the applicant for at least 12 months indicating that the person is making a good faith application and the adult supports the person
 - confirmation of the sex descriptor that they wish to include on their birth certificate.
- 1.60 If a person is under 16 years, they can apply to the NSW Civil and Administrative Tribunal (NCAT) to alter the record of their sex. The application must:
- include a statement from a person who has provided counselling to the

⁸⁶ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

⁸⁷ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 sch 2\[5\]](#).

⁸⁸ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9146-9147 (Mr Alex Greenwich, Member for Sydney).

⁸⁹ *Births, Deaths and Marriages Act 1995* s 32B(1)(b).

applicant that the applicant has received counselling about the application and the implications of altering the record of their sex

- include any other information or document that NCAT Considers necessary.

1.61 The applicant must also provide a statement that they understand that NCAT must give notice to each parent or person with parental responsibility. The applicant may, however, make a submission that they do not want NCAT to notify their parents on the basis that they would be adversely affected. NCAT can decide not to notify the parents if they find it would adversely affect the young person.

1.62 The Bill requires NCAT to be satisfied that altering the record of sex for a person under 16 years would be in their best interests before approving the application.

1.63 In addition, the Bill seeks to:

- allow a person over the age of 16 to apply to alter the record of sex on behalf of a person younger than 16 to change the record of that person's sex. Proposed section 32D sets out what is required for a person to make that application.
- enable a person younger than 16 to apply for the same process of altering their sex if their birth is not registered under the BDM Act.
- extend the time in which a person must record the sex of their baby from 60 days to 180 days, if variations of sex characteristics do not allow for easy assignment of sex.⁹⁰

1.64 Under the proposed change, once the record of a person's sex is altered, it becomes their recorded sex and their sex for the purposes of all law in NSW.

Arguments against

1.65 Several organisations opposed the amendments to the BDM Act, as they were concerned that it would lead to a loss of recognition of male and female 'sex' and conflate 'sex' and 'gender'. They were specifically concerned about a person being able to alter their record to a sex descriptor that is not 'female' or 'male' and instead include a term that is also used to describe gender.⁹¹

1.66 Bishop Michael Stead said that the proposed amendment allowing a person to alter the record of their sex descriptor to a term that can also describe gender is radical and conflates sex and gender. He said allowing a person to change their sex from male to female was secondary to the primary concern of conflating

⁹⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 2[2].

⁹¹ [Submission 25](#), Genspect Australia committee, pp 2-3; [Submission 28](#), Freedom for Faith, p 9; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 3; [Submission 32](#), LGB Alliance Australia, p 12; [Submission 35](#), Australian Christian Lobby, p 6; [Submission 34](#), Plunkett Centre for Ethics, pp 2-3; [Submission 37](#), Australian Feminists for Women's Rights, p 2; [Submission 38](#), Women's Rights Network Australia, p 9; [Submission 49](#), Coalition of Activist Lesbians, p 5.

gender identity and sex.⁹²

- 1.67 Other groups raised concerns about being able to include a sex descriptor other than male or female. Ms Janet Fraser, Women's Rights Network Australia, said that gender identity is separate to a person's sex and is not a characteristic capable of protection as it cannot be verified.⁹³ Ms Viviane Morigan, Public Officer, Coalition of Activist Lesbians, said that the Bill would make gender identity legal and erase female sex, same-sex attraction and lesbian identity.⁹⁴ Ms Catherine Anderson-Karena, Executive Director and Public Officer, Active Watchful Waiting Australasia, said the Bill prioritises self-identification and internal perceptions of gender and fails to consider the medical, societal and practical implications of the proposed changes.⁹⁵
- 1.68 Stakeholders were concerned that, as the proposed change would make it easier for a person to alter the record of their sex without being required to have surgery, sex specific rights could be impacted.⁹⁶ Australian Association of Christian Schools and Christian Schools Australia argued that this change would undermine privacy and sex based rights.⁹⁷ Dr Deirdre Little, State Bioethics Convenor, Catholic Women's League Australia, argued that it is important to know if a person is either male or female on a birth certificate to protect the safety of women.⁹⁸
- 1.69 Ms Anna Kerr, Principal Solicitor, Feminist Legal Clinic, was also concerned about the enforceability of women's only spaces if a person was allowed to change their sex without having surgery.⁹⁹ Catholic Women's League Australia were similarly worried about protecting women's spaces¹⁰⁰, as were other stakeholders, who argued that women's spaces would be threatened by the changes.¹⁰¹
- 1.70 Better Balanced Futures and Faith NSW talked about the negative impacts the changes could cause for a Muslim woman, for example if there was a transgender

⁹² Bishop Michael Stead, Bishop of South Sydney and Chair, Freedom for Faith, [Transcript of evidence](#), 30 April 2024, p 26.

⁹³ Ms Janet Fraser, Women's Rights Network Australia, [Transcript of evidence](#), 1 May 2024, p 10.

⁹⁴ Dr Viviane Morigan, Public Officer, Coalition of Activist Lesbians, [Transcript of evidence](#), 1 May 2024, p 8.

⁹⁵ Ms Catherine Anderson-Karena, Executive Director and Public Officer, Active Watchful Waiting Australasia, [Transcript of evidence](#), 1 May 2024, p 31.

⁹⁶ [Submission 52](#), Institute for Civil Society, p 4; [Submission 49](#), Coalition of Activist Lesbians, pp 7-8; [Submission 51](#), Women's Forum Australia, pp 3-4; [Submission 38](#), Women's Rights Network Australia, p 9; [Submission 37](#), Australian Feminists for Women's Rights, pp 1-2; [Submission 32](#), LGB Alliance Australia, pp 12-13; [Submission 27](#), Australian Association of Christian Schools and Christian Schools Australia, p 3; [Submission 25](#), Genspect Australia committee, pp 3-4.

⁹⁷ [Submission 27](#), Australian Association of Christian Schools and Christian Schools Australia, p 3.

⁹⁸ Dr Deirdre Little, State Bioethics Convenor, Catholic Women's League Australia, [Transcript of evidence](#), 1 May 2024, p 7.

⁹⁹ Ms Anna Kerr, Principal Solicitor, Feminist Legal Clinic, [Transcript of evidence](#), 1 May 2024, p 13.

¹⁰⁰ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 3.

¹⁰¹ [Submission 38](#), Women's Rights Network Australia, p 9; Mr Murray Norman, CEO, Faith NSW and Better Balance Futures, [Transcript of evidence](#), 30 April 2024, pp 31-32; Emeritus Professor Patrick Parkinson AM, [Transcript of evidence](#), 1 May 2024, p 39; Bishop Stead, [Evidence](#), 30 April 2024, p 30; [Answers to supplementary questions](#), Better Balanced Futures and Faith NSW, 21 May 2024, pp 2-3.

woman in a female changeroom at a gym.¹⁰²

- 1.71 Some stakeholders were concerned that the amendments allowing NCAT to approve an application to alter the record of a young person's sex would undermine the rights of parents to make decisions about their children's lives.¹⁰³ Jessica Pearson, Harvey Eastman and Michael Lowry said that allowing the alteration of sex without parental consent changes the role of parental guidance and the exercise of duty of care in important decision-making processes.¹⁰⁴
- 1.72 Mr Josh Bonett, Director, Research and Strategic Communications, Faith NSW and Better Balanced Futures, stated that the changes may lead to a fracturing of the family unit in its '... prioritisation [of] others over the family unit.'¹⁰⁵
- 1.73 Other arguments raised by stakeholders opposed to the proposed amendments include:
- children not having the cognitive capacity to make decisions to alter their sex¹⁰⁶
 - difficulty preserving religious practices that are traditionally restricted to either men or women¹⁰⁷
 - inconsistency with other legislation that distinguishes between 'sex' and 'gender'¹⁰⁸
 - conflating intersex issues with gender identity issues¹⁰⁹
 - elevating the rights of some minorities over other marginalised groups¹¹⁰
 - potential difficulties gathering data during medical trials on males and females.¹¹¹

Arguments in favour

- 1.74 Several stakeholders supported the proposed amendments as they said it would improve the lives of transgender people and make it easier to access identification (ID) that reflects their sex or gender identity.¹¹² Mr Nicolas Parkhill

¹⁰² [Answers to supplementary questions](#), Better Balanced Futures and Faith NSW, 21 May 2024, p 2.

¹⁰³ Ms Karen Richardson, Representative, Genspect Australia, [Transcript of evidence](#), 1 May 2024, p 36; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 18.

¹⁰⁴ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 18.

¹⁰⁵ Mr Josh Bonett, Director, Research and Strategic Communications, Faith NSW and Better Balanced Futures, [Transcript of evidence](#), 30 April 2024, p 31.

¹⁰⁶ Mr Bonett, [Evidence](#), 30 April 2024, p 31.

¹⁰⁷ The Most Reverend, Anthony Fisher OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, [Transcript of evidence](#), 1 May 2024, p 6.

¹⁰⁸ Bishop Stead, [Evidence](#), 30 April 2024, pp 29-30.

¹⁰⁹ Mr Joshua Rowe, State Director NSW/ACT, Australian Christian Lobby, [Transcript of evidence](#), 30 April 2024, pp 35-36.

¹¹⁰ Ms Anderson-Karena, [Evidence](#), 1 May 2024, p 31.

¹¹¹ Ms Richardson, [Evidence](#), 1 May 2024, pp 34-35.

¹¹² [Submission 15](#), Kingsford Legal Centre, p 4; [Submission 16](#), Pitt St Uniting Church, p 3; [Submission 17](#), Public Interest Advocacy Centre, p 13; [Submission 19](#), NSW Gender Centre, p 2; [Submission 42](#), Pride in Protest, p 8;

AM, CEO, ACON, said that it is a relatively easy 'fix' that will afford people '... a great amount of human dignity.'¹¹³ Dr Aileen Kennedy supported the changes as they would allow transgender and gender diverse people to access ID matching their identity '... without facing cruel and unnecessary legal barriers.'¹¹⁴

- 1.75 Groups supporting the proposed amendments noted that the change would allow transgender people to more easily affirm their gender and sex identity, which would:
- improve respect and dignity for trans and gender diverse people¹¹⁵
 - remove barriers for transgender and gender diverse people to participate in public life¹¹⁶
 - reduce the risk of trans people being 'outed'¹¹⁷
 - improve the physical safety of transgender and gender diverse people.¹¹⁸
- 1.76 Dr Eloise Brook, Health and Communications Manager, NSW Gender Centre, talked about the importance of including trans women in public life.¹¹⁹ Domestic Violence NSW supported the amendments, saying it will make life better for trans and gender-diverse women. They said women's refuges have been servicing trans women for many years and have policies to ensure the safety of all clients.¹²⁰
- 1.77 Mr Parkhill said that the LGBTIQ+ community were, by and large, in solidarity with trans and gender diverse communities, but acknowledged that there may be a small group who do not agree.¹²¹ Dr Eloise Brook noted that women's only spaces such as the women's baths at Coogee are accepting of transgender women.¹²²
- 1.78 Stakeholders talked about the practical importance of being able to update their birth certificate. Mx Mish Pony, CEO, Sex Workers Outreach Project NSW, said that trans and gender diverse people should be able to access identification that aligns with their experience of gender.¹²³ Parents, Family and Friends of Lesbians and Gays supported the amendments as sex reassignment surgery is cost

[Submission 39](#), Equality Australia, p 1; [Submission 45](#), Rainbow Families, p 4; [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 3; [Submission 56](#), headspace National and the Black Dog Institute, p 5; [Submission 58](#), Miss Jasmine Nightingale, p 1; [Submission 66](#), Mental Health Commission of NSW, pp 7-8; [Submission 47](#), Greens NSW, p 1; [Submission 21](#), AEU NSW Teachers Federation, p 4; [Submission 20](#), Trans Justice Project, pp 1-2.

¹¹³ Mr Nicolas Parkhill AM, CEO ACON, [Transcript of evidence](#), 30 April 2024, p 11.

¹¹⁴ Dr Aileen Kennedy, Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights, [Transcript of evidence](#), 30 April 2024, p 17

¹¹⁵ [Submission 17](#), Public Interest Advocacy Centre, p 9.

¹¹⁶ [Submission 20](#), Trans Justice Project, p 1.

¹¹⁷ [Submission 39](#), Equality Australia, p 1.

¹¹⁸ [Submission 42](#), Pride in Protest, p 8.

¹¹⁹ Dr Eloise Brook, Health and Communications Manager, NSW Gender Centre, [Transcript of evidence](#), 1 May 2024, p 19.

¹²⁰ [Submission 5](#), Domestic Violence NSW, p 1.

¹²¹ Mr Parkhill, [Evidence](#), 30 April 2024, p 13.

¹²² Dr Brook, [Evidence](#), 1 May 2024, p 19.

¹²³ Mx Mish Pony, CEO, Sex Workers Outreach Project NSW, [Transcript of evidence](#), 30 April 2024, p 44.

prohibitive and some transgender people do not want to have surgery to affirm their gender identity.¹²⁴ Dr Brook said that from her experience with families, young people and the trans community, trans people need ID that allows them to connect with wider society.¹²⁵

- 1.79 Mr Ghassan Kassisieh, Legal Director, Equality Australia, said that transgender people have been entitled to legal recognition in NSW since 1996 and as a matter of law, sex and gender are already conflated.¹²⁶ The Public Interest Advocacy Centre noted that the BDM Act currently imposes the highest burden in Australia on trans people, as no other jurisdiction requires genital surgical intervention as a prerequisite to obtain a new birth certificate.¹²⁷ Rainbow Families stated that the proposed amendments will bring NSW in line with other jurisdictions.¹²⁸ Mr Kassisieh noted that the Commonwealth has changed its passport requirements to allow a person to update their sex, and that this could result in inconsistencies with a NSW birth certificate.¹²⁹
- 1.80 The Australian Education Union, NSW Teachers Federation, agreed with expanding the definition of 'sex' in the BDM Act to include broad sex descriptors. Ms Mel Smith said that it is a barrier for young people engaging with services to have their name, gender or pronouns differing to what is on their birth certificate.¹³⁰ Mr Parkhill stated that many trans people were forced to disclose incorrect personal information because they had not been able to update their birth certificate.¹³¹ Dr Brook spoke about the mental health issues raised by ID that isn't accurate and doesn't give a person protection, and argued that the proposed changes could save lives.¹³²
- 1.81 BlaQ Aboriginal Corporation submitted that it was important that ID accurately reflects a transgender person's identity, saying it is critical for the social recognition and dignity of transgender people. The organisation said that, particularly for Aboriginal transgender people, not having accurate ID means that they may be misgendered and experience increased discrimination, distress and anxiety.¹³³
- 1.82 The amendment to extend the period in which a baby's sex must be recorded was supported by some organisations on the basis that it would improve protections for intersex people. Catholic Women's League Australia NSW supported a delay in recording the sex of a baby in cases where there is ambiguous genitalia.¹³⁴ Dr Morgan Carpenter, Executive Director, Intersex Human

¹²⁴ [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 3.

¹²⁵ Dr Brook, [Evidence](#), 1 May 2024, p 20.

¹²⁶ Mr Ghassan Kassisieh, Legal Director, Equality Australia, [Transcript of evidence](#), 30 April 2024, p 10.

¹²⁷ [Submission 17](#), Public Interest Advocacy Centre, pp 8-9.

¹²⁸ [Submission 45](#), Rainbow Families, p 4.

¹²⁹ Mr Kassisieh, [Evidence](#), 30 April 2024, p 11.

¹³⁰ Ms Mel Smith, Acting General Secretary, Australian Education Union, NSW Teachers Federation Branch, [Transcript of evidence](#), 30 April 2024, p 4.

¹³¹ Mr Parkhill, [Evidence](#), 30 April 2024, p 9.

¹³² Dr Brook, [Evidence](#), 1 May 2024, p 20.

¹³³ [Submission 2](#), BlaQ Aboriginal Corporation, p 3.

¹³⁴ Answer to question on notice, Catholic Women's League Australia NSW, 6 May 2024, p 1.

Rights Australia, also supported the change, but said that it would not meet the needs of Intersex people to protect them from harmful practices.¹³⁵ Although Mr Joshua Rowe, State Director, Australian Christian Lobby, opposed amending the BMD Act, he did not have an explicit concern about the amendment to allow 180 days to register the birth of someone where assignment of sex is difficult.¹³⁶

- 1.83 Parents for Trans Youth Equity supported the proposed amendments to the BDM Act, but suggested numerous additional amendments such as:
- lowering the minimum age to 14
 - removing the need to involve a counsellor in making an application
 - requiring NCAT to notify at least one parent.¹³⁷

Operational issues

- 1.84 The NSW Government said that a review of Part 5A of the BDM Act has been on hold pending consideration of this inquiry. However, the Government identified a number of operational issues regarding the proposed amendments, including:
- concerns about protections against identity fraud as the amendments may not comply with other sections of the BDM Act that have safeguards to prevent identity fraud
 - there are no restrictions on particular persons making an application to alter the record of their sex, unlike applications to change a person's name
 - the sex descriptor a person may choose to alter their record to might be inconsistent with types of names, which may raise administrative issues
 - there is no provision for accessing the previous records of a person's sex
 - potential inconsistencies with the Marriage Act (Cth).¹³⁸
- 1.85 The NSW Government also raised potential issues regarding the proposal to lower the age at which a person can make an application to alter the record of their sex, from 18 to 16. It said that the changes may be inconsistent with other sections of the Act applying to applications to change a person's name. The Government said that the amendments conflict with the procedural principle that a person under 18 years does not have legal capacity to initiate legal proceedings.
- 1.86 The Government also raised concern about the evidentiary requirement for a counsellor to be involved in the application, suggesting that it might be more appropriate for counselling to be provided by a 'qualified person'. It said that requiring NCAT to make a primary decision about a person's application is

¹³⁵ Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia, [Transcript of evidence](#), 30 April 2024, p 17.

¹³⁶ Mr Rowe, [Evidence](#), 30 April 2024, p 36.

¹³⁷ [Submission 10](#), Parents for Trans Youth Equity, pp 7-8.

¹³⁸ [Submission 13](#), NSW Government, pp 9-10.

inconsistent with its jurisdiction under the BDM Act, and that NCAT does not currently have permanent members with relevant expertise to assess what is in a child's best interests.¹³⁹

Responses to survey question

1.87 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* were:

- 82.91% opposed
- 12.91% supported
- 0.79% supported with amendments
- 1.59% neutral-undecided
- 1.80% did not respond.¹⁴⁰

See Appendix 3 for more details on the online survey.

Children and Young Persons (Care and Protection) Act 1988

The proposed amendments

1.88 The Bill seeks to amend the *Children and Young Persons (Care and Protection) Act 1988* (the **Act**). The Bill seeks to add 'gender identity' and 'variations of sex characteristics' to the guiding principles of the Act. This means that these attributes of a child, or if relevant, the person with parental responsibility, will need to be considered in all decisions and actions made under the Act.

1.89 The Bill proposes to insert a new section into the Act to allow a young person (aged 16 or 17) to make a decision about their 'own medical or dental treatment as effectively as an adult'. By doing so, Mr Greenwich stated that the Bill would legislate Gillick competence.¹⁴¹

1.90 For a child (under the age of 16), the Bill would allow medical practitioners to administer medical or dental treatment if:

- a parent consents, or
- the child consents and, in the medical practitioner's opinion, the child is capable of understanding the nature, consequences and risks of the treatment, and it is in the best interests of the child's health and wellbeing.

1.91 The Bill also proposes to specify that if a court has consented to or approved

¹³⁹ [Submission 13](#), NSW Government, pp 9-10.

¹⁴⁰ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

¹⁴¹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 3[2]; New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9146 (Mr Alex Greenwich, Member for Sydney).

'special medical treatment', consent from the Civil and Administrative Tribunal is not required.¹⁴²

1.92 In the Act, special medical treatment includes any medical treatment that is intended, or reasonably likely, to have the effect of rendering someone permanently infertile. In his second reading speech Mr Greenwich stated that some doctors consider some types of gender affirming care to be 'special medical treatment'.¹⁴³

1.93 In his submission to the inquiry Mr Greenwich indicated that he intends to withdraw the Bill's provisions that legislate Gillick competence and regulate gender affirming care, due to potential unintended consequences.¹⁴⁴

Arguments against

1.94 Stakeholders expressed concern that the Bill removes parental consent as a requirement for medical treatment of children and young people in certain circumstances.¹⁴⁵ Stakeholders stated that parental consent is a safeguard in the care of the children¹⁴⁶, and that the Bill would:

- impact the rights of parents or the family unit¹⁴⁷
- drive a 'wedge' between children and their parents¹⁴⁸
- allow medical treatment to be used as 'leverage in family disputes'.¹⁴⁹

1.95 Some stakeholders stated that a child or young person is too young to make important decisions about gender affirming medical treatment.¹⁵⁰ Stakeholders argued that children are unable to comprehend the effects of such treatment and

¹⁴² [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 3[3].

¹⁴³ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9146 (Mr Alex Greenwich, Member for Sydney).

¹⁴⁴ *Children and Young Persons (Care and Protection) Act 1998* s 175(5); [Submission 8](#), Mr Alex Greenwich MP, p 2.

¹⁴⁵ [Submission 25](#), Genspect Australia committee, p 7; [Submission 28](#), Freedom for Faith, p 13; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc., p 5; [Submission 32](#), LGB Alliance Australia, p 15; [Submission 34](#), Plunkett Centre for Ethics, p 3; [Submission 35](#), Australian Christian Lobby, p 20; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4; [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 49](#), Coalition of Activist Lesbians, pp 2-3; [Submission 51](#), Women's Forum Australia, p 1; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 21; The Most Reverend Anthony Fisher OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, [Transcript of Evidence](#), 1 May 2024, p 2; Dr Deirdre Little, State Bioethics Convenor, Catholic Women's League Australia—New South Wales Inc, [Transcript of Evidence](#), 1 May 2024, p 3.

