

14 April 2024



Mr Clayton Barr MP

Legislative Assembly Committee on Community Services

By email only: communityservices@parliament.nsw.gov.au

Dear Mr Barr and Committee Members,

Submission on Inquiry into the Equality Legislation Amendment (LGBTIQ+) Bill 2023

Kingsford Legal Centre (KLC) welcomes the opportunity to make a submission on the inquiry into the provisions of the Equality Legislation Amendment (LGBTIQ+) Bill 2023 (the Equality Bill). We consent to this submission being published.

About Kingsford Legal Centre

Kingsford Legal Centre (KLC) is a community legal centre, providing free legal advice, casework, and community legal education to people in south-east Sydney. We specialise in discrimination law and run a statewide Employment Law Clinic (ERLS) and Sexual Harassment and Discrimination Legal Service Clinic (SHDLS).¹

KLC is part of the UNSW Sydney Faculty of Law & Justice and provides clinical legal education to over 500 of its students each year. As a community legal centre specialising in discrimination law, KLC's perspective benefits from a combination of practical experience and technical expertise stemming from decades of advice, casework and law reform work in this area.

Overview

KLC has long been concerned about the inadequate legal protection for members of the LGBTIQ+ community in NSW. KLC welcomed with relief the ban on conversion practices of March 2024. This was an important and overdue reform. It is our position that the Equality Bill makes further important

¹ These clinics provide free legal help and assistance to migrant workers and people experiencing social and economic disadvantage and discrimination in NSW. ERLS is a collaborative partnership between KLC, the Inner City Legal Centre and Redfern Legal Centre.

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and necessary changes to NSW law so that LGBTIQA+ people can be fully respected, included and protected from discrimination.

The Equality Bill aims to provide equality for LGBTIQA+ people by amending 20 different laws. We deal with specific aspects that touch on our expertise, especially in discrimination law. We have had the benefit of seeing the submission from Equality Australia which we also endorse.

Our overall position is that we recommend that:

1. The Equality Legislation Amendment (LGBTIQA+) Bill be passed by the NSW Parliament.
2. KLC supports amendments to the *Births, Deaths and Marriages Act 1995* to remove the requirement that applicants must have undergone a sex affirmation procedure before the Registrar will change their birth registration.
3. We support amendments to the *Crimes (Domestic and Personal Violence) Act 2007*.

Proposed amendments to the *Anti-Discrimination Act 1977*

Reform of NSW discrimination law is long overdue and KLC welcomes the current review by the NSW Law Reform Commission (NSWLRC) of the *Anti-Discrimination Act 1977* (the ADA). We believe there is a need for broader reform to the ADA, as detailed in our submission to the NSW Law Reform Commission (NSWLRC).² As the NSWLRC's review is still ongoing and long term, we support the measures in the Equality Bill which amend the ADA to help tackle serious deficiencies in legal protection for the LGBTIQA+ community which are urgently required now.

KLC supports the amendments proposed to the ADA and makes the following observations:

- KLC supports the amendments to the definitions and interpretive provisions of the ADA. For example, the current definition of 'homosexual' is outdated and restrictive and calls upon a gender binary which is out of step with modern understandings of gender and sexuality.³ Similarly, the suggested replacement of "the opposite sex by living" with "another sex by living" would modernise the law to reflect current conceptions of gender diversity. This will increase the protection offered by the ADA and remove unnecessary technical hurdles for people who experience discrimination.
- The removal of references to gender as an exclusively binary concept as well as the removal of the requirement for a transgender person to have legally altered their sex to be recognised as transgender will mean that the law remains as appropriate and relevant as possible for as

² Kingsford Legal Centre, Preliminary Submission on the Anti-Discrimination Act 1977 (NSW) Review 2023 (29 September 2023) ('KLC Preliminary Submission on the Anti-Discrimination Act'). [KLC Submission](#)

³ See e.g. LGBTI Legal Service Inc., 'LGBTI+ Inclusive Language Guide' (February 2021).

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long as possible. Importantly, this futureproofing of the law caters to our young people, helping to ensure they will feel safe to express themselves without shame or stigma.