¹⁴⁶ [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 20.

¹⁴⁷ [Submission 35](#), Australian Christian Lobby, pp 4, 11; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4.

¹⁴⁸ [Submission 36](#), Faith NSW and Better Balanced Futures, p 4.

¹⁴⁹ [Submission 28](#), Freedom for Faith, p 11; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4.

¹⁵⁰ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 3; [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 40](#), Active Watchful Waiting Australasia, p 12; [Submission 46](#), Feminist Legal Clinic, p 4; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), p3; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 21.

cannot provide informed consent.¹⁵¹

- 1.96 Freedom for Faith and Genspect Australia committee stated that children and young people may regret their decision to undertake gender affirming medical treatment and referred to an increasing number of 'de-transitioners'.¹⁵²
- 1.97 Stakeholders said that gender affirming medical care could lead to negative long term health consequences for children and young people.¹⁵³ Some stakeholders said that gender affirming medical treatment, or forms of this treatment are irreversible¹⁵⁴ and would cause, or risk, infertility¹⁵⁵, sterility¹⁵⁶ and a loss of sexual function¹⁵⁷.
- 1.98 Some stakeholders who opposed the proposed amendments referred to the Independent review of gender identity services for children and young people: (the **Cass Review**), which made recommendations to the National Health Service (NHS) in England on providing care to minors experiencing gender dysphoria.¹⁵⁸ Stakeholders called for caution in providing access to gender-affirming care, including puberty blockers and cross-sex hormones, to children and young people.¹⁵⁹
- 1.99 Some stakeholders noted that the amendments relating to consent for the medical treatment of minors could create inconsistency with Federal common law and referenced the decisions made by the Family Court of Australia in *Re Kelvin* and *Re Imogen*.¹⁶⁰
- 1.100 Emeritus Professor Patrick Parkinson AM noted that the proposed amendments regarding the consent to medical care for children under 16 could contradict *Re*

¹⁵¹ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 3; [Submission 40](#), Active Watchful Waiting Australasia, p 12; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 21.

¹⁵² [Submission 25](#), Genspect Australia committee, p 7; [Submission 28](#), Freedom for Faith, p 14.

¹⁵³ [Submission 25](#), Genspect Australia committee, p 8; [Submission 32](#), LGB Alliance Australia, p 15; [Submission 34](#), Plunkett Centre for Ethics, p 3; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4; [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 40](#), Active Watchful Waiting Australasia, p 10; [Submission 51](#), Women's Forum Australia, p 8; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 21.

¹⁵⁴ [Submission 28](#), Freedom for Faith, p 11; [Submission 34](#), Plunkett Centre for Ethics, p 3; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4; [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 51](#), Women's Forum Australia, p 8.

¹⁵⁵ [Submission 1](#), Emeritus Professor Patrick Parkinson AM, p 6; [Submission 25](#), Genspect Australia committee, p 8; [Submission 28](#), Freedom for Faith, p 11; [Submission 46](#), Feminist Legal Clinic, p 4; [Submission 51](#), Women's Forum Australia, p 8.

¹⁵⁶ [Submission 28](#), Freedom for Faith, p 11; [Submission 36](#), Faith NSW and Better Balanced Futures, p 4; [Submission 46](#), Feminist Legal Clinic, p 4; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 21.

¹⁵⁷ [Submission 25](#), Genspect Australia committee, p 8; [Submission 46](#), Feminist Legal Clinic, p 4; [Submission 51](#), Women's Forum Australia, p 8; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 21.

¹⁵⁸ The Cass Review, [Final Report](#), viewed 7 May 2024.

¹⁵⁹ [Submission 36](#), Faith NSW and Better Balanced Futures, p 4; [Submission 38](#), Women's Rights Network Australia, p 10; [Submission 46](#), Feminist Legal Clinic, p 3; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), p 4; Dr Little, [Evidence](#), 1 May 2024, p 3; Ms Janet Fraser, Women's Rights Network Australia, [Transcript of evidence](#), 1 May 2024, p 12; Ms Catherine Anderson-Karena, Executive Director and Public Officer, Active Watchful Waiting Australasia, [Transcript of evidence](#), 1 May 2024, p 31.

¹⁶⁰ [Submission 40](#), Active Watchful Waiting Australasia, p 12; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 21; Emeritus Professor Patrick Parkinson AM, [Transcript of evidence](#), 1 May 2024, p 40; *Re Kelvin* [2017] FamCAFC 258; *Re: Imogen* (No. 6) [2020] FamCA761.

Kelvin by allowing their medical treatment to occur, either with one parent's consent or without parental consent altogether.¹⁶¹

- 1.101 Plunkett Centre for Ethics stated that it is inappropriate to add gender identity and variations of sex characteristics into the Act's guiding principles. The organisation stated that 'gender identity' could be misunderstood in a clinical setting and lead to normalising gender affirming care.¹⁶²

Arguments in favour

- 1.102 Stakeholders who supported the amendments stressed the importance of access to gender affirming care and how it can positively affect the mental health and wellbeing of transgender and gender diverse children and young people.¹⁶³
- 1.103 Several stakeholders supported the proposed amendments to the Act, either with or without amendments.¹⁶⁴
- 1.104 The Trans Justice Project noted that the proposed amendments would offer some safeguards for gender diverse and transgender minors' access to health services.¹⁶⁵
- 1.105 Dr Eloise Brook, Health and Communications Manager, NSW Gender Centre, said that the Cass Review recommends a model for gender affirming care that incorporates multi-disciplinary teams to work with gender diverse or transgender minors and their families on a pathway that best supports them. Dr Brook and Mr Greenwich noted that the model recommended by the Cass Review is already in place in Australia and NSW.¹⁶⁶
- 1.106 Equality Australia said that the Bill would not change the existing requirement for a Court to authorise puberty blockers or hormone treatments for a person under 18, if a parent disputes their competence, diagnosis or treatment for gender dysphoria.¹⁶⁷
- 1.107 Stakeholders also said that the amendments would clarify laws relating to medical consent for young people.¹⁶⁸ Trans Justice Project and Equality Australia said the change would remove a 'double standard' and allow transgender and

¹⁶¹ Emeritus Professor Parkinson AM, [Evidence](#), 1 May 2024, p 39; [Submission 1](#), Emeritus Professor Patrick Parkinson AM, p 5.

¹⁶² [Submission 34](#), Plunkett Centre for Ethics, p 3.

¹⁶³ [Submission 20](#), Trans Justice Project, p 2; [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 4; Attachment to Submission 39, Equality Australia, [Act for equality: Legal explainer on the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 \(NSW\)](#), 18 September 2023, p 15; [Submission 47](#), Greens NSW, pp 5-6.

¹⁶⁴ [Submission 10](#), Parents for Trans Youth Equity, p 15; [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 4; [Submission 18](#), Intersex Human Rights Australia, p 19; [Submission 20](#), Trans Justice Project, pp 1-3; [Submission 21](#), AEU NSW Teachers Federation, pp 4-5; [Submission 39](#), Equality Australia, pp 1-3; [Submission 42](#), Pride in Protest, p 9; [Submission 48](#), Australian Lawyers for Human Rights, p 5.

¹⁶⁵ [Submission 20](#), Trans Justice Project, pp 2-3.

¹⁶⁶ Dr Eloise Brook, Health and Communications Manager, NSW Gender Centre, [Transcript of evidence](#), 1 May 2024, p 20; Mr Alex Greenwich, Member for Sydney, [Transcript of evidence](#), 1 May 2024, p 50.

¹⁶⁷ [Submission 39](#), Equality Australia, pp 2-3.

¹⁶⁸ [Submission 2](#), BlaQ Aboriginal Corporation, p 4; [Submission 21](#), AEU NSW Teachers Federation, pp 4-5; [Submission 39](#), Equality Australia, p 2.

gender diverse children and young people to be on an even playing field with their peers when consenting to their medical treatment.¹⁶⁹

1.108 Additionally, some stakeholders supported children and young people's right to give informed consent, and to bodily autonomy and/or agency.¹⁷⁰

Operational issues

1.109 The NSW Government stated that further consideration and consultation is needed on the proposed amendments. They noted that there was uncertainty about how the amendments would interact with other laws or practices relating to children and young people, including:

- whether they would override section 174 of the Act, which allows a minor to receive lifesaving medical treatment without their consent or their parent's consent
- replacing the principle of Gillick competence with the proposed provisions
- interaction with the *Family Law Act 1975* (Cth) and federal common law.¹⁷¹

1.110 The NSW Government submitted that the requirement for practitioners to consider the best interests of a child when administering medical treatment may be difficult to apply in practice. The NSW Government also stated that implementing the proposal would have wide implications for the health services sector, and that it was not clear why the changes are needed.¹⁷²

1.111 Intersex Human Rights Australia (IHRA) was in support of empowering minors to consent to their own medical treatment, if they have the capacity to consent. However, IHRA raised concern that the proposed amendment allowing a parent to consent to medical treatment for a child under 16 would prioritise a parent's consent over the child's, arguably irrespective of the child's Gillick competency.¹⁷³

1.112 IHRA also noted that existing protections for children, including those with innate variations of sex characteristics, would be compromised by allowing a parent to consent to medical treatment without being required to consider the child's best interests. Dr Morgan Carpenter, Executive Director, IHRA, told the Committee that this would remove the limited protections that are provided by the best interest test.¹⁷⁴ Accordingly, IHRA recommended that this amendment be redrafted or removed altogether in recognition of factors like a child's best

¹⁶⁹ [Submission 20](#), Trans Justice Project, p 3; Attachment to Submission 39, Equality Australia, [Act for equality: Legal explainer on the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 \(NSW\)](#), 18 September 2023, pp 15, 3.

¹⁷⁰ [Submission 2](#), BlaQ Aboriginal Corporation, p 4; [Submission 48](#), Australian Lawyers for Human Rights, pp 5-6; [Submission 56](#), headspace National and Black Dog Institute, p 5; [Submission 15](#), Kingsford Legal Centre, p 4.

¹⁷¹ [Submission 13](#), NSW Government, p 15; 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, NSW Government, [Transcript of evidence](#), 1 May 2024, p 55.

¹⁷² [Submission 13](#), NSW Government, pp 15-16.

¹⁷³ [Submission 18](#), Intersex Human Rights Australia, p 20; [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 \(nsw.gov.au\)](#) sch 3[2].

¹⁷⁴ [Submission 18](#), Intersex Human Rights Australia, p 20; Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia, [Transcript of evidence](#), 30 April 2024, p 17.

interests and human rights principles.¹⁷⁵

- 1.113 BlaQ Aboriginal Corporation (**BlaQ**) stated that the proposed amendments relating to the consent of medical treatment for minors may lead to unintended consequences for LGBTIQ+ Indigenous youth. BlaQ said that the amendments may be in conflict with cultural norms and values, including collective decision making, which could create tension within Indigenous families and communities.¹⁷⁶

Additional ways to improve safety and wellbeing

- 1.114 Some stakeholders referred to the unaffordability and inaccessibility of gender affirming medical treatment, including culturally sensitive care for Indigenous youth.¹⁷⁷
- 1.115 Pride in Protest recommended that NSW Health introduces a scheme to partly or fully fund hormone therapy and surgical interventions for transgender and gender diverse individuals. The organisation also called for paid gender affirmation leave for employees.¹⁷⁸

Responses to survey question

- 1.116 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1988* were:

- 81.75% opposed
- 12.91% supported
- 0.97% supported with amendments
- 2.20% neutral/undecided
- 2.16% did not respond.¹⁷⁹

See Appendix 3 for more details on the online survey.

Children's Guardian Act 2019

The proposed amendment

- 1.117 The Bill proposes to amend the *Children's Guardian Act 2019* (the **Act**) by updating the guiding principles that are to be applied when administering the Act. The Bill updates a guiding principle to state that the 'innate variations of sex characteristics' of a child and, if relevant, of the person with parental

¹⁷⁵ [Submission 18](#), Intersex Human Rights Australia, pp 21-22.

¹⁷⁶ [Submission 2](#), BlaQ Aboriginal Corporation, p 4

¹⁷⁷ [Submission 2](#), BlaQ Aboriginal Corporation, p 4; [Submission 7](#), ACON, p 5; [Submission 42](#), Pride in Protest, p 9.

¹⁷⁸ [Submission 42](#), Pride in Protest, pp 9-10.

¹⁷⁹ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

responsibility, must be considered when making decisions and taking actions under the Act.¹⁸⁰

- 1.118 The Act's existing guiding principles include other attributes such as religion, gender identity and sexuality.¹⁸¹

Arguments against

- 1.119 Some stakeholders were opposed to, or concerned by the proposed amendment¹⁸² on the basis that:
- children might be intrusively examined while in care because variations of sex characteristics are unlikely to be visible¹⁸³
 - the term 'variations of sex characteristics' is vague and could be misinterpreted.¹⁸⁴

Arguments in favour

- 1.120 There was some support for the proposed amendment.¹⁸⁵ Greens NSW stated that the change would be aligned with the main purpose of the Act.¹⁸⁶

Operational issues

- 1.121 The NSW Government did not raise any concerns about the proposed amendment and stated that the change would create a preferable alignment with the *Children and Young Persons (Care and Protection) Act 1998*.¹⁸⁷

Responses to survey question

- 1.122 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Children's Guardian Act 2019* were:
- 67.22% opposed
 - 14.66% supported
 - 1.37% supported with amendments
 - 14.07% neutral/undecided

¹⁸⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 4; *Children's Guardian Act 2019* s8(b).

¹⁸¹ *Children's Guardian Act 2019* s8(b).

¹⁸² [Submission 25](#), Genspect Australia committee, p 8; [Submission 32](#), LGB Alliance Australia, p 16; [Submission 46](#), Feminist Legal Clinic, p 5; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 7.

¹⁸³ [Submission 25](#), Genspect Australia committee, p 8; [Submission 46](#), Feminist Legal Clinic, p 5.

¹⁸⁴ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 24.

¹⁸⁵ [Submission 15](#), Kingsford Legal Centre, p 4; [Submission 18](#), Intersex Human Rights Australia, p 25; [Submission 47](#), Greens NSW, p 6.

¹⁸⁶ [Submission 47](#), Greens NSW, p 6.

¹⁸⁷ [Submission 13](#), NSW Government, p 15.

- 2.68% did not respond¹⁸⁸

See Appendix 3 for more details on the online survey.

Court Security Act 2005; Crimes (Administration of Sentences) Act 1999; Crimes (Forensic Procedures) Act 2000; Law Enforcement (Powers and Responsibilities) Act 2002; Sheriff Act 2005

Proposed amendments across Acts

- 1.123 The Bill proposes to make some amendments across all or some of the above five Acts. In his second reading speech Mr Greenwich stated that these Acts permit body searches without consent, but have certain protections to maintain a person's dignity by requiring whoever is conducting the search to be of the same sex as the person. He said that only some laws clarify that for transgender people this is the sex they identify with, and none mention intersex or non-binary individuals.¹⁸⁹
- 1.124 Mr Greenwich stated that being searched by someone of the same sex may not be appropriate or possible for transgender and intersex people and that the amendments will better preserve their dignity.¹⁹⁰
- 1.125 The Bill proposes to amend some Acts to require searches of an intersex or transgender person to be conducted by a particular person or a class of person of their preference, if they have expressed a preference.¹⁹¹ This is the case if the preferred person is reasonably available¹⁹² or it is practicable¹⁹³. The types of personal searches addressed by the amendments include those conducted by:
- correctional officers (searches of a person in or immediately near a place of detention, or in a residential facility)¹⁹⁴
 - Sheriff's officers (searches during an arrest).¹⁹⁵
- 1.126 The Bill seeks to change references and definitions across the Acts by:
- inserting definitions of 'intersex person' as someone that 'has an innate variation of primary and secondary sex characteristics that differ from norms for female or male bodies'.¹⁹⁶
 - inserting or replacing definitions of 'transgender person'. The proposed

¹⁸⁸ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

¹⁸⁹ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9147 (Mr Alex Greenwich, Member for Sydney).

¹⁹⁰ [Parliamentary Debates](#), 24 August 2023, p 9147 (Mr Alex Greenwich, Member for Sydney).

¹⁹¹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[4], 7[4], 15[10] and 17[3].

¹⁹² [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[4], 15[10] and 17[3].

¹⁹³ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 7[4].

¹⁹⁴ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 7[4]; *Crimes (Administration of Sentences) Act 1999*, s 253I.

¹⁹⁵ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 17[3]; *Sheriff Act 2005* s 7B.

¹⁹⁶ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[1], 7[2], 9[1], 15[1] and 17[1].

amendments seek to define a 'transgender person' as someone that lives or seeks to live as a person of a different sex to the one that was registered at their birth. This is regardless of whether the person's sex is altered under the *Births, Deaths and Marriages Registration Act 1995* or corresponding laws of another state, territory or jurisdiction outside Australia.¹⁹⁷

- inserting a definition of 'private upper body parts' to mean:
 - the breasts of a female person or other person with breasts
 - the chest area of a transgender person or other person that is neither exclusively male or female.¹⁹⁸
- inserting references to 'a member of a different sex to a person' and 'a member of the same sex as a person'. This would be someone of a different or same sex to what a transgender person identifies as their sex.¹⁹⁹
- replacing references to 'the opposite sex' with 'a different sex'.²⁰⁰

1.127 The Bills seeks to clarify that the application of the *Anti-Discrimination Act 1977* (the **AD Act**) is not limited by the Acts, including when an officer is exercising search functions under those Acts.²⁰¹ Depending on the Act, an officer is a '[court security', 'correctional', 'police', or 'sheriff's' officer.²⁰²

Proposed amendments to specific Acts

1.128 The Bill also proposes to make some amendments that are specific to the Acts listed below.

Crimes (Administration of Sentences) Act 1999

1.129 The Bill proposes to amend the *Crimes (Administration of Sentences) Act 1999* (**CAS Act**) by stating that a sample of sweat taken from the following is considered invasive:

- a person's breasts (a person being a female or other person with breasts).
- a person's chest area (a person being a transgender male or other person who is not exclusively male or female).²⁰³

Crimes (Forensic Procedure) Act 1999

1.130 The Bill proposes to amend the *Crimes (Forensic Procedures) Act 2000* (**CFP Act**) by:

¹⁹⁷ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[1], 7[2], 9[1-3], 15[1] and 17[1].

¹⁹⁸ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 9[1] and 15[8].

¹⁹⁹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[2] and 17[2].

²⁰⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 9[4-5], [7], [11], 15[2-3], [9].

²⁰¹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[3], 7[3], 9[6], 15[4] and 17[2].

²⁰² [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) schs 5[3], 7[3], 9[6], 15[4] and 17[2].

²⁰³ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 7[1].

- replacing definitions of 'private parts'²⁰⁴ and 'breasts of a female or a transgender person who identifies as a female' with 'private upper body part' (as defined above)²⁰⁵.
- requiring, if practicable, that certain intimate forensic procedures of a transgender or intersex suspect are to be carried out by a person or a class of person of their preference, if they have expressed a preference.²⁰⁶

Law Enforcement (Powers and Responsibilities) Act 2002

- 1.131 The Bill seeks to update a provision to state that a police officer must not search 'the private upper body parts of the person searched' unless the police officer suspects on reasonable grounds it is necessary during a search.²⁰⁷

Arguments against

- 1.132 Several stakeholders expressed concern about personnel being negatively impacted by the proposed amendments that change the protocol for body searches.²⁰⁸ Stakeholders said the proposed changes may:
- 'infringe' government employees' rights²⁰⁹
 - make female staff unsafe or uncomfortable by requiring them to conduct a search on a transgender woman.²¹⁰
- 1.133 Faith NSW and Better Balanced Futures recognised the need for transgender and intersex individuals to have privacy in personal searches. However, they stated that this amendment would be problematic for individuals of certain faiths who may not be permitted to touch someone of the opposite sex.²¹¹
- 1.134 Some stakeholders stated that some amendments accommodate the preferences of transgender people²¹² or create 'a special privilege' for them.²¹³ Some stakeholders said that this disregards female staff's rights²¹⁴ and that there is no provision for staff to refuse to conduct a search if they are uncomfortable with

²⁰⁴ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 9[1].

²⁰⁵ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 9[8].

²⁰⁶ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 9[9].

²⁰⁷ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 15[5].

²⁰⁸ [Submission 28](#), Freedom for Faith, p 16; [Submission 37](#), Australian Feminists for Women's Rights, p 4; [Submission 38](#), Women's Rights Network Australia, p 15; [Submission 46](#), Feminist Legal Clinic, pp 5-6; [Submission 49](#), Coalition of Activist Lesbians, pp 5-6; [Submission 51](#), Women's Forum Australia, p 10; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, pp 3-4, 7.

²⁰⁹ [Submission 37](#), Australian Feminists for Women's Rights, p 4; [Submission 38](#), Women's Rights Network Australia, p 15; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 3.

²¹⁰ [Submission 37](#), Australian Feminists for Women's Rights, pp 4, 12; [Submission 38](#), Women's Rights Network Australia, p 15; [Submission 49](#), Coalition of Activist Lesbians, pp 5-6; [Submission 51](#), Women's Forum Australia, p 10; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 3, 49; Dr Viviane Morigan, Public Officer, Coalition of Activist Lesbians, [Transcript of evidence](#), 1 May 2024, p 9.

²¹¹ [Answers to supplementary questions](#), Faith NSW and Better Balanced Futures, 21 May 2024, p 2; [Submission 36](#), Faith NSW and Better Balanced Futures, p 5.