- The provisions in the Equality Bill protecting against discrimination and vilification on the ground of variations of sex characteristics are essential. Self-reported health and wellbeing is lower for intersex people, with over a third reporting stress from stigma and discrimination.⁴ People with variations in sex characteristics still face stigmatisation in various areas of public life and key academic authorities in this area support reform to discrimination law to better protect intersex people.⁵ The Australian Human Rights Commission has also noted that people with variations in sex characteristics face “stigma and disadvantage as relates to exclusion in schooling and employment”.⁶
- KLC supports the removal of exceptions for private education authorities. NSW has the broadest exemptions for faith-based schools of all Australian jurisdictions.⁷ We agree that it is appropriate to tailor blanket exceptions as proposed in the Equality Bill and that this can be done in a way which balances the protection of LGBTIQIA+ community with freedom of religion. We explore faith-based exemptions in greater depth in our submission on the ALRC Inquiry into Religious Education Institutions and Discrimination Laws and note their recent recommendations in this regard.⁸
- KLC supports the provisions protecting against discrimination and vilification on the ground a person is or has been a sex worker. This is in line with our submission to the NSWLRC on the review of the ADA and our recommendation of the expansion of the range of protected attributes to include sex workers.⁹ We hope that the NSWLRC will also consider a broader range of protected attributes in the review of the ADA to increase the effectiveness of discrimination law in NSW.
- KLC supports adding a provision relating to forms to reflect the reality of gender diversity in the community and to make sure same sex relationships are on level ground with heterosexual relationships. This amendment would allow all people to see themselves reflected in the bureaucracy and administration of their society. It is crucial, for example, that a child can have their same sex parents described as parent 1 and parent 2 at school, rather than as mother and father, which is needlessly othering and ostracising for children and parents. This is also an area where the law is out of step with modern Australian families.

⁴ NSW Ministry of Health, ‘NSW LGBTIQ+ Health Strategy 2022-2027 – Summary of Evidence’ (2019 – 2020), 10.

⁵ Morgan Carpenter, ‘The health and human rights of people with intersex variations’ in Peter Aggleton et al (eds), *The Routledge Handbook of Sexuality, Gender, Health and Rights* (Routledge, 22 December 2023) 90, 96-97.

⁶ Australian Human Rights Commission, ‘Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics – Summary Report’ (October 2021) 10.

⁷ Equality Australia, ‘Act for Equality: Legal Explainer on the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW)’ (2023) 5-7 (‘Equality Australia Explainer’).

⁸ Kingsford Legal Centre, Submission on the ALRC Inquiry into Religious Education Institutions and Anti-Discrimination Laws (24 February 2023).

⁹ KLC Preliminary Submission on the Anti-Discrimination Act (n 1) 3.

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Proposed amendment to the *Births, Deaths and Marriages Registration Act 1995*

The process for updating legal gender in NSW requires urgent reform. KLC supports amendments to the *Births, Deaths and Marriages Act 1995* to remove the requirement that applicants must have undergone a sex affirmation procedure before the Registrar will change their birth registration.

For many of our trans and gender diverse clients, this requirement is cruel and distressing. In some circumstances, the requirement can subject people to further discrimination by services and employers who refuse to recognise our clients' gender identity.

Proposed amendments to the *Crimes (Domestic and Personal Violence) Act 2007*

Threats to 'out' a person's sexual orientation, gender history, HIV status, or variations in sex characteristics can be a form of interpersonal violence.¹⁰ We support amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to include 'outing' as a relevant consideration when courts decide whether to grant an Apprehended Domestic Violence Order (ADVO) or Apprehended Personal Violence Order (APVO).

In particular, KLC considers it important to expand the factors that a court is to consider when determining whether there is a good reason not to refer a matter for mediation in an application for an ADVO. We have seen firsthand how harassment of a person in relation to the suggested attributes can be exacerbated in informal settings such as mediation and give perpetrators a platform to continue harassing our clients, resulting in increased and unnecessary distress and psychological harm.

Other amendments¹¹

KLC supports provisions that enhance protections of bodily autonomy. KLC also supports the use of non-derogatory and inclusive language, such as changing "HIV infection" to "HIV", and the explicit inclusion in law of intersex people and transgender people, without requiring their sex to have been altered at law.

Law reform is a key part of social change and ensuring that laws adequately protect all citizens. KLC seeks to advocate that NSW be underpinned by a legal framework that supports all members of the public and lays the foundation for a safe and inclusive community.

¹⁰ Equality Australia Explainer (n 6) 2.

¹¹ *Children and Young Persons (Care and Protection) Act 1998; Children's Guardian Act 2019; Court Security Act 2005; Crimes Act 1900; Crimes (Administration of Sentences) Act 1999; Crimes (Sentencing Procedure) Act 1999; Drug Misuse and Trafficking Act 1985; Government Sector Employment Act 2013; Government Sector Employment (General) Rules 2014; Interpretation Act 1987; Sheriff Act 2005; Summary Offences Act 1988; Workers Compensation Act 1987.*

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If you have any questions about this submission, please contact Emma Golledge at legal@unsw.edu.au.

Yours faithfully

KINGSFORD LEGAL CENTRE



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