²¹² [Submission 46](#), Feminist Legal Clinic, p 6.

²¹³ [Submission 28](#), Freedom for Faith, p 16.

²¹⁴ [Submission 46](#), Feminist Legal Clinic, p 6.

doing so.²¹⁵

- 1.135 Some inquiry participants also said that there would be limited requirements for someone to identify as transgender in these circumstances.²¹⁶ Australian Feminists for Women's Rights and WRNA noted that a transgender person would not need to have officially changed their sex descriptor and could easily say that they 'seek to live' as another sex in these circumstances.²¹⁷
- 1.136 Some stakeholders said that some proposed amendments remove or obscure the sex binary.²¹⁸ Freedom for Faith stated that the Bill proposes to remove sex-based language and distinctions in State legislation, which imposes 'a controversial gender ideology' into NSW law.²¹⁹
- 1.137 Feminist Legal Clinic and Genspect Australia committee said that the binary nature of sex is obscured by replacing the term 'opposite sex' with 'different sex'.²²⁰ WRNA said that proposed changes take out references to female biology by removing the word 'breasts' and adding the term 'private upper body part'.²²¹
- 1.138 Further, Freedom for Faith (FFF) stated some changes may be impossible to implement, for example, the proposed provision that a forensic procedure must not be carried out by a person of 'a different sex' to the suspect. FFF questioned the operation of this provision for a suspect that may have a non-binary sex, like 'demiboy'.²²²
- 1.139 Some stakeholders stated that some of the proposed changes were confusing, for example those that:
- describe the various circumstances and requirements for conducting searches²²³
 - define 'private upper body part'.²²⁴

Arguments in favour

- 1.140 Some stakeholders stated that the Bill protects or affords the dignity and autonomy of transgender, intersex or gender diverse individuals during body searches.²²⁵ Equality Australia said this would be achieved by letting individuals

²¹⁵ [Submission 38](#), Women's Rights Network Australia, p 15.

²¹⁶ [Submission 37](#), Australian Feminists for Women's Rights, p 12; [Submission 38](#), Women's Rights Network Australia, p 15; [Submission 49](#), Coalition of Activist Lesbians, pp 5-6.

²¹⁷ [Submission 37](#), Australian Feminists for Women's Rights, p 12; [Submission 38](#), Women's Rights Network Australia, p 15.

²¹⁸ [Submission 25](#), Genspect Australia committee, p 9; [Submission 28](#), Freedom for Faith, p 18; [Submission 35](#), Australian Christian Lobby, p 6; [Submission 46](#), Feminist Legal Clinic, pp 7-8.

²¹⁹ [Submission 28](#), Freedom for Faith, p 18.

²²⁰ [Submission 25](#), Genspect Australia committee, p 9; [Submission 46](#), Feminist Legal Clinic, p 7.

²²¹ [Submission 38](#), Women's Rights Network Australia, p 11.

²²² [Submission 28](#), Freedom for Faith, p 16.

²²³ [Submission 35](#), Australian Christian Lobby, p 19.

²²⁴ [Submission 49](#), Coalition of Activist Lesbians, p 6.

²²⁵ [Submission 2](#), BlaQ Aboriginal Corporation, p 6; [Submission 15](#), Kingsford Legal Centre, p 4; Attachment to Submission 39, Equality Australia, [Act for equality: Legal explainer on the Equality Legislation Amendment](#)

choose a suitable person who is reasonably available to perform their search.²²⁶

- 1.141 Mr Ghassan Kassisieh, Legal Director, Equality Australia, said that the current legislation is unclear. He said it does not reflect actual practice, which is that generally a person is searched by someone of the same gender that they identify as, or someone they are comfortable with. He said that the Bill enables these laws to be interpreted equally and provides all individuals with respect.²²⁷
- 1.142 Law Society of NSW supported the amendments relating to personal searches but suggested considering whether these laws are appropriate for other marginalised people, for example, people with disability.²²⁸
- 1.143 Some stakeholders supported the Bill's proposed definitions of 'intersex person' and 'transgender person'.²²⁹ The AEU NSW Teachers Federation said that the Bill clearly defines the terms.²³⁰

Operational issues

- 1.144 The NSW Government said the proposed amendments to these Acts could have unintended consequences and may not be able to be operationalised appropriately with the amendments in their current form.²³¹
- 1.145 The NSW Government said that the amendment relating to the AD Act could clash with the highest need of guaranteeing safety and good order of a particular area or community. The Government said it could be useful for any limitation or extension of the AD Act to take into account recommendations from the NSW Law Reform Commission's AD Act review.²³²
- 1.146 The NSW Government said that the personal search amendments may be seen to afford dignity and respect to transgender and intersex people. However, it would be operationally inappropriate to allow a person to select a security officer and could pose risks to staff. The Government said that the term 'class of officer' may create uncertainty as it is undefined and could be misapplied to call on a particular officer.²³³
- 1.147 In response to a question on notice the Department of Communities and Justice said that the change may also prevent Sheriff's officers from exercising their duty to conduct personal searches if a particular officer was unavailable.²³⁴ The NSW Government alternatively raised electing an officer of a certain gender or sex,

[\(LGBTIQ+\) Bill 2023 \(NSW\)](#), 18 September 2023, p 18; Mr Ghassan Kassisieh, Legal Director, Equality Australia, [Transcript of evidence](#), 30 April 2024, p 10; Mr Alex Greenwich, Member for Sydney, [Transcript of evidence](#), 1 May 2024, p 46.

²²⁶ Equality Australia, [Act for equality: Legal explainer on the Equality Legislation Amendment \(LGBTIQ+\) Bill 2023 \(NSW\)](#), p 3.

²²⁷ Mr Kassisieh, [Evidence](#), 30 April 2024, p 10.

²²⁸ [Submission 54](#), Law Society of NSW, p 4.

²²⁹ [Submission 16](#), Pitt Street Uniting Church, p 3; [Submission 21](#), AEU NSW Teachers Federation, p 5.

²³⁰ [Submission 21](#), AEU NSW Teachers Federation, p 5.

²³¹ [Submission 13](#), NSW Government, pp 3, 16-19, 21-23.

²³² [Submission 13](#), NSW Government, pp 15, 17, 19, 22-23.

²³³ [Submission 13](#), NSW Government, pp 15, 17, 19, 22-23.

²³⁴ [Answers to questions on notice](#), Department of Communities and Justice, 10 May 2024, p 1.

when it is practicable, as an option for more inclusive personal searches.²³⁵

- 1.148 The NSW Government also said the proposed definitions of breasts or chest area could inadvertently include cisgender men and exclude nonbinary individuals and transgender women. They said that, in some instances, cisgender men may be considered to have breast tissue and transgender women may not have breasts.²³⁶
- 1.149 Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia (IHRA), did not support adding an 'intersex' definition in law, as accessing the protections could 'out' someone. He also said the term is linked to misconceptions and is not commonly used by those in the community.²³⁷
- 1.150 IHRA recommended that the proposed amendments on body searches be redrafted to safeguard any person who thinks they may face discrimination due to their sex characteristics or body features. IHRA encouraged allowing a person to elect the gender of the person conducting the search. The organisation stated that this would remove the need to refer to, or redefine, 'intersex person' and 'transgender person' in the amendments.²³⁸

Responses to survey question

- 1.151 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation.
- 1.152 The responses to the proposed amendments to the *Court Security Act 2005* were:
- 78.99% opposed
 - 12.82% supported
 - 1.00% supported with amendments
 - 4.62% neutral/undecided
 - 2.57% did not respond.
- 1.153 The responses to the proposed amendments to the *Crimes (Administration of Sentences) Act 1999* were:
- 78.41% opposed
 - 12.81% supported
 - 1.24% supported with amendments

²³⁵ [Submission 13](#), NSW Government, pp 16-17, 19, 22-23.

²³⁶ [Submission 13](#), NSW Government, pp 17, 19, 22.

²³⁷ Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia, [Transcript of evidence](#), 30 April 2024, p 17.

²³⁸ [Submission 18](#), Intersex Human Rights Australia, pp 25-27; Dr Carpenter, [Evidence](#), 30 April 2024, p 17.

- 4.84% neutral/undecided
- 2.71% did not respond.

1.154 The responses to the proposed amendments to the *Crimes (Forensic Procedures) Act 2000* were:

- 77.26% opposed
- 12.99% supported
- 1.37% supported with amendments
- 5.50% neutral/undecided
- 2.88% did not respond.

1.155 The responses to the proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002* were:

- 77.84% opposed
- 12.71% supported
- 1.16% supported with amendments
- 5.18% neutral/undecided
- 3.11% did not respond.

1.156 The responses to the proposed amendments to the *Sheriff Act 2005* were:

- 76.41% opposed
- 12.51% supported
- 1.07% supported with amendments
- 6.77% neutral/undecided
- 3.24% did not respond.²³⁹

See Appendix 3 for more details on the online survey.

Crimes Act 1900

The proposed amendments

1.157 The Bill proposes to amend the *Crimes Act 1900* (the **Act**) by inserting 'sex work' as another attribute which the offence of intentionally or recklessly threatening or inciting violence towards a person or a group of people through a public act

²³⁹ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

can be committed against. This applies regardless of whether the person or people are, or have been sex workers. The Act currently includes other grounds to commit this offence such as 'gender identity', 'HIV/AIDS status' and 'intersex'.²⁴⁰

- 1.158 The Bill seeks to update terminology in this part of the Act by replacing references of 'HIV/AIDS status' to 'HIV/AIDS' and 'intersex' to 'intersex status'. Similarly, the subsection's reference to people that 'have' HIV/AIDS would be changed to those that 'live with' HIV/AIDS.²⁴¹

Arguments against

- 1.159 Several stakeholders opposed the suggested amendment or viewed it as inadequate.²⁴² Stakeholders were uncertain about why a type of profession would require the same, or additional legal protections as biological characteristics.²⁴³ Stakeholders also questioned the relevance of the amendment to LGBTIQ+ equality.²⁴⁴
- 1.160 Jessica Pearson, Harvey Eastman and Michael Lowry stated that the change would weaken the attention on historically marginalised groups and recommended preserving a clear distinction between 'immutable' attributes and career or lifestyle choices.²⁴⁵ Other stakeholders advocated for the Nordic Model as a more effective legislative framework or a way to support sex workers.²⁴⁶ This model is discussed at paragraph 1.244 and 1.253.

Arguments in favour

- 1.161 Some stakeholders supported the amendment, either with or without amendments.²⁴⁷ Kingsford Legal Centre supported the Bill's use of inclusive language.²⁴⁸
- 1.162 Intersex Human Rights Australia (IHRA) recommended replacing 'intersex' with 'innate variations of sex characteristics' under the headings of the offence to keep language across state laws consistent.²⁴⁹
- 1.163 IHRA also recommended that the wording in a subsection under the offence, which defines 'intersex status', be updated to 'innate variations of sex' and also suggested an alternative definition for those with innate variations of sex. This

²⁴⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 6[1]-[3]; *Crimes Act 1900* s 93Z.

²⁴¹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 6[1]-[3]; *Crimes Act 1900* s 93Z.

²⁴² [Submission 28](#), Freedom for Faith, p 8; [Submission 46](#), Feminist Legal Clinic, p 5; [Submission 49](#), Coalition of Activist Lesbians, p 6; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 7.

²⁴³ [Submission 37](#), Australian Feminists for Women's Rights, p 12; [Submission 38](#), Women's Rights Network Australia, p 13.

²⁴⁴ [Submission 37](#), Australian Feminists for Women's Rights, p 12; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 28.

²⁴⁵ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 28-29.

²⁴⁶ [Submission 46](#), Feminist Legal Clinic, p 5; [Submission 49](#), Coalition of Activist Lesbians, p 6.

²⁴⁷ [Submission 15](#), Kingsford Legal Centre, p 4; [Submission 18](#), Intersex Human Rights Australia, p 26.

²⁴⁸ [Submission 15](#), Kingsford Legal Centre, p 4.

²⁴⁹ [Submission 18](#), Intersex Human Rights Australia, p 26; *Crimes Act 1900* pt 3A div 8 s 93Z.

subsection is currently not proposed to be altered by the Bill.²⁵⁰

Operational issues

- 1.164 The NSW Government stated that reform of this section of the Act could benefit from consideration of the NSW Law Reform Commission's findings.²⁵¹ The Law Reform Commission is currently reviewing how effectively the offence that the Bill proposes to amend addresses serious racial and religious vilification.²⁵²
- 1.165 The Law Society of NSW agreed that sex workers and individuals that live with HIV or AIDS should be protected from vilification. However, it suggested that the proposed amendments should be considered within the wider set of criminal and civil NSW laws that aim to address vilification. It also suggested that consideration be given to broadening these legal protections to include other attributes, for example people with disability.²⁵³

Responses to survey question

1.166 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Crimes Act 1900* were:

- 73.19% opposed
- 12.24% supported
- 3.73% supported with amendments
- 8.14% neutral/undecided
- 2.70% did not respond.²⁵⁴

See Appendix 3 for more details on the online survey.

Crimes (Domestic and Personal Violence) Act 2007

The proposed amendments

1.167 The Bill proposes to amend the *Crimes (Domestic and Personal Violence) Act 2007* (DPV Act) to improve protections for people against violence and abuse, particularly against the threat of 'outing' a particular attribute of a person without their consent. The Bill seeks to define what it means to 'out a person' as disclosing any of the following matters about a person without their consent:

- the person's sexual orientation

²⁵⁰ [Submission 18](#), Intersex Human Rights Australia, p 26; Crimes Act 1900 pt 3A div 8 s 93Z(5).

²⁵¹ [Submission 13](#), NSW Government, p 18.

²⁵² Law Reform Commission, [Serious racial and religious vilification](#), viewed 14 May 2024.

²⁵³ [Submission 54](#), Law Society of NSW, p 2.

²⁵⁴ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

- the person's gender history
- that the person has a variation of sex characteristics
- that the person lives with HIV
- that the person is or has been a sex worker.²⁵⁵

1.168 The Bill also seeks to make other changes to the DPV Act to:

- include the threat of outing someone as an example of coercive behaviour and domestic abuse²⁵⁶
- add fear of being outed by a person as a ground for a court to grant an Apprehended Domestic Violence Order (ADVO) or Apprehended Personal Violence Order (APCO)
- include additional types of harassment that a court can consider during proceedings about an application for an Apprehended Violence Order (AVO) to find that there is good reason not to refer the person to mediation
- include additional types of harassment into a section that requires that, if there are allegations of that harassment occurring, an AVO matter can't be stopped from progressing through the court²⁵⁷
- enable AVOs to be granted to prohibit or restrict a person from outing a protected person.

1.169 Mr Greenwich explained that the Bill 'would make threats to out a person's sexual orientation, gender history, HIV diagnosis, variations in sex characteristics or sex work a form of domestic abuse for the purpose of making an apprehended violence order or an apprehended personal violence order.'²⁵⁸

Arguments against

1.170 Several stakeholders opposed the proposed amendments to the DPV Act. Freedom for Faith opposed including the threat of 'outing' a person as a factor to consider when a court considers granting an AVO. The organisation said that the provision was problematic because the broad scope of the disclosure could encompass unintended situations.²⁵⁹ For example, it could include a situation where a person's wife or husband discloses something about the other person to a counsellor, which may be considered coercive control under the proposed provision.²⁶⁰ Coalition of Activist Lesbians also raised this concern.²⁶¹

²⁵⁵ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 8[1].

²⁵⁶ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 8[2].

²⁵⁷ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 8[7].

²⁵⁸ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9148 (Mr Alex Greenwich, Member for Sydney).

²⁵⁹ [Submission 28](#), Freedom for Faith, p 8.

²⁶⁰ [Submission 28](#), Freedom for Faith, p 8.

²⁶¹ [Submission 49](#), Coalition of Activist Lesbians, p 14.

- 1.171 Some groups opposed to adding threats of outing a person as grounds to grant an AVO said that it will impact free speech.²⁶² Australian Feminists for Women's Rights said the proposed amendments would threaten freedom of speech, as a person couldn't call someone a gender that they do not identify as.²⁶³ Women's Rights Network Australia also said the changes would impact freedom of expression.²⁶⁴
- 1.172 Women's Forum Australia said the change would penalise people who raise concerns about transgender women participating in women's sport.²⁶⁵ Feminist Legal Clinic said that it would constrain women talking about emotional abuse from their partners.²⁶⁶ Anna Kerr, Principal solicitor, Feminist Legal Clinic, said that it could transform domestic violence laws into a weapon to silence women.²⁶⁷ Jessica Pearson, Harvey Eastman and Michael Lowry also argued that the threat of an AVO could be used by a person to silence their female partner.²⁶⁸
- 1.173 Jessica Pearson, Harvey Eastman and Michael Lowry submitted that considering threats to out someone as a reason to not enter into mediation about an AVO matter could disproportionately affect women. This is because women are less financially able to support long legal proceedings.²⁶⁹

Arguments in favour

- 1.174 Some stakeholders supported including the threat to out a person based on their sexuality, gender history, HIV status or variations in sex characteristics as a form of abuse or harassment.²⁷⁰ The NSW Government said that outing a person is known to be a form of harmful conduct used against members of the LGBTIQ+ community.²⁷¹
- 1.175 Emma Golledge, Director, Kingsford Legal Centre, talked about the high rates of domestic violence experienced by people in the LGBTIQ+ community. She said that the threat of outing someone can be debilitating and impacts employment and how people operate in society.²⁷² Domestic Violence NSW said that the threat of outing someone is a specific tactic of abuse perpetrated against LGBTIQ+ people and sex workers, which is not experienced by people who are not in those communities.²⁷³
- 1.176 HIV AIDS Legal Centre and Positive Life NSW stated that the changes recognise that people living with HIV are vulnerable to unique forms of personal violence,

²⁶² [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 30.

²⁶³ [Submission 37](#), Australian Feminists for Women's Rights, p 4.

²⁶⁴ [Submission 38](#), Women's Rights Network Australia, pp 14-15.

²⁶⁵ [Submission 51](#), Women's Forum Australia, p 10.

²⁶⁶ [Submission 46](#), Feminist Legal Clinic, p 6.

²⁶⁷ Ms Anna Kerr, Principal solicitor, Feminist Legal Clinic, [Transcript of evidence](#), 1 May 2024, p 10.

²⁶⁸ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 31.

²⁶⁹ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 32.

²⁷⁰ [Submission 47](#), Greens NSW, p 7; [Submission 10](#), Parents for Trans Youth Equity, p 17; [Submission 5](#), Domestic Violence NSW, p 1.

²⁷¹ [Submission 13](#), NSW Government, p 17.

²⁷² Ms Emma Golledge, Director, Kingsford Legal Centre, [Transcript of evidence](#), 30 April 2024, p 22.

²⁷³ [Submission 5](#), Domestic Violence NSW, p 1.

which can have far reaching impacts on their lives. The organisation said that the amendments would protect those people from unwanted disclosure, which they see frequently in their practice.²⁷⁴

- 1.177 Kingsford Legal Centre supported expanding the factors that a court may consider when determining whether there is good reason not to refer a matter to mediation during ADVO proceedings. The organisation said that harassment of a person based on the attributes the Bill proposes to insert can be worse in settings like mediation, and it can give perpetrators an opportunity to continue harassing a person, causing psychological harm.²⁷⁵
- 1.178 Intersex Human Rights Australia supported the proposed amendments but suggested defining 'innate variations of sex characteristics'.²⁷⁶
- 1.179 While the Law Society of NSW supported the amendments in principle, they said it may be important to consider a broader range of conduct that people should be protected from. They gave the example of 'doxing' or maliciously disclosing a person's personal details online.²⁷⁷
- 1.180 While Pride in Protest did not oppose the amendments and recognised the danger queer, trans people, sex workers, and people living with HIV face, the organisation did not support the use of prison sentences as a way to prevent harmful behaviour.²⁷⁸

Operational issues

- 1.181 The NSW Government noted that, as the proposed amendments only apply for persons in domestic relationships, their application might be limited. The Government suggested that a similar outcome could be achieved by making threats of outing someone a form of intimidation under the DPV Act.²⁷⁹
- 1.182 Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, explained that it might be more appropriate to link the threat of outing a person to intimidation, as it may capture more relationships. He noted that intimidation may also be present in non-domestic relationships.²⁸⁰

Responses to survey question

- 1.183 The Committee's online survey on the Equality Legislation Amendment (LGBTIQA+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Crimes (Domestic and Personal Violence) Act 2007* were:

²⁷⁴ [Submission 23](#), HIV AIDS Legal Centre and Positive Life NSW, p 2.

²⁷⁵ [Submission 15](#), Kingsford Legal Centre, p 4.

²⁷⁶ [Submission 18](#), Intersex Human Rights Australia, p 26.

²⁷⁷ [Submission 54](#), The Law Society of NSW, p 3.

²⁷⁸ [Submission 42](#), Pride in Protest, pp 24-25.

²⁷⁹ [Submission 13](#), NSW Government, pp 17-18.

²⁸⁰ Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, NSW Government, [Transcript of evidence](#), 1 May 2024, p 52.

- 72.08% opposed
- 14.87% supported
- 4.50% supported with amendments
- 5.65% neutral-undecided
- 2.90% did not respond.²⁸¹

See Appendix 3 for more details on the online survey.

Crimes (Sentencing Procedure) Act 1999

The proposed amendments

- 1.184 The Bill proposes to amend the *Crimes (Sentencing Procedure) Act 1999* to provide that prejudice or hatred against a person based on gender identity or having variations of sex characteristics is considered an aggravating factor in sentencing.
- 1.185 The Act provides that it is an aggravating factor when sentencing a person for an offence if it was motivated by hatred or prejudice against a person who belongs to a specific group of persons.²⁸² The Bill proposes to expand the types of people included in that group to include people:
- of a particular 'gender identity'
 - with 'particular variations of sex characteristics'.²⁸³
- 1.186 Mr Greenwich said that 'trans people and people with variations in sex characteristics are at heightened risk of violence, and the Bill makes it clear that crimes motivated by hatred for them can be aggravating factors in sentencing'.²⁸⁴

Arguments against

- 1.187 The Feminist Legal Clinic said that the proposed change is unnecessary as the current group is not intended to be exhaustive. They said if 'gender identity' is to be added, then 'sex' must also be added to capture crimes motivated by misogyny.²⁸⁵
- 1.188 Jessica Pearson, Harvey Eastman and Michael Lowry said that the amendments could undermine women's rights and civil liberties, and deepen power imbalances.²⁸⁶ They said it could prioritise protection of the new groups at the expense of women. They also argued that the changes could impact freedom of

²⁸¹ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

²⁸² Crimes (Sentencing Procedure) Act 1999 s 21A(2)(h).

²⁸³ [Equality Legislation Amendment \(LGBTIQA+\) Bill 2023](#) sch 10 [1]-[2].

²⁸⁴ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9147 (Mr Alex Greenwich, Member for Sydney).

²⁸⁵ [Submission 46](#), Feminist Legal Clinic, p 6.

²⁸⁶ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 35.

speech by stifling discussions about gender identity.²⁸⁷

Arguments in favour

1.189 In referring to the amendments, the Kingsford Legal Centre said they supported the explicit inclusion of intersex and transgender people in law.²⁸⁸ Equality Australia also supported the amendments as they would ensure equal protection under the law, regardless of gender identity or sex characteristics.²⁸⁹ The NSW Greens supported the proposed amendments to ensure that LGBTIQ+ people are included in sentencing laws.²⁹⁰

Operational issues

1.190 The NSW Government said that the current list of aggravating factors is not exhaustive, and the amendment would clarify, rather than alter the current settings. The Government noted that the relevant section has been interpreted to include other groups of people not explicitly included, such as Aboriginal people, Shiite Muslims and women. The Government illustrated this point by referring to the decision in *R v Valencia Valencia*²⁹¹, whereby the Supreme Court of NSW accepted that the relevant clause in the Act could already apply to hatred towards transgender people.²⁹²

Responses to survey question

1.191 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Crimes (Sentencing Procedure) Act 1999* were:

- 63.34% opposed
- 17.48% supported
- 2.01% supported with amendments
- 13.87% neutral-undecided
- 3.30% did not respond.²⁹³

See Appendix 3 for more details on the online survey.

²⁸⁷ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 36.

²⁸⁸ [Submission 15](#), Kingsford Legal Centre, p 4.

²⁸⁹ [Submission 39](#), Equality Australia, p 3.

²⁹⁰ [Submission 47](#), Greens NSW, p 6.

²⁹¹ [R v Valencia Valencia \(No 3\) \[2023\]](#) NSWSC 780.

²⁹² [Submission 13](#), NSW Government, p 19.

²⁹³ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

Drug Misuse and Trafficking Act 1985

The proposed amendments

- 1.192 The Bill proposes to amend the *Drug Misuse and Trafficking Act 1985* to replace the words 'HIV infection' with 'HIV'.

Arguments against

- 1.193 Feminist Legal Clinic said the amendment is insignificant and unnecessary, and noted that HIV is referred to as an infection by the World Health Organisation.²⁹⁴

Arguments in favour

- 1.194 While few groups specifically mentioned this amendment, many groups spoke in favour of updating language around HIV, including changing 'HIV infection' to 'HIV'²⁹⁵. The Mental Health Commission supported changes proposed to multiple Acts to remove outdated language about HIV. The Commission said it would help reduce stigma and discrimination faced by people living with HIV.²⁹⁶ Similarly, HIV AIDS Legal Centre and Positive Life NSW said removing archaic language around HIV would help to reduce stigmatisation and address misconceptions.²⁹⁷

Operational issues

- 1.195 The NSW Government said that this amendment did not raise any concerns and constituted a minor amendment to update language.²⁹⁸

Responses to survey question

- 1.196 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Drug Misuse and Trafficking Act 1985* were:

- 63.42% opposed
- 18.86% supported
- 1.70% supported with amendments
- 12.62% neutral-undecided
- 3.40% did not respond.²⁹⁹

²⁹⁴ [Submission 46](#), Feminist Legal Clinic, p 7.

²⁹⁵ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 10; [Submission 23](#), HIV AIDS Legal Centre and Positive Life NSW, pp 2-3; [Submission 15](#), Kingsford Legal Centre, p 4; [Submission 39](#), Equality Australia, p 3; [Submission 47](#), Greens NSW, p 6; [Submission 66](#), Mental Health Commission of NSW, pp 6-7.

²⁹⁶ [Submission 66](#), Mental Health Commission of NSW, pp 6-7.

²⁹⁷ [Submission 23](#), HIV AIDS Legal Centre and Positive Life NSW, pp 2-3.

²⁹⁸ [Submission 13](#), NSW Government, pp 19-20.

²⁹⁹ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

See Appendix 3 for more details on the online survey.

Government Sector Employment Act 2013; Government Sector Employment (General) Rules 2014

The proposed amendments

- 1.197 The Bill proposes to amend the *Government Sector Employment Act 2013 (GSE Act)* to improve workforce diversity and inclusion through enforceable inclusion and diversity standards. It expands the definition of workforce diversity to include 'people with a disability, sexual orientation and variations of sex characteristics'.³⁰⁰
- 1.198 The Bill seeks to enable the Public Service Commissioner to publish minimum diversity and inclusion standards for government sector agencies. The head of a government agency would be required to comply with these standards and other obligations under government sector employment rules.³⁰¹ The diversity and inclusion standard may include:
- leave provisions for gender affirming care
 - specific targets and quotas for workforce diversity.
- 1.199 Mr Greenwich said that the Bill 'would ensure that all LGBTIQ+ people are covered by public sector employment laws that facilitate the employment of disadvantaged groups'.³⁰²
- 1.200 The Bill also proposes an amendment to the *Government Sector Employment (General) Rules 2014 (General Rules)* to expand the definition of an eligible person by including an 'intersex person' and a 'transgender person'.³⁰³ Under the General Rules, an eligible person may be employed by the head of a government sector agency in a non-executive role at the agency.³⁰⁴

Arguments against

- 1.201 The Feminist Legal Clinic said that the definition of 'workforce diversity' is not exhaustive and there is no advantage to expand it in the way proposed by the Bill.³⁰⁵ The Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches also argued this.³⁰⁶ Jessica Pearson, Harvey Eastman and Michael Lowry were concerned that changing the definition of 'eligible person' could be difficult to enforce and it would be hard to measure compliance.³⁰⁷
- 1.202 Freedom for Faith said the amendments provide special privileges for LGBTIQ+

³⁰⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 12[1].

³⁰¹ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 12[2].

³⁰² New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9148 (Mr Alex Greenwich, Member for Sydney).

³⁰³ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 13.

³⁰⁴ Government Sector Employment (General) Rules 2014 rule 26(1).

³⁰⁵ [Submission 46](#), Feminist Legal Clinic, p 7.

³⁰⁶ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 10.

³⁰⁷ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 37-38.

people and that, if they were going to be included, then other categories such as religion, sex and political opinion should also be added. Referring to the General Rules, Freedom for Faith said there is no evidence that intersex and transgender people experience systematic disadvantage in government sector employment.³⁰⁸ Women's Rights Network Australia also argued that there is no evidence to justify the creation of diversity targets relating to sexual orientation, intersex status or gender identity.³⁰⁹ Australian Feminists for Women's Rights said the changes aren't necessary.³¹⁰

- 1.203 Jessica Pearson, Harvey Eastman and Michael Lowry said the amendments could cause inequitable treatment of government sector employees.³¹¹ They said the changes to the General Rules could impact other groups that aren't included by making them a lower priority in recruitment.³¹² Other groups agreed with this.³¹³
- 1.204 Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches noted that the Public Service Commissioner could change the General Rules without legislation if they identified a particular need to expand the definition of 'eligible person'.³¹⁴ The Australian Christian Lobby said that requiring the government to set diversity and inclusion standards would make the NSW government an agent of radical and divisive social change.³¹⁵
- 1.205 Several groups opposed the amendment relating to gender affirming care leave.³¹⁶
- 1.206 Other arguments against the proposed changes included:
- potential overemphasis on gender identity³¹⁷
 - privileging transgender women leading to less protections for other women.³¹⁸

Arguments in favour

- 1.207 Mr Craig Gross, Professional Officer, Professional Services, NSW Nurses and Midwives' Association, said the intention behind the amendments is good and people identifying as LGBTIQ+ should be encouraged to work everywhere across the State without barriers. He said that exposure to diversity helps to reduce

³⁰⁸ [Submission 28](#), Freedom for Faith, p 7.

³⁰⁹ [Submission 38](#), Women's Rights Network Australia, pp 15-16.

³¹⁰ [Submission 37](#), Australian Feminists for Women's Rights, pp 13-14.

³¹¹ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 37.

³¹² [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 40.

³¹³ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 11.

³¹⁴ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 11.

³¹⁵ [Submission 35](#), Australian Christian Lobby, p 20.

³¹⁶ [Submission 46](#), Feminist Legal Clinic, p 7; [Submission 28](#), Freedom for Faith, p 7; [Submission 38](#), Women's Rights Network Australia, p 16; [Submission 37](#), Australian Feminists for Women's Rights, p 14.

³¹⁷ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 40.

³¹⁸ Ms Judith Hunter, Australian Representative, Genspect Australia, [Transcript of evidence](#), 1 May 2024, p 32.

discrimination.³¹⁹

- 1.208 The Public Service Association (**PSA**) strongly supported the proposed amendments. The PSA said that changes to the GSE Act would enable the public service to address issues of sexual orientation and variations of sex characteristics in workforce planning. It also suggested that the diversity and inclusion standard setting targets and quotas for workplace diversity would increase diversity in the public service.³²⁰ The NSW Greens also supported expanding the list of disadvantaged persons to include trans people, gender diverse people and people with variations of sex characteristics.³²¹
- 1.209 The Australian Education Union and NSW Teachers Federation said that the amendment should be changed so that the Public Service Commission 'must' publish the diversity and inclusion standards. The organisation also supported adding intersex and transgender people in the General Rules as it allows for opportunities and transparency.³²²
- 1.210 Intersex Human Rights Australia supported the proposed amendments, but suggested including language referring to 'innate variations of sex characteristics'.³²³

Operational issues

- 1.211 The NSW Government said that the proposed amendments may not be necessary as the existing definition of workforce diversity is not exhaustive. The Government said that the Public Service Commission already has the power to direct the head of a Government agency in relation to the agency's employees.³²⁴ In an answer to a question on notice, the Department of Communities and Justice also noted that the definition of 'eligible person' includes a person who belongs to a group of persons who the Public Service Commissioner designates as being disadvantaged.³²⁵
- 1.212 While supporting the proposed amendments, the NSW Nurses and Midwives Association suggested that they may have unintended consequences. The Association said that a person currently has the right to choose whether to disclose personal information, or not, and that the amendments should not give an authority power to collect information about a person's sexuality, sex characteristics or gender identity without their consent.³²⁶
- 1.213 Mr Craig Gross questioned how the workplace diversity quotas could be mandated and enforced and whether this could make people feel pressured to

³¹⁹ Mr Craig Gross, Professional Officer, Professional Services, NSW Nurses and Midwives' Association, [Transcript of evidence](#), 30 April 2024, p 6.

³²⁰ [Submission 55](#), Public Service Association, p 1.

³²¹ [Submission 47](#), Greens NSW, p 7.

³²² [Submission 21](#), AEU NSW Teachers Federation, p 5.

³²³ [Submission 18](#), Intersex Human Rights Australia, pp 26-27.

³²⁴ [Submission 13](#), NSW Government, p 20.

³²⁵ [Answers to questions on notice](#), Department of Communities and Justice, 10 May 2024, p 1.

³²⁶ [Submission 57](#), NSW Nurses and Midwives Association, pp 4-5.

reveal who they are.³²⁷ Mr Greenwich acknowledged these concerns and clarified that the amendments are not seeking to mandate diversity quotas.³²⁸

Responses to survey question

1.214 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation.

1.215 The responses to the proposed amendments to the *Government Sector Employment Act (2013)* were:

- 77.98% opposed
- 12.63% supported
- 1.11% supported with amendments
- 5.24% neutral-undecided
- 3.04% did not respond.

1.216 The response to the proposed amendments to the *Government Sector Employment (General) Rules 2014* were:

- 77.70% opposed
- 12.61% supported
- 1.06% supported with amendments
- 5.55% neutral-undecided
- 3.08% did not respond.³²⁹

See Appendix 3 for more details on the online survey.

Interpretation Act 1987

The proposed amendments

1.217 The Bill seeks to amend the *Interpretation Act 1987* (the **Act**) to change the way interpretive terms including gender, relationships or body attributes are defined. It proposes to change the following references so that:

- a reference to a particular gender includes every other gender
- a reference to a particular gender in a relationship includes any person in the

³²⁷ Mr Gross, [Evidence](#), p 6.

³²⁸ Mr Alex Greenwich, Member for Sydney, [Transcript of evidence](#), 1 May 2024, p 50.

³²⁹ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

same relationship regardless of gender

- a word indicating one or more body attributes of a particular gender includes every person with that body attribute regardless of gender.³³⁰

1.218 The Act currently includes a definition of gender to provide that a reference to a particular gender includes every other gender and the Bill proposes to move this into a new section.³³¹

1.219 The Bill also seeks to define new references to persons by providing that:

- a reference to a person does not exclude a reference to a corporation
- a reference to an individual does not exclude a reference to a person.

1.220 Mr Greenwich said that the Bill includes 'interim measures to expand interpretation principles for gendered language under the *Interpretation Act 1987* to ensure references to relationships and body attributes or capacities through gendered terms are inclusive of all relevant relationships and people, regardless of gender.'³³²

Arguments against

1.221 Jessica Pearson, Harvey Eastman and Michael Lowry said the changes to the Act may have broad societal impacts and impact legislative clarity. They said that the changes shift from a biological understanding of sex to a gendered interpretation that may encompass a broad spectrum of gender identities.³³³ They said this could undermine the effectiveness of laws designed to protect specific sex based groups.³³⁴

1.222 Women's Forum Australia said that the changes will make references to sex-based language in NSW law gender neutral.³³⁵ The Australian Christian Lobby said that the changes replace binary with non-binary beliefs about biological sex.³³⁶

1.223 The Act currently does not define the term 'sex' and already provides that a word or expression indicating one or more genders, 'indicates every other gender'.³³⁷ The Feminist Legal Clinic and Genspect Australia committee suggested that the term 'gender' should be removed and replaced with the term 'sex'.³³⁸

1.224 Freedom for Faith said that the term gender was used synonymously with sex when the Act was introduced in 1987.³³⁹ The Catholic Bishops of NSW and the

³³⁰ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 14[3].

³³¹ Interpretation Act 1987 s 8(a).

³³² New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9149 (Mr Alex Greenwich, Member for Sydney).

³³³ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 40-41.

³³⁴ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 42.

³³⁵ [Submission 51](#), Women's Forum Australia, p 11.

³³⁶ [Submission 35](#), Australian Christian Lobby, p 6.

³³⁷ Interpretation Act 1987 s 8(a).

³³⁸ [Submission 46](#), Feminist Legal Clinic, p 7; [Submission 25](#), Genspect Australia committee, p 9.

³³⁹ [Submission 28](#), Freedom for Faith, p 18.

Australasian-Middle East Christian Apostolic Churches also made this point although they noted that gender is now used to describe a variety of different concepts that are related to, but distinct from, sex.³⁴⁰

Arguments in favour

- 1.225 Equality Australia said that the changes would strengthen statutory interpretation to ensure all genders are equal before the law.³⁴¹ The Public Interest Advocacy Centre noted that the amendments update and make inclusive interpretation provisions across many statutes.³⁴²
- 1.226 The Kingsford Legal Centre said that it supports the amendments, along with other parts of the Bill, as it lays the foundation for a safe and inclusive community. The organisation said law reform is key to ensuring laws adequately protect all citizens.³⁴³

Operational issues

- 1.227 The NSW Government said that the amendments require careful consideration and that there may be unintended consequences. The Government said this consideration is important particularly for transitional provisions.³⁴⁴ Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, clarified this point, saying that changing the Act would have a broad impact on the entire NSW Statute Book and it is important to properly understand those impacts.³⁴⁵

Responses to survey question

- 1.228 The Committee's online survey on the Equality Legislation Amendment (LGBTIQA+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Interpretation Act 1987* were:
- 77.85% opposed
 - 12.48% supported
 - 0.91% supported with amendments
 - 5.60% neutral-undecided
 - 3.17% did not respond.³⁴⁶

³⁴⁰ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Apostolic Churches, p 11.

³⁴¹ [Submission 39](#), Equality Australia, p 3.

³⁴² [Submission 17](#), Public Interest Advocacy Centre, p 3.

³⁴³ [Submission 15](#), Kingsford Legal Centre, p 4.

³⁴⁴ [Submission 13](#), NSW Government, p 21.

³⁴⁵ Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, NSW Government, [Transcript of evidence](#), 1 May 2024, p 55.

³⁴⁶ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

See Appendix 3 for more details on the online survey.

Mental Health Act 2007

The proposed amendment

- 1.229 The Bill seeks to amend the *Mental Health Act 2007* (the **Act**) by adding a new subsection that specifies that if a person expresses, refuses or fails to express a certain gender identity or gender expression it may not indicate mental illness or disorder. The subsection would also state that this is the case if the person has previously expressed, refused or failed to express a certain gender identity or expression.³⁴⁷
- 1.230 In Mr Greenwich's second reading speech he stated that some individuals still view transgender people as pathological, which can lead to an increased risk of them being 'forcibly institutionalised', and that the bill clarifies that gender identity and gender expression do not indicate mental illness. He also stated that the Act already excludes certain identities and behaviours from being considered a mental illness, for example, a person's sexual orientation.³⁴⁸

Arguments against

- 1.231 Some inquiry participants rejected the proposed amendment to the Act.³⁴⁹ Some stakeholders were of the view that all, or a number of transgender or gender diverse people have a mental health illness, 'disordered thinking', or multiple psychological disorders.³⁵⁰ Some stakeholders asserted that the provision of appropriate mental health care should not be prevented and that all parts of a person's identity should be considered when providing this care.³⁵¹
- 1.232 Jessica Pearson, Harvey Eastman, Michael Lowry stated that the proposed amendment may restrict or hinder practitioners from conducting thorough mental health assessments, and that this could:
- place mental health professionals in an ethical dilemma, and
 - prevent children or young people from receiving the appropriate care.³⁵²

Arguments in favour

- 1.233 Other inquiry participants were in favour of the proposed amendment.³⁵³ Some

³⁴⁷ [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) sch 16.

³⁴⁸ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9147 (Mr Alex Greenwich, Member for Sydney).

³⁴⁹ [Submission 25](#), Genspect Australia committee, p 9; [Submission 46](#), Feminist Legal Clinic, p 7; [Submission 49](#), Coalition of Activist Lesbians, pp 6-7; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 9.

³⁵⁰ [Submission 1](#), Emeritus Professor Patrick Parkinson AM, p 5; [Submission 25](#), Genspect Australia committee, p 9; [Submission 46](#), Feminist Legal Clinic, p 7; [Submission 49](#), Coalition of Activist Lesbians, p 7.

³⁵¹ [Submission 25](#), Genspect Australia committee, p 9; [Submission 46](#), Feminist Legal Clinic, p 7; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 9, 46.

³⁵² [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 4, 47.

³⁵³ [Submission 10](#), Parents for Trans Youth Equity, p 17; [Submission 16](#), Pitt Street Uniting Church, p 4; [Submission 22](#), BEING - Mental Health Consumers, p 1; [Submission 47](#), Greens NSW, p 6.

stakeholders asserted that transgender individuals are 'natural' and 'normal'³⁵⁴ and that having a gender identity or gender expression is an 'authentic part of the human condition.'³⁵⁵ Stakeholders also noted that the amendment is important in decreasing stigma for transgender and gender diverse people, and ensuring they are not perceived to have a mental illness or disorder.³⁵⁶

1.234 Stakeholders also advised that the proposed amendment would:

- be more in line with the NSW Government's *LGBTIQ+ Health Strategy 2022-2027*³⁵⁷
- increase the likelihood of LGBTIQ+ individuals feeling safe and using mental health services.³⁵⁸

Operational issues

1.235 The NSW Government submitted that the proposed amendment does not raise concerns.³⁵⁹

Responses to survey question

1.236 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Mental Health Act 2007* were:

- 62.88% opposed
- 15.18% supported
- 1.98% supported with amendments
- 16.38% neutral/undecided
- 3.58% did not respond³⁶⁰

See Appendix 3 for more details on the online survey.

³⁵⁴ [Submission 10](#), Parents for Trans Youth Equity, p 17.

³⁵⁵ Mr Warren Talbot, Member and Secretary of the Uniting Church in Australia's national apology to LGBTIQ+ Australians Task Group, Pitt Street Uniting Church, [Transcript of evidence](#), 30 April 2024, p 38.

³⁵⁶ [Submission 47](#), Greens NSW, p 6; [Submission 16](#), Pitt St Uniting Church, p 4.

³⁵⁷ [Submission 22](#), BEING Mental Health Consumers, p 1.

³⁵⁸ [Submission 22](#), BEING Mental Health Consumers, p 2; [Submission 66](#), Mental Health Commission of NSW, p 8.

³⁵⁹ [Submission 13](#), NSW Government, p 22.

³⁶⁰ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

Summary Offences Act 1988

The proposed amendments

- 1.237 The Bill seeks to amend the *Summary Offences Act 1988* (the **Act**) to remove all offences related to sex work, those being that:
- a person taking part in an act of sex work, including from a vehicle, must not do so:
 - in a school, church, hospital or public place
 - within view of a school, church, hospital public place or dwelling.³⁶¹
 - a person (aged 18 or older) must not knowingly live on the earnings of sex work. This is someone that lives with, or is routinely in the company of a sex worker and has no lawful means of support.
 - a person must not through coercive conduct or influence, cause or induce another person to do an act of sex work or surrender proceeds from an act of sex work.
 - a person must not, for the purpose of sex work or soliciting sex work, use or permit the use of a premises that is a photographic studio, used to provide massage, sauna baths, steam baths or facilities for physical exercise, taking photographs or other similar services.
 - A person cannot advertise that a premises or person is available for sex work.
 - a person must not publish an employment advertisement for:
 - a sex worker position
 - a position that involves or may involve acting as a sex worker.
 - a sex worker or client on a road must not solicit for sex near or within view of a dwelling, a school, church, or hospital. Additionally, a sex worker or client must not solicit for sex in a school, church, or hospital. This includes from within a vehicle.
- 1.238 The Bill also seeks to remove search warrant powers for certain premises (such as massage parlours, saunas etc.) that may be used for sex work or soliciting sex work.³⁶²

Arguments against

- 1.239 A number of stakeholders rejected the proposed amendments, and sex work being fully decriminalised.³⁶³ Stakeholders observed that sex workers are more

³⁶¹ [Equality Legislation Amendment \(LGBTIQA+\) Bill 2023](#) sch 18; Summary Offences Act 1988 ss 15-20.

³⁶² [Equality Legislation Amendment \(LGBTIQA+\) Bill 2023](#) sch 18; Summary Offences Act 1988 s 21.

³⁶³ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 3; [Submission 29](#), Catholic Women's League Australia -

likely to experience physical harm, psychological trauma and abuse.³⁶⁴
Stakeholders also said that the amendments would remove protections for sex workers³⁶⁵ and place vulnerable women at risk.³⁶⁶

- 1.240 However, Women's Rights Network Australia agreed with certain dependent family members or partners, for example an adult child living at home while studying, being allowed to live off the earnings of a sex worker. In noting this, the organisation stated that there is no evidence of a prosecution occurring to justify removing the offence of living off the earnings of a sex worker.³⁶⁷
- 1.241 Stakeholders expressed the view that sex work is dangerous, a form of violence against women, and a type of gender inequality.³⁶⁸ The Committee heard concerns that the proposed amendment could increase the demand for sex work and subsequently increase the exploitation of women.³⁶⁹
- 1.242 Stakeholders cautioned that the proposed reform could lead to other impacts, such as:
- compromising women's safety, physical and mental health, and wellbeing³⁷⁰
 - allowing 'pimping' and coercive conduct against women³⁷¹
 - an increase in the human trafficking of sex workers³⁷²
 - normalising and encouraging sex work as a career³⁷³

New South Wales Inc., p 5; [Submission 38](#), Women's Rights Network Australia, p 12; [Submission 53](#), Nordic Model Information Network, p 1; [Submission 63](#), Jessica Pearson, Harvey Eastman, Michael Lowry, p 10.

³⁶⁴ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 3; [Submission 37](#), Australian Feminists for Women's Rights, p 14; [Submission 38](#), Women's Rights Network Australia, p 12; [Submission 51](#), Women's Forum Australia, p 12; Dr Helen Pringle, Nordic Model Information Network, [Transcript of evidence](#), 1 May 2024, p 44.

³⁶⁵ [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 5; [Submission 28](#), Freedom for Faith, p 17; [Submission 51](#), Women's Forum Australia, p 11; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), p 5.

³⁶⁶ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), p 5.

³⁶⁷ [Submission 38](#), Women's Rights Network Australia, p 13.

³⁶⁸ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 37](#), Australian Feminists for Women's Rights, pp 3, 14; [Submission 38](#), Women's Rights Network Australia, p 13; [Submission 53](#), Nordic Model Information Network, p 1.

³⁶⁹ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 5.

³⁷⁰ [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 5; [Submission 28](#), Freedom for Faith, p 17; [Submission 53](#), Nordic Model Information Network, p 2.

³⁷¹ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 28](#), Freedom for Faith, p 17; [Submission 37](#), Australian Feminists for Women's Rights, pp 3, 14; [Submission 51](#), Women's Forum Australia, p 11; [Submission 53](#), Nordic Model Information Network, p 2.

³⁷² [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, pp 5, 51.

³⁷³ [Submission 37](#), Australian Feminists for Women's Rights, p 17.

- exposing children to sex work.³⁷⁴
- 1.243 Stakeholders noted that the amendments would have implications on other parts of society by allowing soliciting and sex work to occur within or near public spaces, churches, schools and hospitals.³⁷⁵ The Most Reverend Anthony Fisher OP said that the current restrictions protect 'public decency'.³⁷⁶
- 1.244 Dr Helen Pringle, Nordic Model Information Network (**NMIN**), and Coalition Against Trafficking in Women Australia (**CATWA**) called for the voices and perspectives of current or former sex workers to be included in reforms concerning them.³⁷⁷ They endorsed the Nordic Model, along with several other stakeholders.³⁷⁸
- 1.245 Stakeholders said that the Nordic model framework only partly decriminalises sex work by removing offences for those that provide 'sexual services' and criminalising clients who purchase those services. Stakeholders viewed the model as an effective way to decrease the demand for sex work by deterring people from buying sex. Stakeholders noted that the model has been successfully implemented in Scandinavian countries like Sweden.³⁷⁹

Arguments in favour

- 1.246 Multiple stakeholders supported the proposed amendment and the removal of offences relating to sex work.³⁸⁰ Organisations stated the suggested changes would complete the decriminalisation process that began in NSW decades ago

³⁷⁴ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 5; [Submission 35](#), Australian Christian Lobby, p 16; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 51.

³⁷⁵ [Submission 14](#), Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.), p 1; [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 4; [Submission 28](#), Freedom for Faith, p 17; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 5; [Submission 36](#), Faith NSW and Better Balanced Futures, p 5; [Submission 37](#), Australian Feminists for Women's Rights, p 14; [Submission 51](#), Women's Forum Australia, p 11; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 51; Mr Mark Spencer, Director of Public Policy, Christian Schools Australia, [Transcript of evidence](#), 1 May 2024, p 2.

³⁷⁶ The Most Reverend Anthony Fisher, OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, [Transcript of evidence](#), 1 May 2024, p 2.

³⁷⁷ [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), pp 6-7; Dr Pringle, [Evidence](#), 1 May 2024, p 45.

³⁷⁸ [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), p 6; [Submission 37](#), Australian Feminists for Women's Rights, p 15; [Submission 38](#), Women's Rights Network Australia, p 12; [Submission 46](#), Feminist Legal Clinic, p 5; [Submission 49](#), Coalition of Activist Lesbians, p 6; [Submission 51](#), Women's Forum Australia, p 15; [Submission 53](#), Nordic Model Information Network, p 1; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), p 5; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 10; Dr Pringle, [Evidence](#), 1 May 2024, p 42.

³⁷⁹ [Submission 24](#), Coalition Against Trafficking in Women Australia (CATWA), pp 5-6; [Submission 38](#), Women's Rights Network Australia, p 12; [Submission 49](#), Coalition of Activist Lesbians, p 6; [Submission 51](#), Women's Forum Australia, p 14; [Submission 53](#), Nordic Model Information Network, pp 4-5; [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 52.

³⁸⁰ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 5; [Submission 33](#), Sex Workers Outreach Project NSW, p 2; [Submission 39](#), Equality Australia, p 1; [Submission 42](#), Pride in Protest, p 17; Ms Joanna Megan, Chief Executive Officer, Sex Workers Outreach Project NSW, [Transcript of evidence](#), 30 April 2024, p 41; Mx Mish Pony, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association, [Transcript of evidence](#), 30 April 2024, p 42.

and improve the safety, protection and wellbeing of sex workers.³⁸¹

- 1.247 Scarlet Alliance, Australian Sex Workers Association (**Scarlet Alliance**) and Sex Workers Outreach Project NSW (**SWOP NSW**) said that other laws with more severe penalties than those in the Summary Offences Act provide better protection for sex workers.³⁸² The organisations pointed to various offences the Bill is proposing to repeal as being sufficiently covered by other pieces of legislation, including:
- causing or inducing sex work³⁸³
 - visible public sexual activity³⁸⁴
 - using or permitting the use of certain premises for sex work.³⁸⁵
- 1.248 Stakeholders highlighted the high level of discrimination experienced by sex workers, including in healthcare where a study showed that 91% of sex workers experienced discrimination.³⁸⁶ Scarlet Alliance and SWOP NSW noted that stigmas about sex work are perpetuated by singling out the industry through specific offences, which often have more lenient penalties. This sends a message to the community that sex work is different and 'less worthy of protection'.³⁸⁷
- 1.249 Stakeholders submitted that decriminalisation is safer for sex workers, and exploitation is rare due to better transparency and regulation of the industry. Stakeholders said that this makes it difficult to conceal exploitative practices, deters 'pimping' and allows sex workers to seek help if needed.³⁸⁸
- 1.250 Organisations referred to a fraught relationship between sex workers and the police, with police having regulatory powers over the sex industry under current laws.³⁸⁹ They said that this dynamic leads to abuse and harassment of sex workers and is an obstacle to a functioning relationship between the two groups.³⁹⁰ SWOP NSW observed that the relationship between police and sex

³⁸¹ [Submission 33](#), Sex Workers Outreach Project NSW, p 3; Ms Megan, [Evidence](#), 30 April 2024, p 41; Mx Pony, [Evidence](#), 30 April 2024, p 42.

³⁸² Ms Megan, [Evidence](#), 30 April 2024, p 41.

³⁸³ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, pp 6-7, [Submission 33](#), Sex Workers Outreach Project NSW, p 3.

³⁸⁴ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 10.

³⁸⁵ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 7; [Submission 33](#), Sex Workers Outreach Project NSW, p 4.

³⁸⁶ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 2; Ms Megan, [Evidence](#), 30 April 2024, pp 41-42; Mx Pony, [Evidence](#), 30 April 2024, p 42; [Submission 66](#), Mental Health Commission of NSW, p 7.

³⁸⁷ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 7; [Submission 33](#), Sex Workers Outreach Project NSW, p 3; Ms Megan, [Evidence](#), 30 April 2024, p 41; Mx Pony, [Evidence](#), 30 April 2024, p 46.

³⁸⁸ [Submission 33](#), Sex Workers Outreach Project NSW, pp 3, 6; Ms Megan, [Evidence](#), 30 April 2024, p 43; Mx Pony, [Evidence](#), 30 April 2024, p 42.

³⁸⁹ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 9; [Submission 33](#), Sex Workers Outreach Project NSW, pp 2, 6; Ms Megan, [Evidence](#), 30 April 2024, pp 41, 45.

³⁹⁰ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 9; [Submission 33](#), Sex Workers Outreach Project NSW, p 2; Ms Megan, [Evidence](#), 30 April 2024, p 45.

workers in New Zealand had improved after decriminalisation.³⁹¹

1.251 SWOP NSW stated that decriminalisation is safer for street-based sex workers, as it allows:

- sex workers to take time when initially speaking with clients
- the flow of safe sex supplies
- clients to inform the police when they know a sex worker has been assaulted.³⁹²

1.252 Stakeholders also noted that the Act penalises adult family members of sex workers that live off their earnings and submitted that sex workers should be able to manage their own finances and spending.³⁹³

1.253 SWOP NSW and Scarlet Alliance stated that models which criminalise clients, such as the Nordic Model, make sex work more dangerous by pushing the industry underground and preventing access to legal and industrial rights. They also noted that this type of framework involves more risk, as it may result in sex workers accepting clients they otherwise wouldn't, and clients being less inclined to undergo sexual health testing.³⁹⁴

Operational issues

1.254 The NSW Government stated that the proposed amendment may be a suitable step in treating sex work as equal to other types of work and recognising it as a legitimate business, considering that it has already been decriminalised. However, the Government recommended further consideration to prevent unintended consequences, such as the risk of removing important safeguards like preventing a person from coercing someone into sex work.³⁹⁵

1.255 Ms Joanna Megan, Chief Executive Officer, Sex Workers Outreach Project NSW, referred to prejudice and a scarce understanding of relevant legislation within the police force. If the Bill is passed Scarlet Alliance recommended that training be provided to the NSW Police on changes to laws as they relate to sex work.³⁹⁶

Responses to survey question

1.256 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments

³⁹¹ [Submission 33](#), Sex Workers Outreach Project NSW, p 6.

³⁹² [Submission 33](#), Sex Workers Outreach Project NSW, p 6; Ms Megan, [Evidence](#), 30 April 2024, p 41.

³⁹³ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 6; [Submission 33](#), Sex Workers Outreach Project NSW, p 2; Ms Megan, [Evidence](#), 30 April 2024, p 41.

³⁹⁴ [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 9; Mx Pony, [Evidence](#), 30 April 2024, pp 42-43; Ms Megan, [Evidence](#), 30 April 2024, p 44.

³⁹⁵ [Submission 13](#), NSW Government, pp 4, 23.

³⁹⁶ Ms Megan, [Evidence](#), 30 April 2024, pp 41, 45; [Submission 31](#), Scarlet Alliance, Australian Sex Workers Association, p 11.

to the *Summary Offences Act 1988* were:

- 77.48% opposed
- 12.49% supported
- 1.06% supported with amendments
- 5.78% neutral/undecided
- 3.19% did not respond³⁹⁷

See Appendix 3 for more details on the online survey.

Surrogacy Act 2010

The proposed amendments

- 1.257 The Bill proposes to amend the *Surrogacy Act 2010* (the **Act**) to allow parenting orders to be made for a child born through a commercial surrogacy arrangement. It also makes other related changes.
- 1.258 Under the Act a court can make an order to transfer the parentage of a child born through a surrogacy arrangement from the surrogate to the intended parents. However, those orders cannot be made by a court if the child was born overseas through commercial surrogacy.³⁹⁸ The Bill proposes to change this by removing the ban on overseas commercial surrogacy so that courts can make parentage orders for children born overseas through commercial surrogacy, provided that it is in the best interest of the child.
- 1.259 Mr Greenwich stated that the 'bill would not lift the ban on commercial surrogacy in the State, but it would remove a ban on commercial surrogacy arrangements outside of NSW and empower the courts to issue parentage orders to intending parents of children born from these arrangements, if it's in the best interests of the child to do so'.³⁹⁹
- 1.260 The Bill proposes to do this by:
- removing a section that enables the NSW Government to prosecute a person if they have entered into an international commercial surrogacy arrangement
 - removing a requirement for the surrogacy to be altruistic in order for a court to make a parentage order
 - removing the requirement for there to be exceptional circumstances to make a parentage order and instead requiring a court to find that a parentage order is in the best interests of the child.

³⁹⁷ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

³⁹⁸ *Surrogacy Act 2010* s 23(2).

³⁹⁹ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 24 August 2023, p 9148 (Mr Alex Greenwich, Member for Sydney).

- 1.261 The Bill also proposes to amend the Act to insert a statement that the birth mother in a surrogacy arrangement has the same rights to manage her pregnancy and birth as any other mother, regardless of anything the parties to a surrogacy arrangement may have otherwise agreed.

Arguments against

- 1.262 One of the main arguments against the proposed amendment is that it may lead to more people accessing international commercial surrogacy.⁴⁰⁰ The Catholic Women's League Australia said that because the government would not be able to prosecute someone living in NSW and accessing commercial surrogacy services overseas, more people may choose to undertake international commercial surrogacy.⁴⁰¹
- 1.263 Several groups opposed to the amendments did not agree with international commercial surrogacy on principle, particularly religious groups.⁴⁰² Joshua Rowe, State Director, Australian Christian Lobby, talked about the importance of a child being in contact with their biological parents.⁴⁰³ Australian Feminists for Women's Rights said the change would encourage the removal of children from their birth mothers.⁴⁰⁴ Other groups argued that the amendment would encourage the removal of children from their birth mothers and impact human rights.⁴⁰⁵
- 1.264 The Most Reverend, Anthony Fisher OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW, warned of the risks of women being exploited, especially those in poorer countries.⁴⁰⁶ Freedom for Faith similarly said that removing the requirement for a surrogacy arrangement to be altruistic to be eligible for a parentage order would harm vulnerable women in foreign jurisdictions.⁴⁰⁷ Other stakeholders agreed with this.⁴⁰⁸
- 1.265 The Australian Christian Lobby expressed its opposition to overseas commercial surrogacy and said that the Bill would create conditions where children are

⁴⁰⁰ [Submission 28](#), Freedom for Faith, p 17; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, p 5.

⁴⁰¹ [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, pp 5-6.

⁴⁰² Bishop Michael Stead, Bishop of South Sydney and Chair, Freedom for Faith, [Transcript of evidence](#), 30 April 2024, p 29; Mr Murray Norman, CEO, Faith NSW and Better Balance Futures, [Transcript of evidence](#), 30 April 2024, p 32.

⁴⁰³ Mr Joshua Rowe, State Director, Australian Christian Lobby, [Transcript of evidence](#), 30 April 2024, p 32.

⁴⁰⁴ [Submission 37](#), Australian Feminists for Women's Rights, p 3.

⁴⁰⁵ [Submission 37](#), Australian Feminists for Women's Rights, p 3; [Submission 61](#), Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), pp 4-5.

⁴⁰⁶ The Most Reverend Anthony Fisher OP, Catholic Archbishop of Sydney, Catholic Bishops of NSW, [Transcript of evidence](#), 1 May 2024, p 2.

⁴⁰⁷ [Submission 28](#), Freedom for Faith, p 17.

⁴⁰⁸ Ms Anna Kerr, Principal solicitor, Feminist Legal Clinic, [Transcript of evidence](#), 1 May 2024, p 10; [Submission 29](#), Catholic Women's League Australia - New South Wales Inc, pp 5-6; [Submission 34](#), Plunkett Centre for Ethics, p 3; [Submission 37](#), Australian Feminists for Women's Rights, p 3; [Submission 38](#), Women's Rights Network Australia, p 14; [Submission 41](#), Catholic Bishops of NSW and the Australasian Middle East Christian Apostolic Churches, pp 13-14; [Submission 49](#), Coalition of Activist Lesbians, p 7; [Submission 51](#), Women's Forum Australia, p 16; Mr Norman, [Evidence](#), 30 April 2024, p 32.

tradeable commodities and women are more vulnerable to exploitation.⁴⁰⁹ Bishop Michael Stead, Bishop of South Sydney and Chair, Freedom for Faith, was concerned that this change could lead to the exploitation of vulnerable women in certain countries.⁴¹⁰

- 1.266 Freedom for Faith said that the changes would make surrogacy arrangements more attractive. The organisation also suggested that it is unlikely that a court will find that it is in a child's best interests to remain with their surrogate mother.⁴¹¹ Catholic Bishops of NSW and the Australasian Middle East Christian Apostolic Churches said surrogacy arrangements do not accord with human dignity.⁴¹²
- 1.267 Jessica Pearson, Harvey Eastman and Michael Lowry argued that the changes could reduce protections for children and birth mothers by weakening the standards required to obtain a parentage order.⁴¹³ They also said that the proposed changes allowing parentage orders to be made for a child born through commercial surrogacy could be manipulated. Further, they argued that the proposed test of the 'best interests of the child' is subjective and could lead to prioritising the interests of the intended parents over those of the surrogate mother or the child.⁴¹⁴
- 1.268 Other arguments against the proposed amendments were:
- it would create difficulty in accessing birth records⁴¹⁵
 - it would lead to legalising commercial surrogacy in NSW⁴¹⁶
 - that commercial surrogacy is a form of human trafficking.⁴¹⁷

Arguments in favour

- 1.269 Several stakeholders agreed with the amendments to support legal recognition of children born through commercial surrogacy arrangements and their parents.⁴¹⁸ They argued that the changes will:
- ensure children born through international commercial surrogacy are treated equally under the law⁴¹⁹

⁴⁰⁹ [Submission 35](#), Australian Christian Lobby, p 16.

⁴¹⁰ Bishop Stead, [Evidence](#), 30 April 2024, p 29.

⁴¹¹ [Submission 28](#), Freedom for Faith, p 18.

⁴¹² [Submission 41](#), Catholic Bishops of NSW and the Australasian Middle East Christian Apostolic Churches, p 13.

⁴¹³ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 54.

⁴¹⁴ [Submission 63](#), Jessica Pearson, Harvey Eastman and Michael Lowry, p 53.

⁴¹⁵ [Submission 38](#), Women's Rights Network Australia, p 14.

⁴¹⁶ [Submission 41](#), Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches, p 12.

⁴¹⁷ [Submission 38](#), Women's Rights Network Australia, p 14.

⁴¹⁸ [Submission 12](#), Parents, Family and Friends of Lesbians and Gays, p 4; [Submission 17](#), Public Interest Advocacy Centre, p 3; Dr Aileen Kennedy, Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights, [Transcript of evidence](#), 30 April 2024, p 18; [Submission 59](#), Mr Stephen Page, p 20; [Submission 2](#), BlaQ Aboriginal Corporation, p 6.

⁴¹⁹ [Submission 43](#), Surrogacy Australia, p 5.

- make it easier for courts to make parentage orders, consistent with international obligations⁴²⁰
 - improve access to services such as superannuation by legally recognising parents.⁴²¹
- 1.270 While acknowledging that surrogacy is a contentious issue, Ms Sarah Bevan, Principal, Sarah Bevan Family Lawyers, Surrogacy Australia, said that surrogacy is here to stay and indicated her support for measures to make surrogacy safer for all parties, including surrogates, children and parents.⁴²² Ms Bevan clarified that the Bill would not legalise commercial surrogacy in NSW. Rather, it would enable a court to make parentage orders for children born overseas to a commercial surrogate.⁴²³
- 1.271 Mr Ashley Scott, Executive Officer, Rainbow Families, said that the proposed changes are about ensuring that all children are equal under the law. Mr Scott also stated that criminalising parents is not in the best interests of a child.⁴²⁴
- 1.272 Stakeholders spoke about the legal difficulties people have when going through international commercial surrogacy arrangements because they aren't able to get a parentage order.⁴²⁵ Under current arrangements surrogates and their partners are recognised as the legal parents of children born through commercial surrogacy.⁴²⁶ Mr Scott said this puts the actual parents and children of surrogates in legal uncertainty, unless they are able to get a parentage order.⁴²⁷ He said this deprives children born overseas through commercial surrogacy of security and certainty of parentage.⁴²⁸
- 1.273 Mr Ghassan Kassisieh, Legal Director, Equality Australia, said that uncertainty about parentage disadvantages the economic and emotional security of children born through commercial surrogacy, and that those children should not be punished for the circumstances of their birth.⁴²⁹ Stephen Page explained that under the current law, parentage of children 'limps along' rather than being properly recognised.⁴³⁰ He said the State is obliged to provide clarity as to the parentage of those children.⁴³¹
- 1.274 Surrogacy Australia said that removing the criminal offence for people to engage in international commercial surrogacy will remove discrimination against people

⁴²⁰ [Submission 59](#), Mr Stephen Page, pp 15-16.

⁴²¹ [Submission 45](#), Rainbow Families, p 6.

⁴²² Ms Sarah Bevan, Principal, Sarah Bevan Family Lawyers, Surrogacy Australia, [Transcript of evidence](#), 1 May 2024, pp 25-26.

⁴²³ Ms Bevan, [Evidence](#), 1 May 2024, p 27.

⁴²⁴ Mr Ashley Scott, Executive Officer, Rainbow Families, [Transcript of evidence](#), 1 May 2024, p 16.

⁴²⁵ [Submission 21](#), AEU NSW Teachers Federation, p 5; [Submission 39](#), Equality Australia, p 2; [Submission 45](#), Rainbow Families, p 6.

⁴²⁶ Mr Alex Greenwich, Member for Sydney, [Transcript of evidence](#), 1 May 2024, p 50.

⁴²⁷ Mr Scott, [Evidence](#), 1 May 2024, p 16.

⁴²⁸ Mr Scott, [Evidence](#), 1 May 2024, p 15.

⁴²⁹ Mr Ghassan Kassisieh, Legal Director, Equality Australia, [Transcript of evidence](#), 30 April 2024, p 13.

⁴³⁰ [Submission 59](#), Mr Stephen Page, p 18.

⁴³¹ [Submission 59](#), Mr Stephen Page, p 19.

who aren't able to bear children, a large portion of which are LGBTIQA+ people.⁴³² Mr Scott argued that the current ban isn't effective, noting that no prosecutions have occurred to date.⁴³³ Stephen Page also noted that no one has been prosecuted under the Act in NSW.⁴³⁴

- 1.275 Surrogacy Australia said that the threat of criminal prosecution does not improve regulation of commercial surrogacy.⁴³⁵ The organisation also argued that the changes will not lead to widespread commercial surrogacy as there are still criminal penalties in place for domestic commercial surrogacy.⁴³⁶ Sarah Bevan, in referring to the criminal offence, talked about the stress that the threat of prosecution causes for people using overseas surrogacy.⁴³⁷
- 1.276 Surrogacy Australia supported removing the reference to 'exceptional circumstances' and replacing it with a requirement that the court must be satisfied that a parentage order is in 'the best interests of the child', as there is a substantial body of case law on how this is defined under the Act.⁴³⁸ Stephen Page said this change was the right focus as it is consistent with Australia's obligations under the *UN Convention on the Rights of the Child*.⁴³⁹
- 1.277 A few stakeholders stated that a birth mother already has the same rights to manage her pregnancy and birth as any other pregnant woman, despite anything the parties to an surrogacy arrangement may have agreed to.⁴⁴⁰ On the other hand, Stephen Page said NSW is an outlier in not having this provision in the Act and talked about the importance of protecting a surrogate's right to have control over her body.⁴⁴¹

Operational issues

- 1.278 The NSW Government said that a review of the Act may be the most appropriate way to consider possible amendments, as they raise complex policy and operational complexities.⁴⁴² The Government noted that surrogacy is a highly complex area of law that raises difficult ethical issues, and reform should be informed by expert advice to ensure birth mothers, children and intended parents are protected.⁴⁴³
- 1.279 NSW Government staff raised specific operational issues. 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, NSW Government, noted that there may, for example,

⁴³² [Submission 43](#), Surrogacy Australia, p 3.

⁴³³ Mr Scott, [Evidence](#), 1 May 2024, p 15.

⁴³⁴ [Submission 59](#), Mr Stephen Page, p 6.

⁴³⁵ [Submission 43](#), Surrogacy Australia, p 3.

⁴³⁶ [Submission 43](#), Surrogacy Australia, p 5.

⁴³⁷ Ms Bevan, [Evidence](#), 1 May 2024, p 28.

⁴³⁸ [Submission 43](#), Surrogacy Australia, p 4.

⁴³⁹ [Submission 59](#), Mr Stephen Page, p 15.

⁴⁴⁰ [Submission 59](#), Mr Stephen Page, 15; [Submission 43](#), Surrogacy Australia, p 3.

⁴⁴¹ [Submission 59](#), Mr Stephen Page, pp 2-3.

⁴⁴² [Submission 13](#), NSW Government, p 24.

⁴⁴³ [Submission 13](#), NSW Government, p 25.

be legal complexities where Commonwealth visa requirements intersect with NSW surrogacy arrangements.⁴⁴⁴

- 1.280 Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, NSW Government, said that there is a risk of the amendments encouraging international commercial surrogacy. Therefore, the Act should be considered holistically to ensure that there are no unintended consequences.⁴⁴⁵

Responses to survey question

- 1.281 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Surrogacy Act 2010* were:

- 79.93% opposed
- 10.54% supported
- 0.98% supported with amendments
- 5.60% neutral-undecided
- 2.96% did not respond.⁴⁴⁶

See Appendix 3 for more details on the online survey.

Workers Compensation Act 1987

The proposed amendments

- 1.282 The Bill proposes to amend the *Workers Compensation Act 1987* (the **Act**) to replace multiple references in the Act. The Bill replaces:
- 'HIV infection' with 'HIV'
 - 'HIV infected or suffering from AIDS' with 'living with HIV/AIDS'.
- 1.283 It also seeks to update definitions of HIV and AIDS and removes a reference to a previously repealed section.

Arguments against

- 1.284 Feminist Legal Clinic said that the proposed changes to the Act are insignificant and unnecessary. The organisation noted that the World Health Organisation

⁴⁴⁴ 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, NSW Government, [Transcript of evidence](#), 1 May 2024, pp 53-54.

⁴⁴⁵ Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, NSW Government, [Transcript of evidence](#), 1 May 2024, p 53.

⁴⁴⁶ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

refers to HIV as an infection.⁴⁴⁷

Arguments in favour

- 1.285 The HIV AIDS Legal Centre and Positive Life NSW said that the Bill makes important amendments, in that they remove provisions that stigmatise people living with HIV. The organisation said that removing discriminatory language from NSW legislation, including the Act, will make it more inclusive and enabling for people living with HIV. The organisation added that the changes would help to address common misconceptions about HIV.⁴⁴⁸ Similarly, Kingsford Legal Centre supported the changes and the use of non-derogatory and inclusive language, such as replacing 'HIV infection' with 'HIV'.⁴⁴⁹
- 1.286 Equality Australia also described the amendments as removing stigmatising language and provisions from the Act, particularly for people living with HIV.⁴⁵⁰ The Greens supported changing references from 'suffering from HIV' to 'living with HIV', saying that legislation should use language that is unbiased and accurate.⁴⁵¹ The Mental Health Commission supported changing the Act to remove stigmatising language, noting that language plays a significant role in shaping attitudes and perceptions in health care.⁴⁵²
- 1.287 The Law Society of NSW stated that there is significant benefit in updating language referring to HIV/AIDS.⁴⁵³ LGB Alliance also supported the changes, as they would benefit gay and bisexual men.⁴⁵⁴

Operational issues

- 1.288 The NSW Government said that the Bill proposes to remove a reference to a repealed section in the Act that may have a 'substantive impact' on historical claims under the Act.⁴⁵⁵
- 1.289 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, said the Department had been advised that the change to the repealed section could affect historical claims that were made when the section was still in effect.⁴⁵⁶ The Department of Communities and Justice further explained that it is unlikely, but technically possible that there are open claims or injuries that haven't yet been claimed under the now repealed

⁴⁴⁷ [Submission 46](#), Feminist Legal Clinic, p 8.

⁴⁴⁸ [Submission 23](#), HIV AIDS Legal Centre and Positive Life NSW, pp 2-3.

⁴⁴⁹ [Submission 15](#), Kingsford Legal Centre, p 4.

⁴⁵⁰ [Submission 39](#), Equality Australia, p 3.

⁴⁵¹ [Submission 47](#), Greens NSW, p 6.

⁴⁵² [Submission 66](#), Mental Health Commission of NSW, pp 6-7.

⁴⁵³ [Submission 54](#), The Law Society of NSW, p 2.

⁴⁵⁴ [Submission 32](#), LGB Alliance Australia, p 4.

⁴⁵⁵ [Submission 13](#), NSW Government, p 26.

⁴⁵⁶ 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, [Transcript of evidence](#), 1 May 2024, p 56.

section.⁴⁵⁷

Responses to survey question

1.290 The Committee's online survey on the Equality Legislation Amendment (LGBTIQ+) Bill 2023 included multiple choice questions about the proposed amendments to specific legislation. The responses to the proposed amendments to the *Workers Compensation Act 1987* were:

- 61.69% opposed
- 19.20% supported
- 1.73% supported with amendments
- 13.85% neutral-undecided
- 3.53% did not respond.⁴⁵⁸

See Appendix 3 for more details on the online survey.

⁴⁵⁷ [Answers to questions on notice](#), Department of Communities and Justice, 10 May 2024, p 2.

⁴⁵⁸ These percentages exclude most of the duplicate responses to the survey. For more information see results for all responses in Appendix 3.

Chapter Two – Additional ways to improve the safety and wellbeing of the LGBTIQ+ community

Finding 2

There is a need for additional policy measures and funding to improve the safety and wellbeing of LGBTIQ+ people. These may be directed towards addressing issues like disadvantage, discrimination and poorer health outcomes experienced by LGBTIQ+ people.

- 2.1 A number of stakeholders to the inquiry talked about ongoing issues negatively impacting the livelihoods and wellbeing of LGBTIQ+ people in NSW. They discussed the discrimination and disadvantage many people continue to experience, as well as prejudice and stigma, which contributes to poor mental health outcomes and isolation.
- 2.2 To address these issues, stakeholders suggested a range of measures that can be implemented to improve the safety and wellbeing of LGBTIQ+ people. This chapter outlines those suggestions, including information about current NSW Government initiatives and programs.

Support services, programs and initiatives

- 2.3 The NSW Government said that legal, social and health issues continue to impact the wellbeing of people with diverse genders and sexualities, and people with innate variations of sex characteristics.⁴⁵⁹ Some stakeholders talked about the importance of LGBTIQ+ health services and programs for their wellbeing.⁴⁶⁰ The Inner City Legal Clinic said that there is increasing demand for their services supporting LGBTIQ+ people. The organisation said that their programs provide independent, holistic and trauma informed services to keep people safe and protect them from discrimination, but that these programs need more funding.⁴⁶¹
- 2.4 The Greens NSW highlighted the need for ongoing resourcing of community organisations, groups and services that work with communities impacted by the Bill.⁴⁶² The Mental Health Commission said that improved access to affordable, trauma informed LGBTIQ+ mental health services, as well as making mainstream services more inclusive will provide important support.⁴⁶³
- 2.5 ACON said that embedding the peer workforce within health and community services in NSW is vital to improved community safety and wellbeing, and called

⁴⁵⁹ [Submission 13](#), NSW Government, p 4.

⁴⁶⁰ [Submission 66](#), Mental Health Commission of NSW, p 11.

⁴⁶¹ [Submission 9](#), Inner City Legal Centre, pp 2-3.

⁴⁶² [Submission 47](#), Greens NSW, p 8.

⁴⁶³ [Submission 66](#), Mental Health Commission of NSW, p 11.

for more funding to expand peer programs.⁴⁶⁴ BEING Mental Health Consumers stated that there needs to be more LGBTIQ+ peer workers across the NSW mental health system to improve the quality of services for members of the LGBTIQ+ community. They said additional peer workers were needed in hospitals, including in emergency departments and inpatient care to enhance the quality of care for people seeking mental health support.⁴⁶⁵ The Mental Health Commission said that expanding the peer workforce will help ensure services are inclusive, accessible and designed based on need.⁴⁶⁶

- 2.6 The Mental Health Commission said that public awareness and education is important to shift attitudes and help people to understand the complexities of LGBTIQ+ peoples' experiences. They said that campaigns and programs should be developed to specifically address negative stereotypes.⁴⁶⁷
- 2.7 Headspace National and Black Dog Institute suggested a range of programs to support LGTBQIA+ young people, such as education and resources, support groups for families to connect, and accommodation services. They talked about the importance of engaging directly with young people on the operational issues raised as the Bill progresses, and identifying additional ways to support young people.⁴⁶⁸ The Advocate for Children and Young People referred to suggestions in the Advocate's *Voices of LGBTIQ+ Young People in NSW 2022* report, including: funding for teachers to complete LGBTIQ+ inclusion training, funding for Anti-Discrimination NSW to improve access to complaints processes, and additional funding for LGBTIQ+ health initiatives.⁴⁶⁹
- 2.8 BlaQ Aboriginal Corporation recommended education and awareness initiatives with First Nations communities to foster understanding and acceptance of LGBTIQ+ people, including Sistergirls and Brotherboys.⁴⁷⁰
- 2.9 Other programs and initiatives raised by stakeholders included:
- LGBTIQ+ community designed models of crisis services⁴⁷¹
 - specific legal assistance services to address violence, discrimination and harassment against LGBTIQ+ persons⁴⁷²
 - education and public awareness on what discrimination is and how to respond to it⁴⁷³
 - a requirement for government agencies, service providers and institutions to

⁴⁶⁴ [Submission 7](#), ACON, pp 10-11.

⁴⁶⁵ [Submission 22](#), BEING Mental Health Consumers, p 2.

⁴⁶⁶ [Submission 66](#), Mental Health Commission of NSW, p 11.

⁴⁶⁷ [Submission 66](#), Mental Health Commission of NSW, p 10.

⁴⁶⁸ [Submission 56](#), headspace National and Black Dog Institute, pp 6-7.

⁴⁶⁹ [Submission 44](#), Advocate for Children and Young People, pp 15-16.

⁴⁷⁰ [Answers to supplementary questions](#), BlaQ Aboriginal Corporation, 14 May 2024, p 2.

⁴⁷¹ [Submission 66](#), Mental Health Commission of NSW, p 11.

⁴⁷² [Submission 4](#), City of Sydney, p 2.

⁴⁷³ [Submission 57](#), NSW Nurses and Midwives Association, p 5.

adhere to culturally competent practices for First Nations LGBTIQ+ people⁴⁷⁴

- grants and sponsorships for LGBTIQ+ community groups.⁴⁷⁵

Implementing recommendations from the Commission of Inquiry into hate crimes

- 2.10 Several stakeholders suggested that recommendations of the Special Commission of Inquiry into LGBTIQ Hate Crimes (**Special Commission**) should be implemented and considered alongside the Bill.⁴⁷⁶ Professor Nicole L Asquith and Dr Justin Ellis said that the harm LGBTIQ people experience is not limited to discrimination and vilification, and suggested that hate crime law and policy needs to be reformed. They also said that the Bill cannot be considered in isolation from the findings and gaps in policy and law that were identified by the Special Commission.⁴⁷⁷
- 2.11 The City of Sydney said that fully implementing the recommendations of the Special Commission would help to restore community confidence in NSW Police following the shortcomings that were identified by the Special Commission.⁴⁷⁸ ACON said that the recommendations present an opportunity for improvement in the relationship between NSW LGBTIQ communities and the NSW Police Force.⁴⁷⁹ Greens NSW said that implementing all the recommendations is urgently needed.⁴⁸⁰

Human Rights Act

- 2.12 Parents for Trans Youth Equity and Australian Lawyers for Human Rights recommended a Human Rights Act for NSW.⁴⁸¹ Parents for Trans Youth Equity said that such an Act would help to address discrimination against trans youth.⁴⁸² Australian Lawyers for Human Rights said that the rights of LGBTIQ+ people, and human rights of all people in NSW are best protected when international human rights obligations are enshrined in NSW law. The organisation noted that a Human Rights Act has passed in Victoria, the ACT and Queensland.⁴⁸³

Current and planned NSW Government initiatives to support LGBTIQ+ communities

- 2.13 The NSW Government outlined a range of current and planned initiatives and programs to support LGBTIQ+ communities. It identified the key initiatives as:

⁴⁷⁴ [Answers to supplementary questions](#), BlaQ Aboriginal Corporation, 14 May 2024, p 2.

⁴⁷⁵ [Submission 4](#), City of Sydney, p 10.

⁴⁷⁶ [Submission 6](#), Professor Nicole L Asquith and Dr Justin Ellis, p 2; [Submission 8](#), Mr Alex Greenwich MP, p 2; [Submission 47](#), Greens NSW, p 7; [Submission 7](#), ACON, pp 7-8.

⁴⁷⁷ [Submission 6](#), Professor Nicole L Asquith and Dr Justin Ellis, p 2.

⁴⁷⁸ [Submission 4](#), City of Sydney, p 3.

⁴⁷⁹ [Submission 7](#), ACON, p 8.

⁴⁸⁰ [Submission 47](#), Greens NSW, p 7.

⁴⁸¹ [Submission 48](#), Australian Lawyers for Human Rights, p 9; [Submission 10](#), Parents for Trans Youth Equity, p 17.

⁴⁸² [Submission 10](#), Parents for Trans Youth Equity, p 17.

⁴⁸³ [Submission 48](#), Australian Lawyers for Human Rights, p 9.

- introducing legislation to ban LGBTQ+ conversion practices
- establishing a NSW LGBTIQ+ advisory council and cross portfolio standing committee
- developing a whole of government LGBTIQ+ Inclusion Strategy for NSW.⁴⁸⁴

Banning LGBTQ+ Conversion Practices

2.14 The *Conversion Practices Ban Act 2024* passed the NSW Parliament on 22 March 2024. The NSW Government said the legislation bans conversion practices that are informal or formal and are based on the false ideology that LGBTQ+ people require treatment. It prohibits conversion practices under criminal and civil law and includes exclusions for expressions of religious beliefs and conversations within families. It will commence on 3 April 2025.⁴⁸⁵

Establishing a LGBTIQ+ Advisory Council and Cross Portfolio Committee

2.15 The NSW Government said it will establish a LGBTIQ+ Advisory Council (**Council**) that will be comprised of representatives of LGBTIQ+ communities for ongoing community consultation and engagement. The Council will advise the Government on initiatives to promote equality and inclusion for LGBTIQ+ people and develop initiatives to strengthen their safety and wellbeing. It will also support the development and implementation of a whole-of-government LGBTIQ+ inclusion strategy.⁴⁸⁶

2.16 The Cross-Portfolio Standing Committee will include senior representatives from the NSW Government and representatives from the community. It will drive the policy direction and efforts of the Government to support LGBTIQ+ communities and enhance investment in partnerships and information sharing about programs and services for people experiencing intersecting inequities.⁴⁸⁷

Other investments and initiatives

2.17 The NSW Government said that NSW Health has invested in community partners and health care services to improve the health and wellbeing of LGBTIQ+ communities. Those investments include:

- \$4.2 million to support ACON to establish a new LGBTIQ+ health centre to delivery primary care
- \$4.9 million for NSW Health's Specialist Trans and Gender Diverse Health Service to provide specialist health services for trans and gender diverse young people and their families
- \$2.3 million to ACON, Twenty10 and Equality Australia for mental health and

⁴⁸⁴ [Submission 13](#), NSW Government, p 4.

⁴⁸⁵ [Submission 13](#), NSW Government, pp 4-5.

⁴⁸⁶ [Submission 13](#), NSW Government, p 5.

⁴⁸⁷ [Submission 13](#), NSW Government, p 5.

suicide prevention initiatives in LGBTIQ+ communities.⁴⁸⁸

⁴⁸⁸ [Submission 13](#), NSW Government, pp 5-6.

Appendix One – Terms of reference

That the Committee on Community Services inquire into and report on the Equality Legislation Amendment (LGBTIQA+) Bill, including:

1. The provisions of the Bill.
2. Operational issues for government agencies raised by the Bill.
3. Additional ways of improving the safety and wellbeing of the LGBTIQA+ community.

The Committee is to report by 3 June 2024.

Appendix Two – Conduct of inquiry

The Equality Legislation Amendment (LGBTIQ+) Bill 2023 was introduced in the Legislative Assembly on 24 August 2023 and referred by the Assembly to the Committee for inquiry on 13 March 2024. The terms of reference for the inquiry is at Appendix One.

The Committee resolved to accept the referral on 18 March 2024.

The Committee issued a media release on 19 March 2024 and wrote to targeted stakeholders inviting them to make a submission to the inquiry.

The Committee resolved not to accept public submissions outside of the survey process. To enable public participation in the inquiry, individuals were encouraged to provide their views on the Bill through an online survey. The survey closed on 15 April 2024. The survey results are outlined at Appendix Three.

Submissions closed on 14 April 2024. Sixty six submissions were received from support groups and services, advocacy and legal groups, professional associations, academics, religious groups and churches, school and education groups, unions, and government agencies.

A list of submissions is at Appendix Four. Submissions are available on the inquiry [webpage](#).

The Committee held two public hearings at Parliament House on 30 April and 1 May 2024. Representatives of LGBTIQ+ advocacy groups, religious groups and bodies, school and education groups, advocacy groups and peak bodies, legal groups, academics, unions, first nations representatives, and government agencies appeared in person and via videoconference.

A list of witnesses is at Appendix Five. Transcripts of evidence taken at the hearings are available on the inquiry [webpage](#).

Appendix Three – Online survey

The Committee resolved to use an online survey to facilitate members of the public sharing their views on the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

Survey respondents self-selected in choosing to participate. This means that respondents were not a representative sample of the NSW population, but rather interested members of the public who volunteered their time to have their say. As noted below, some survey respondents reside outside of NSW.

The survey included 21 multiple choice questions about the Bill overall, and proposed amendments to specific pieces of legislation. The survey was open from 20 March 2024 to the morning of 15 April 2024.

All respondents had to provide a response to the question about the Bill overall. It was optional for respondents to provide answers to questions about the proposed amendments to specific pieces of legislation.

The survey received a total of 13,981 responses. However, some individuals submitted more than one response or 'duplicate' responses. An analysis of responses including and excluding 'duplicates' is provided below.⁴⁸⁹

Analysis of responses with duplicates removed

Excluding duplicates, there were 13,258 responses to the survey:

- Overall views on the Bill were – 85.13% opposed, 13.48% support, 0.89% support with amendments, and 0.51% neutral or undecided.
- The majority of responses for all questions were 'opposed'.
- The percentage of 'opposed' responses decreased for questions about amendments to specific pieces of legislation.

723 duplicates were found in the data, where 641 individuals submitted 1,364 responses. Some of these individuals made more than two responses and/or provided different answers to some of the same questions. With duplicates removed the percentage of individuals opposed to the Bill slightly decreased or remained the same:

- For 18 out of 21 questions the percentage 'opposed' decreased by 1%.
- For 3 out of 21 questions the percentage 'opposed' remained the same.

See Table 1 for a detailed breakdown of responses to each question.

⁴⁸⁹ Duplicates were removed from a list of respondents' email addresses as this was the only unique attribute for respondents within the survey data. However, not all duplicates were removed, for example, respondents that used multiple email addresses with slight variations.

Analysis of all responses

Including duplicates, there were 13,981 responses to the survey:

- Overall views on the Bill were – 85.74% opposed, 12.90% support, 0.86% support with amendments, and 0.50% neutral or undecided.
- As above, for each question the majority of responses were 'opposed' and the percentage of 'opposed' responses decreased for questions about amendments to specific pieces of legislation.

1,271 responses provided invalid or interstate post codes.

See Table 2 for a detailed breakdown of responses to each question.

Table 1: Survey responses with duplicates removed

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
Equality Legislation Amendment (LGBTIQA+) Bill 2023?	0.51%	67	85.13%	11286	13.48%	1787	0.89%	118	0.00%	0	13258
proposed amendments to the Anti-Discrimination Act 1977 (NSW)?	1.38%	183	82.79%	10976	13.11%	1738	1.18%	156	1.55%	205	13258
proposed amendments to the Births, Deaths and Marriages Registration Act 1995 (NSW)?	1.59%	211	82.91%	10992	12.91%	1712	0.79%	105	1.80%	238	13258
proposed amendments to the Children and Young Persons (Care and Protection) Act 1998 (NSW)?	2.20%	292	81.75%	10838	12.91%	1712	0.97%	129	2.16%	287	13258
proposed amendments to the Children’s Guardian Act 2019 (NSW)?	14.07%	1866	67.22%	8912	14.66%	1944	1.37%	181	2.68%	355	13258
proposed amendments to the Court Security Act 2005 (NSW)?	4.62%	613	78.99%	10472	12.82%	1700	1.00%	132	2.57%	341	13258
proposed amendments to the Crimes Act 1900 (NSW)?	8.14%	1079	73.19%	9704	12.24%	1623	3.73%	494	2.70%	358	13258
proposed amendments to the Crimes (Administration of Sentences) Act 1999 (NSW)?	4.84%	642	78.41%	10395	12.81%	1698	1.24%	164	2.71%	359	13258
proposed amendments to the Crimes (Domestic and Personal Violence) Act 2007 (NSW)?	5.65%	749	72.08%	9556	14.87%	1972	4.50%	597	2.90%	384	13258

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
proposed amendments to the Crimes (Forensic Procedures) Act 2000 (NSW)?	5.50%	729	77.26%	10243	12.99%	1722	1.37%	182	2.88%	382	13258
proposed amendments to the Crimes (Sentencing Procedure) Act 1999 (NSW)?	13.87%	1839	63.34%	8397	17.48%	2317	2.01%	267	3.30%	438	13258
proposed amendments to the Drug Misuse and Trafficking Act 1985 (NSW)?	12.62%	1673	63.42%	8408	18.86%	2501	1.70%	225	3.40%	451	13258
proposed amendments to the Government Sector Employment Act 2013 (NSW)?	5.24%	695	77.98%	10338	12.63%	1675	1.11%	147	3.04%	403	13258
proposed amendments to the Government Sector Employment (General) Rules 2014 (NSW)?	5.55%	736	77.70%	10301	12.61%	1672	1.06%	141	3.08%	408	13258
proposed amendments to the Interpretation Act 1987 (NSW)?	5.60%	742	77.85%	10321	12.48%	1654	0.91%	121	3.17%	420	13258
proposed amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)?	5.18%	687	77.84%	10320	12.71%	1685	1.16%	154	3.11%	412	13258
proposed amendments to the Mental Health Act 2007 (NSW)?	16.38%	2172	62.88%	8337	15.18%	2012	1.98%	263	3.58%	474	13258
proposed amendments to the Sheriff Act 2005 (NSW)?	6.77%	897	76.41%	10130	12.51%	1659	1.07%	142	3.24%	430	13258

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
proposed amendments to the Summary Offences Act 1988 (NSW)?	5.78%	766	77.48%	10272	12.49%	1656	1.06%	141	3.19%	423	13258
proposed amendments to the Surrogacy Act 2010 (NSW)?	5.60%	742	79.93%	10597	10.54%	1397	0.98%	130	2.96%	392	13258
proposed amendments to the Workers Compensation Act 1987 (NSW)?	13.85%	1836	61.69%	8179	19.20%	2546	1.73%	229	3.53%	468	13258

Table 2: All survey responses

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
Equality Legislation Amendment (LGBTIQA+) Bill 2023?	0.50%	70	85.74%	11988	12.90%	1803	0.86%	120	0.00%	0	13981
proposed amendments to the Anti-Discrimination Act 1977 (NSW)?	1.34%	187	83.46%	11668	12.54%	1753	1.13%	158	1.54%	215	13981
proposed amendments to the Births, Deaths and Marriages Registration Act 1995 (NSW)?	1.52%	213	83.56%	11683	12.36%	1728	0.76%	106	1.80%	251	13981
proposed amendments to the Children and Young Persons (Care and Protection) Act 1998 (NSW)?	2.12%	297	82.43%	11525	12.37%	1730	0.94%	132	2.12%	297	13981

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
proposed amendments to the Children's Guardian Act 2019 (NSW)?	14.13%	1976	67.75%	9472	14.09%	1970	1.35%	189	2.68%	374	13981
proposed amendments to the Court Security Act 2005 (NSW)?	4.53%	633	79.71%	11144	12.27%	1715	0.96%	134	2.54%	355	13981
proposed amendments to the Crimes Act 1900 (NSW)?	7.90%	1105	74.08%	10357	11.72%	1639	3.63%	508	2.66%	372	13981
proposed amendments to the Crimes (Administration of Sentences) Act 1999 (NSW)?	4.70%	657	79.18%	11070	12.25%	1713	1.21%	169	2.66%	372	13981
proposed amendments to the Crimes (Domestic and Personal Violence) Act 2007 (NSW)?	5.47%	765	72.99%	10205	14.28%	1996	4.40%	615	2.86%	400	13981
proposed amendments to the Crimes (Forensic Procedures) Act 2000 (NSW)?	5.32%	744	78.09%	10918	12.42%	1737	1.34%	187	2.83%	395	13981
proposed amendments to the Crimes (Sentencing Procedure) Act 1999 (NSW)?	13.85%	1937	64.02%	8951	16.87%	2358	2.01%	281	3.25%	454	13981
proposed amendments to the Drug Misuse and Trafficking Act 1985 (NSW)?	12.60%	1762	64.17%	8971	18.20%	2544	1.69%	236	3.35%	468	13981
proposed amendments to the Government Sector Employment Act 2013 (NSW)?	5.09%	712	78.74%	11009	12.08%	1689	1.08%	151	3.00%	420	13981

What is your view of the	%Neutral/ Undecided	No. Neutral/ Undecided	% Opposed	No. Opposed	% Support	No. Support	% Support with amendments	No. Support with amendments	% Blank	No. Blank	Total No. of Responses
proposed amendments to the Government Sector Employment (General) Rules 2014 (NSW)?	5.39%	753	78.51%	10976	12.05%	1685	1.03%	144	3.03%	423	13981
proposed amendments to the Interpretation Act 1987 (NSW)?	5.43%	759	78.63%	10993	11.93%	1668	0.89%	125	3.12%	436	13981
proposed amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)?	5.00%	699	78.66%	10997	12.15%	1699	1.14%	159	3.05%	427	13981
proposed amendments to the Mental Health Act 2007 (NSW)?	16.34%	2285	63.52%	8881	14.61%	2042	1.98%	277	3.55%	496	13981
proposed amendments to the Sheriff Act 2005 (NSW)?	6.58%	920	77.22%	10796	11.97%	1673	1.04%	145	3.20%	447	13981
proposed amendments to the Summary Offences Act 1988 (NSW)?	5.60%	783	78.28%	10945	11.94%	1670	1.04%	145	3.13%	438	13981
proposed amendments to the Surrogacy Act 2010 (NSW)?	5.36%	749	80.67%	11278	10.10%	1412	0.94%	132	2.93%	410	13981
proposed amendments to the Workers Compensation Act 1987 (NSW)?	13.87%	1939	62.39%	8723	18.53%	2591	1.71%	239	3.50%	489	13981

Appendix Four – Submissions

No	Author
1	Emeritus Professor Patrick Parkinson AM
2	BlaQ Aboriginal Corporation
3	Eros Association
4	City of Sydney
5	Domestic Violence NSW
6	Professor Nicole L Asquith and Dr Justin Ellis
7	ACON
8	Mr Alex Greenwich MP
9	Inner City Legal Centre (ICLC)
10	Parents for Trans Youth Equity (PTYE)
11	Local Government NSW
12	Parents, Family and Friends of Lesbians and Gays
13	NSW Government
14	Women Ending Exploitation by Prostitution Incorporated (WEEP Inc.)
15	Kingsford Legal Centre
16	Pitt Street Uniting Church
17	Public Interest Advocacy Centre (PIAC)
18	Intersex Human Rights Australia (IHRA)
19	NSW Gender Centre
20	Trans Justice Project
21	AEU NSW Teachers Federation
22	BEING - Mental Health Consumers
23	HIV AIDS Legal Centre and Positive Life NSW
24	Coalition Against Trafficking in Women Australia (CATWA)
25	Genspect Australia committee
26	NSW Council of Churches
27	Australian Association of Christian Schools and Christian Schools Australia
28	Freedom for Faith
29	Catholic Women's League Australia - New South Wales Inc.
30	Anti-Discrimination NSW
31	Scarlet Alliance, Australian Sex Workers Association
32	LGB Alliance Australia

No	Author
33	Sex Workers Outreach Project NSW
34	Plunkett Centre for Ethics
35	Australian Christian Lobby
36	Faith NSW and Better Balanced Futures
37	Australian Feminists for Women's Rights
38	Women's Rights Network Australia
39	Equality Australia
40	Active Watchful Waiting Australasia
41	Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches
42	Pride in Protest
43	Surrogacy Australia
44	NSW Advocate for Children and Young People
45	Rainbow Families
46	Feminist Legal Clinic
47	Greens NSW
48	Australian Lawyers for Human Rights
49	Coalition of Activist Lesbians (CoAL)
50	Twenty10
51	Women's Forum Australia
52	Institute for Civil Society
53	Nordic Model Information Network
54	Law Society of NSW
55	Public Service Association of NSW
56	headspace National and Black Dog Institute
57	NSW Nurses and Midwives' Association
58	Miss Jasmine Nightingale
59	Mr Stephen Page
60	Catholics for Renewal
61	Feminist International Network of Resistance to Reproductive and Genetic Engineering
62	Ambassadors & Bridge Builders International
63	Jessica Pearson, Harvey Eastman, Michael Lowry
64	Ms Annie Kia
65	Name suppressed
66	Mental Health Commission of New South Wales

Appendix Five – Witnesses

30 April 2024

Parliament House, Macquarie Room, Sydney, NSW

Witness	Position and Organisation
Mr Henry Rajendra	President, Australian Education Union New South Wales Teachers Federation Branch
Mr Craig Gross	Professional Officer, Professional Services, NSW Nurses and Midwives' Association
Ms Mel Smith	Acting General Secretary, Australian Education Union New South Wales Teachers Federation Branch
Ms Anna Brown OAM	CEO, Equality Australia
Mr Ghassan Kassisieh	Legal Director, Equality Australia
Mr Nicolas Parkhill AM	CEO, ACON
Mr Brent Mackie	Director Policy, Strategy and Research, ACON
Ms Emma Golledge	Director, Kingsford Legal Centre
Mr Alastair Lawrie	Director of Policy and Advocacy, Public Interest Advocacy Centre (PIAC)
Dr Aileen Kennedy	Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights
Dr Morgan Carpenter	Executive Director, Intersex Human Rights Australia (IHRA)
Rev Dr Ross Clifford AM	Executive Director, NSW Council of Churches
Bishop Michael Stead	Bishop of South Sydney and Chair, Freedom for Faith
Mr Joshua Rowe	State Director NSW/ACT, Australian Christian Lobby
Mr Murray Norman	CEO, Faith NSW and Better Balanced Futures
Mr Josh Bonett	Director, Research & Strategic Communication, Faith NSW and Better Balanced Futures
Mr Warren Talbot	Member & Secretary of the Uniting Church in Australia's national Apology to LGBTIQ+ Australians Task Group, Pitt Street Uniting Church
Mx Mish Pony	Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association

Witness	Position and Organisation
Ms Joanna Megan	Chief Executive Officer, Sex Workers Outreach Project NSW
Mr Peter Jones	Policy Officer, BlaQ Aboriginal Corporation

01 May 2024

Parliament House, Macquarie Room, Sydney, NSW

Witness	Position and Organisation
Mr Mark Spencer	Director of Public Policy, Australian Association of Christian Schools and Christian Schools Australia
Mrs Vanessa Cheng	Executive Officer, Australian Association of Christian Schools
Dr Deirdre Little	State Bioethics Convenor, Catholic Women's League Australia – New South Wales Inc
The Most Reverend Anthony Fisher OP	Catholic Archbishop of Sydney, Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches
Ms Anna Kerr	Principal Solicitor, Feminist Legal Clinic
Dr Viviane Morrigan	Public Officer, Coalition of Activist Lesbians (CoAL)
Ms Virginia Mansel Lees	Convenor, Coalition of Activist Lesbians (CoAL)
Ms Janet Fraser	Women's Rights Network Australia
Mr Ashley Scott	Executive Officer, Rainbow Families
Ms Barbara Taylor	Parent Representative, Parents for Trans Youth Equity (PTYE)
Ms Lannen Donnelly	Executive Director, Parents for Trans Youth Equity (PTYE)
Dr Eloise Brook	Health and Communications Manager, NSW Gender Centre
Ms Zoe Robinson	Advocate for Children and Young People, Office of the Advocate for Children and Young People
Ms Sarah Bevan	Principal at Sarah Bevan Family Lawyers, Surrogacy Australia
Ms Judith Hunter	Australian Representative, GENSPECT Australia
Ms Karen Richardson	Representative, GENSPECT Australia

Witness	Position and Organisation
Ms Catherine Anderson-Karena	Executive Director & Public Officer, Active Watchful Waiting Australasia
Ms Sarah Morgan	LGB Alliance Australia
Emeritus Professor Patrick Parkinson AM	
Dr Helen Pringle	Nordic Model Information Network
Mr Alex Greenwich MP	
Mr Mark Follett	Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, NSW Government
Ms Theresa Fairman	Registrar, NSW Registry of Births, Deaths and Marriages, Department of Customer Service, NSW Government
Mr Stephen Bray	Director, Civil Justice, Vulnerable Communities & Inclusion, Policy Reform and Legislation Branch, Law Reform and Legal Services Division, Department of Communities and Justice, NSW Government

Appendix Six – Extracts from minutes

MINUTES OF MEETING NO 4

4.03pm, 18 March 2024

Room 1136 and Webex

Members present

Mr Barr (Chair), Ms Doyle (Deputy Chair), Ms Butler, Mrs Dalton, Ms Davis and Ms Wilson (via Webex)

Apologies

Mrs Thompson

Officers present

Sam Griffith, Rohan Tyler, Dora Oravec, Alex Read, Mengyuan Chen, Sukhraj Goraya and Isabella Ciampa

1. ***

2. ***

3. Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill 2023

3.1. Terms of refence

The Committee noted the referral by the House of the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (Legislative Assembly Votes and Proceedings no 44, Wednesday 13 March 2024, entry no 11).

3.2. Inquiry timeline

The Committee discussed and noted the indicative timeline for the inquiry.

3.3. Call for submissions

The Committee discussed conducting a targeted call for submissions, by invitation only.

Resolved, on the motion of Ms Doyle, seconded Ms Davis, that:

1. The Committee not issue an open call for submissions to be lodged through the inquiry webpage.
2. The Committee writes to the agreed nominated stakeholders, and other stakeholders nominated by members, inviting them to make a submission to the inquiry.
3. The Committee not accept any pro-forma submissions or letters.
4. The closing date for submissions be 14 April 2024.

Ms Wilson joined the meeting.

3.4. Extension requests

The Committee discussed the approach to extension requests for submissions from nominated stakeholders, noting the 3 June 2024 reporting deadline.

Resolved, on the motion of Ms Doyle, seconded Mrs Dalton: That the Committee indicates to stakeholders that there will not be any opportunity for extensions beyond 14 April 2024.

3.5 Online Survey

The Committee discussed using an online survey for responses from the community.

Resolved, on the motion of Ms Doyle, seconded Ms Davis: That the Committee uses an online survey to give the broader community an opportunity to provide their views on the Bill, with the survey to be open until 14 April 2024.

Ms Doyle moved, seconded by Ms Davis: That the questions for the online survey be as follows:

1. Demographic details: name, email address and postcode (compulsory field)
2. What is your view of the Equality Legislation Amendment (LGBTIQ+) Bill 2023? Support, support with amendments, oppose, neutral/undecided (compulsory field)
3. What is your view of the proposed amendments to the *Anti-Discrimination Act 1977*? Support, support with amendments, oppose, neutral/undecided (optional field)
4. What is your view of the proposed amendments to the *Births, Deaths and Marriages Registration Act 1995*? Support, support with amendments, oppose, neutral/undecided (optional field)
5. What is your view of the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998*? Support, support with amendments, oppose, neutral/undecided (optional field)
6. What is your view of the proposed amendments to the *Children's Guardian Act 2019*? Support, support with amendments, oppose, neutral/undecided (optional field)
7. What is your view of the proposed amendments to the *Court Security Act 2005*? Support, support with amendments, oppose, neutral/undecided (optional field)
8. What is your view of the proposed amendments to the *Crimes Act 1900*? Support, support with amendments, oppose, neutral/undecided (optional field)
9. What is your view of the proposed amendments to the *Crimes (Administration of Sentences) Act 1999*? Support, support with amendments, oppose, neutral/undecided (optional field)
10. What is your view of the proposed amendments to the *Crimes (Domestic and Personal Violence) Act 2007*? Support, support with amendments, oppose, neutral/undecided (optional field)
11. What is your view of the proposed amendments to the *Crimes (Forensic Procedures) Act 2000*? Support, support with amendments, oppose, neutral/undecided (optional field)

12. What is your view of the proposed amendments to the *Crimes (Sentencing Procedure) Act 1999*? Support, support with amendments, oppose, neutral/undecided (optional field)
13. What is your view of the proposed amendments to the *Drug Misuse and Trafficking Act 1985*? Support, support with amendments, oppose, neutral/undecided (optional field)
14. What is your view of the proposed amendments to the *Government Sector Employment Act 2013*? Support, support with amendments, oppose, neutral/undecided (optional field)
15. What is your view of the proposed amendments to the *Government Sector Employment (General) Rules 2014*? Support, support with amendments, oppose, neutral/undecided (optional field)
16. What is your view of the proposed amendments to the *Interpretation Act 1987*? Support, support with amendments, oppose, neutral/undecided (optional field)
17. What is your view of the proposed amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002*? Support, support with amendments, oppose, neutral/undecided (optional field)
18. What is your view of the proposed amendments to the *Mental Health Act 2007*? Support, support with amendments, oppose, neutral/undecided (optional field)
19. What is your view of the proposed amendments to the *Sheriff Act 2005*? Support, support with amendments, oppose, neutral/undecided (optional field)
20. What is your view of the proposed amendments to the *Summary Offences Act 1988*? Support, support with amendments, oppose, neutral/undecided (optional field)
21. What is your view of the proposed amendments to the *Surrogacy Act 2010*? Support, support with amendments, oppose, neutral/undecided (optional field)
22. What is your view of the proposed amendments to the *Workers Compensation Act 1987*? Support, support with amendments, oppose, neutral/undecided (optional field)

Question put.

The Committee divided.

Ayes 5 [Mr Barr, Ms Doyle, Ms Butler, Mrs Dalton and Ms Davis]

Noes 1 [Ms Wilson]

Question resolved in the affirmative.

3.6 Inquiry webpage wording

The Committee discussed the wording on the inquiry webpage about the survey and submissions process.

Mrs Dalton moved, seconded by Ms Butler: That the wording on the inquiry webpage about the survey and submissions process be as follows:

Individuals can provide their views on the Bill through an online survey [[hyperlink to survey](#)]. The survey will be open until 14 April 2024.

The Committee will not accept public submissions outside of the survey process. The Committee will also not accept pro-forma submissions or letters.

4. ***

5. Next meeting

The meeting adjourned at 4:55pm until a time and date to be determined.

MINUTES OF MEETING NO 5

2.32pm, 18 April 2024

Room 1254 and Webex

Members present

Mr Barr (Chair via Webex), Ms Doyle (Deputy Chair via Webex), Ms Butler (via Webex), Mrs Dalton, Ms Davis (via Webex) and Ms Wilson

Apologies

Mrs Thompson

Officers present

Rohan Tyler, Dora Oravec, Alex Read, Sukhraj Goraya, Yann Pearson, Lloyd Connolly and Isabella Ciampa

1. Confirmation of minutes

Resolved, on the motion of Ms Doyle, seconded Mrs Butler: That the minutes of the meeting of 18 March 2024 be confirmed.

2. Inquiry into Equality Legislation Amendment (LGBTIQ+) Bill 2023

2.1 ***

2.2 Publishing submissions

Resolved, on the motion of Ms Doyle, seconded Ms Davis: That the Committee accepts and publishes submissions 1 to 25, 27, 29 to 36, 38 to 39, 41 to 48, 50 to 52, and 54 to 57 in full.

Resolved, on the motion of Ms Davis, seconded Ms Doyle: That submissions 26, 28, 37, 40, 49 and 53 be accepted and published with the redactions outlined in the circulated submissions table.

Resolved, on the motion of Ms Wilson, seconded Mrs Dalton: That the Committee accepts and publishes the submission received from the Mental Health Commission of NSW.

2.3 Public hearing dates and witness list

The Committee discussed arrangements for the public hearings.

Resolved, on the motion of Ms Doyle, seconded Ms Davis: That the Committee invites the listed witnesses to give evidence at public hearings to be held on 30 April and 1 May.

2.4 Survey responses

The Committee noted the summary of responses to the online survey.

3. Next meeting

The meeting adjourned at 3.13pm until 30 April.

MINUTES OF MEETING NO 6

9.23am, 30 April 2024

Macquarie Room and Webex

Members present

Mr Barr (Chair), Ms Doyle (Deputy Chair), Ms Butler, Mrs Dalton, Ms Davis and Ms Wilson

Officers present

Rohan Tyler, Dora Oravec, Alex Read, Sukhraj Goraya, Yann Pearson and Lloyd Connolly

1. Pre-hearing deliberative meeting

1.1 Media orders

Resolved on the motion of Ms Wilson, seconded Mrs Dalton: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 30 April 2024, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

1.2 Answers to questions taken on notice and supplementary questions

Resolved on the motion of Ms Doyle, seconded Mrs Thompson: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 1 week of the date on which the questions are forwarded.

1.3 ***

The meeting concluded at 9.25am.

2. Public hearing - Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill 2023

The Chair opened the public hearing at 9.31am and made a short opening statement.

Mr Henry Rajendra, President, Australian Education Union New South Wales Teachers Federation Branch, was affirmed and examined.

Ms Mel Smith, Acting General Secretary, Australian Education Union NSW Teachers Federation Branch, was affirmed and examined.

Mr Craig Gross, Professional Officer, Professional Services, NSW Nurses and Midwives' Association, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded; the witnesses withdrew.

Ms Anna Brown OAM, CEO, Equality Australia, was affirmed and examined.

Mr Ghassan Kassisieh, Legal Director, Equality Australia, was affirmed and examined.

Mr Nicolas Parkhill AM, CEO ACON, was affirmed and examined.

Mr Brent Mackie, Director Policy, Strategy and Research, ACON, was affirmed and examined.

The Committee questioned the witnesses.

Ms Brown tendered a letter to the NSW Premier regarding the Equality Legislation Amendment (LGBTIQ+) Bill.

Evidence concluded; the witnesses withdrew.

Ms Emma Golledge, Director, Kingsford Legal Centre, was affirmed and examined.

Mr Alastair Lawrie, Director of Policy and Advocacy, Public Interest Advocacy Centre (PIAC), was affirmed and examined via videoconference.

Dr Aileen Kennedy, Member, LGBTIQ+ Committee, Australian Lawyers for Human Rights, was affirmed and examined via videoconference.

Dr Morgan Carpenter, Executive Director, Intersex Human Rights Australia (IHRA), was affirmed and examined via videoconference.

The Committee questioned the witnesses. Evidence concluded; the witnesses withdrew.

Rev Dr Ross Clifford, Executive Director, NSW Council of Churches, was sworn and examined.

Bishop Michael Stead, Bishop of South Sydney and Chair, Freedom for Faith, was sworn and examined.

The Committee questioned the witnesses. Evidence concluded; the witnesses withdrew.

Mr Joshua Rowe, State Director NSW/ACT, Australian Christian Lobby, was sworn and examined.

Mr Murray Norman, CEO, Faith NSW and Better Balanced Futures, was sworn and examined.

Mr Josh Bonett, Director, Research & Strategic Communication, Faith NSW and Better Balanced Futures, was sworn and examined.

The Committee questioned the witnesses.

Mr Rowe tendered a document titled 'First Response Talking Points (NSW) – The Cass Review 2024'.

Evidence concluded; the witnesses withdrew.

Mr Warren Talbot, Member & Secretary of the Uniting Church in Australia's national apology to LGBTIQ+ Australians Task Group, Pitt Street Uniting Church, was sworn and examined.

The Committee questioned the witness. Evidence concluded; the witness withdrew.

Mx Mish Pony, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association, was affirmed and examined via videoconference.

Ms Joanna Megan, Chief Executive Officer, Sex Workers Outreach Project NSW, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded; the witnesses withdrew.

Mr Peter Jones, Policy Officer, BlaQ Aboriginal Corporation, was affirmed via videoconference.

The witness experienced technical difficulties and withdrew.

The hearing concluded at 4.21pm.

3. ***

4. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 5.07pm.

4.1 Confirmation of minutes

Resolved on the motion of Mrs Thompson, seconded Ms Davis: That the minutes of the meeting of 18 April 2024 be confirmed.

4.2 ***

4.3 Publishing amended versions of submissions

Resolved on the motion of Mrs Dalton seconded Ms Wilson: That the Committee accepts and publishes an amended version of submission 39 in full.

Resolved on the motion of Ms Doyle, seconded Mrs Thompson: That the Committee amends its publication order for submission 33 to publish the submission with the attachment, from pages 11 to 23, redacted.

4.4 Publishing transcript of evidence

Resolved on the motion of Ms Davis, seconded Ms Wilson: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's webpage.

4.5 Accepting and publishing tendered documents

Resolved on the motion of Mrs Dalton, seconded Ms Doyle: That the Committee accepts and publishes the following documents tendered during the public hearing:

- Letter to the NSW Premier regarding the Equality Bill tendered by Ms Amanda Brown

from Equality Australia.

- Document entitled 'First Response Talking Points (NSW) – The Cass Review 2024' tendered by Mr Joshua Rowe from the Australian Christian Lobby (ACL).

4.6 Supplementary questions

Resolved on the motion of Ms Doyle, seconded Mrs Thompson: That the Committee adopts the following process in relation to supplementary questions:

- Members to email any proposed supplementary questions for witnesses to committee staff by 4pm on the second business day after the uncorrected transcript is circulated to members.
- Committee staff to circulate all proposed supplementary questions to the Committee, with members to lodge any objections to the questions by 4pm of the business day after the date on which the questions are sent to members.
- That questions for BLAQ Aboriginal Corporation be sent as part of the supplementary questions process.

4.7 Inviting additional witness

Resolved on the motion of Ms Davis, seconded by Mrs Dalton: That the Committee invites Dr Eloise Brook from the Gender Centre to give evidence at the public hearing to be held on 1 May 2024.

5. Next meeting

The meeting adjourned at 5.16pm until 8.50am on 1 May in the Macquarie Room.

INUTES OF MEETING NO 7

8.59am, 1 May 2024

Macquarie Room and Webex

Members present

Mr Barr (Chair), Ms Doyle (Deputy Chair), Ms Butler, Mrs Dalton and Ms Davis

Apologies

Ms Wilson

Officers present

Rohan Tyler, Dora Oravec, Alex Read, Sukhraj Goraya, Yann Pearson and Lloyd Connolly

1. Pre-hearing deliberative meeting

1.1 Media orders

Resolved on the motion of Mrs Thompson, seconded Ms Davis: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 1 May 2024, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

1.2 Answers to questions taken on notice and supplementary questions

Resolved on the motion of Mrs Dalton, seconded Ms Doyle: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 1 week of the date on which the questions are forwarded.

The meeting concluded at 8:59am.

2. Public hearing – Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill 2023

The Chair opened the public hearing at 9:00am and made a short opening statement.

Dr Deirdre Little, State Bioethics Convenor, Catholic Women's League Australia, was sworn and examined.

The Most Reverend Anthony Fisher OP, Catholic Archbishop of Sydney, was sworn and examined.

Mr Mark Spender, Director of Public Policy, Australian Association of Christian Schools, was sworn and examined via videoconference.

Mrs Vanessa Cheng, Executive Director, Australian Association of Christian Schools, was sworn and examined via videoconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Anna Kerr, Principal Solicitor, Feminist Legal Clinic, was affirmed and examined via videoconference.

Ms Janet Fraser, Women's Rights Network Australia, was affirmed and examined.

Dr Viviane Morrigan, Public Officer, Coalition of Activities Lesbians, was affirmed and examined.

Ms Virginia Mansel Lees, Coalition of Activist Lesbians, was affirmed and examined via videoconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Barbara Taylor, Parent representative, Parents for Trans Youth Equity, was affirmed and examined.

Ms Lannen Donnelly, Executive, Parents for Trans Youth Equity, was affirmed and examined via videoconference.

Mr Ashley Scott, Executive Officer, Rainbow Families, was affirmed and examined.

Dr Eloise Brook, Health and Communications Manager, The Gender Centre, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Zoe Robinson, Advocate for Children and Young People, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Sarah Bevan, Principal at Sarah Bevan Lawyers, Surrogacy Australia, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Judith Hunter, Representative, GENSPECT Australia, was affirmed and examined via videoconference.

Ms Karen Richardson, Representative, GENSPECT Australia, was affirmed and examined via videoconference.

Ms Catherine Anderson-Karena, Executive Director and Public Officer, Active Watchful Waiting Australians, was affirmed and examined.

Ms Sarah Morgan, Policy Officer, LGB Alliance Australia, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Emeritus Professor Patrick Parkinson AM, was affirmed and examined via videoconference.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Dr Helen Pringle, Nordic Model Information Network, was sworn and examined.

The Committee questioned the witness.

Dr Pringle tendered two documents titled 'Evidence of Alan Caton OBC, written evidence submitted to the House of Commons, Public Bill Committee on the Modern Slavery Bill' and 'French prostitution law of 13 April 2016, Coalition for the Abolition of Prostitution'

Evidence concluded and the witness withdrew.

Mr Alex Greenwich MP, was affirmed and examined.

The Committee questioned the witness.

Mr Greenwich tendered six documents:

- 'Dismissed, Denied and Demeaned: A National Report on LGBTQ+ Discrimination in Faith-Based Schools and Organisations'
- 'Framework for the Specialist Trans and Gender Diverse Health Service for People Under 25 Years'

- Letter from Reverend Karen Pack, President, Spiritual Care Australia
- ***
- ***
- ***

Evidence concluded and the witness withdrew.

Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Law Reform and Legal Services Division, Department of Communities and Justice, was 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, was affirmed and examined.

Ms Theresa Fairman, Registrar, NSW Registry of Births, Deaths and Marriages, Department of Customer Service, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The hearing concluded at 4:47pm.

3. Post-hearing deliberative meeting

The Committee commenced a deliberative meeting at 4.53pm.

3.1 Publishing transcript of evidence

Resolved on the motion of Mrs Dalton, seconded Ms Doyle: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's webpage.

3.2 Consideration of tendered documents

Resolved on the motion of Mrs Thompson, seconded Ms Davis: That the Committee accepts the following documents tendered during the public hearing:

- Document entitled, 'Evidence of Alan Caton OBE, written evidence submitted to the House of Commons, Public Bill Committee on the Modern Slavery Bill', tendered by Dr Helen Pringle on behalf of the Nordic Model Information Network.
- Document entitled, 'French prostitution law of 13 April 2016, Coalition for the Abolition of Prostitution', tendered by Dr Helen Pringle on behalf of the Nordic Model Information Network.
- Document entitled '[Framework for the Specialist Trans and Gender Diverse Health Service for People Under 25 Years](#)', tendered by Mr Alex Greenwich MP.
- Report entitled '[Dismissed, Denied and Demeaned: A National Report on LGBTQ+ Discrimination in Faith-Based Schools and Organisations](#)', tendered by Mr Alex Greenwich MP.

The Committee noted the following documents tendered during the public hearing for future consideration:

- Letter from Rev Dr Karen Pack, President, Spiritual Care Australia, addressed to the Chair dated 30 April 2024, tendered by Mr Alex Greenwich MP.
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- ***
- ***

4. Next meeting

The meeting adjourned at 4:56pm until a date and time to be determined.

UNCONFIRMED MINUTES OF MEETING NO 8

9.11am, 30 May 2024

Room 1254 and Webex

Members present

Mr Barr (Chair), Ms Doyle (Deputy Chair, via Webex), Ms Butler (via Webex), Mrs Dalton (via Webex), Ms Davis (via Webex) and Mrs Thompson (via Webex)

Apologies

Ms Wilson

Officers present

Rohan Tyler, Dora Oravec, Alex Read, Sukhraj Goraya, Yann Pearson, Lloyd Connolly

1. Resolution permitting recording of meeting

Resolved on the motion of Ms Doyle: That the Committee agrees to record the meeting for the purposes of committee staff preparing the minutes and report amendments, and that the recording be deleted when the report is tabled.

2. Confirmation of minutes

Resolved on the motion of Mrs Thompson: That the minutes of the meetings of 30 April 2024 and 1 May 2024 be confirmed.

3. Inquiry into Equality Legislation Amendment (LGBTIQA+) Bill 2023

3.1 Accepting and publishing tendered documents

Resolved on the motion of Ms Doyle: That the Committee publishes the following document tendered by Mr Alex Greenwich MP during the public hearing on 1 May 2024:

- Letter from Rev Dr Karen Pack, President, Spiritual Care Australia, to Chair, dated 30 April 2024.

3.2 Answers to questions on notice and supplementary questions

Resolved on the motion of Ms Doyle: That the Committee publishes the following answers to questions on notice and supplementary questions:

- Deirdre Little, Catholic Women's League Australia - NSW, answer to question on notice, received 6 May 2024.
- Theresa Fairman, Registrar of the NSW Registry of Births, Deaths & Marriages, answers to questions on notice, received 8 May 2024.
- Department of Communities and Justice, answers to questions on notice, received 10 May 2024.
- Public Interest Advocacy Centre, answer to question on notice, received 10 May 2024.
- ACON, answer to question on notice, received 10 May 2024.
- Equality Australia, answer to supplementary question, received 10 May 2024.
- BlaQ Aboriginal Corporation, answers to supplementary questions, received 14 May 2024.
- Kingsford Legal Centre, answers to questions on notice, received 15 May 2024.
- Faith NSW and Better Balanced Futures, answers to supplementary questions and additional information, received 21 May 2024.

3.3 Correspondence

Resolved on the motion of Ms Doyle: That the Committee publishes the following correspondence:

- Morgan Carpenter, Intersex Human Rights Australia, 16 May 2024, attaching IHRA's submission to the Commonwealth Attorney General's Department to provide more information on the concept of intersex.
- Alex Greenwich MP, 2 May 2024, attaching correspondence addressed to him from the Australian Medical Association in support of the Bill.

3.4 Consideration of the Chair's draft report

The Committee agreed to consider the report chapter by chapter.

Mrs Dalton moved: That recommendation 1 on page v and page 1 be omitted and the following recommendation be inserted instead:

That the Parliament of New South Wales not proceed to consider the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.13 to read:

Emeritus Professor Patrick Parkinson AM submitted that the proposed amendments to section 38A as drafted could have unintended consequences. Ms Rachael Wong, Women's Forum Australia expressed a similar concern regarding the proposed amendment of the definition of "transgender person" in the Bill.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a sentence be inserted at the end of paragraph 1.23 to read:

Ms Anna Kerr, Feminist Legal Clinic asserted that the protected attribute of 'sex' should unambiguously refer to 'biological sex, being either male or female'.

Question put.

The Committee divided.

Ayes 2 [Mrs Dalton, Mrs Thompson]

Noes 4 [Mr Barr, Ms Doyle, Mr Butler, Ms Davis]

Question negatived.

Mrs Dalton moved: That the first sentence of paragraph 1.30 be amended by inserting the word 'strongly' after the word 'organisations'.

Question put.

The Committee divided.

Ayes 2 [Mrs Dalton, Mrs Thompson]

Noes 4 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis]

Question negatived.

Mrs Dalton moved: That a sentence be inserted at the end of paragraph 1.32 to read:

Ms Rachael Wong, Women's Forum Australia also expressed concerns that the amendment to the sport exception provision would have a range of negative repercussions for women's sport.

Question put.

The Committee divided.

Ayes 2 [Mrs Dalton, Mrs Thompson]

Noes 4 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis]

Question negatived.

Mrs Dalton moved: That the word 'most' in the first sentence of paragraph 1.39 be omitted and the words 'almost all' be inserted instead.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That the word 'strongly' be inserted after the word 'from' in the first sentence of paragraph 1.39.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.42 to read:

The Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches argued that the proposals in Schedule 1 of the Bill including those relating to religious exemption should be rejected in their entirety and noted that the New South Wales Law Reform Commission had commenced a wholesale review of the *Anti-Discrimination Act 1977*.

Question put.

The Committee divided.

Ayes 2 [Mrs Dalton, Mrs Thompson]

Noes 4 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis]

Question negated.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.72 to read:

Women's Forum Australia expressed concerns that the Bill enabled sex self-ID and this was incompatible with efforts to end violence against women. Genspect Australia committee expressed the same concerns regarding violence against women and referred to cases of sexual assault and rape in women's domestic violence shelters in Canada.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negated.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.73 to read:

Active Watchful Waiting Australasia expressed concern that the introduction of sex self-ID would erase historical sex data and that this would threaten the quality of demographic information available to policymakers and researchers.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negated.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.113 to read:

Genspect Australia committee expressed concerns regarding the emergence of evidence about the dangers of treatment practices for children and young people involving puberty blockers and cross-sex hormones. They noted, their concerns were further compounded by the increasing number of detransitioners.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.160 to read:

The Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches noted that section 93Z of the *Anti-Discrimination Act 1977* was currently being reviewed by the New South Wales Law Reform Commission and therefore it would be inappropriate for the Parliament to amend the legislation before the review is completed.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.173 to read:

The Catholic Bishops of NSW and the Australasian-Middle East Christian Apostolic Churches expressed concerns that the proposed provisions would operate so as to impose criminal penalties on a married person who told a third-party that their spouse had been unfaithful to their marriage by having a sexual relationship with another person. It was argued that raising such discussions to the level of domestic or personal violence or coercive behaviours, was extreme and inappropriate.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That the word 'strongly' be inserted in the first sentence of paragraph 1.239 after the word 'stakeholders'.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.245 to read:

Women's Forum Australia said that ultimately, the decriminalisation/deregulation of prostitution has been unable to protect women and girls or reduce the abuses associated with prohibition because of the harmful and exploitative nature of prostitution itself.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Mrs Dalton moved: That a new paragraph be inserted after paragraph 1.267 to read:

Ms Anna Kerr, Feminist Legal Clinic argued that rather than reducing the existing prohibitions against commercial surrogacy arrangements, there needed to be a more rigorous enforcement of the current laws.

Question put.

The Committee divided.

Ayes 1 [Mrs Dalton]

Noes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Question negatived.

Ms Doyle moved: That Chapter 1 stand as part of the report.

Question put.

The Committee divided.

Ayes 5 [Mr Barr, Ms Doyle, Ms Butler, Ms Davis, Mrs Thompson]

Noes 1 [Mrs Dalton]

Motion resolved in the affirmative.

Resolved on the motion of Ms Doyle: That Chapter 2 stand as part of the report.

Resolved on the motion of Ms Doyle:

1. That the draft report be the report of the Committee and that it be signed by the Chair and presented to the House.

2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's webpage.

4. General business

Resolved on the motion of Ms Doyle, seconded by Mrs Thompson: That the Committee thanks committee staff for their work on the inquiry.

5. Next meeting

The meeting adjourned at 9.48am until a date and time to be determined.