



ACT FOR EQUALITY:

LEGAL EXPLAINER ON THE EQUALITY LEGISLATION
AMENDMENT (LGBTIQA+) BILL 2023 (NSW)

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ABOUT EQUALITY AUSTRALIA

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people.

Born out of the successful campaign for marriage equality, and established with support from the Human Rights Law Centre, Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

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Cover image: Sydney WorldPride 2023 Pride March by Jaimi Joy for Sydney Gay and Lesbian Mardi Gras.

We acknowledge that our offices are on the lands of the Eora Nation and the lands of the Kulin Nation and we pay our respects to their traditional owners.

EXECUTIVE SUMMARY

Everyone deserves to live with dignity and respect, treated equally under the law.

After an extensive legal audit and community consultation, Equality Australia identified over 500 NSW laws that disadvantage or discriminate against LGBTIQ+ people.

The [Equality Legislation Amendment \(LGBTIQ+\) Bill 2023](#) (the Bill), introduced by the Independent Member for Sydney Alex Greenwich MP, addresses key findings from our legal review and brings NSW closer into line with best practice in other jurisdictions.

Here is a summary of what the Bill does.

BETTER PROTECTIONS FROM DISCRIMINATION (SECTION 1)

Everyone deserves to be treated with dignity and respect, no matter where they work, study or access goods, services or accommodation.

The Bill ensures LGBTIQ+ people and others are better protected from discrimination, particularly when:

- working or studying in private educational institutions;
- receiving healthcare, disability support, accommodation or other services from faith-based organisations; and
- government agencies collect data about them and their families.

Faith-based schools and service providers will remain able to preference those of their own faith, impose reasonable requirements or conditions on their employees, students and service users, select people to participate in religious observance or practice as they wish, and rely on general exemptions available to others.

The Bill will also bring NSW closer into line with Commonwealth, state and territory anti-discrimination laws and promote equal opportunity in NSW government hiring and employment practices.

ACCESS TO ID THAT MATCHES IDENTITY (SECTION 2)

Everyone deserves to be recognised for who they are.

Consistent with reforms in every state and territory, the Bill removes cruel and unnecessary barriers preventing trans and gender diverse people from accessing state-issued ID that matches their gender identity.

NSW is the only jurisdiction in Australia requiring trans people to undertake surgery on their reproductive organs to access a birth certificate that reflects who they are.

Having mismatched ID risks outing trans people and puts them at risk of harassment and violence when they have to prove their identity, such as when applying for a job, education or opening a bank account.

PROTECTING LGBTIQ+ PEOPLE FROM VIOLENCE (SECTION 3)

Everyone deserves to live in safety, free from violence.

The Bill recognises unique forms of domestic and personal violence experienced by LGBTIQ+ people, people with HIV and sex workers by allowing them to seek protection from being 'outed'.

ACCESS TO HEALTHCARE WITHOUT DISCRIMINATION (SECTION 4)

Everyone should be able to access the healthcare they need.

The Bill helps ensure that laws on medical consent apply to all children and young people, equally.

The Bill helps clarify that young people aged 16 years and over can consent to medical treatment as validly and effectively as an adult while those under 16 years require the consent of a parent unless they are *Gillick* competent. NCAT or a court will maintain oversight if there is a dispute with or among parents or doctors, and in the case of any ‘*special medical treatment*’ (which includes non-life saving treatment that is reasonably likely to render a person under 16 years permanently infertile).

These provisions are intended to help clarify that trans and gender diverse young people can consent to healthcare in the same way as their peers without the need for court authorisation unless there is a dispute or any special medical treatment proposed.

BETTER RECOGNITION OF FAMILIES (SECTION 5)

Every child deserves the financial and emotional security that comes with legal recognition of their parents.

While the Bill maintains the requirement for altruistic surrogacy in NSW, it gives the Supreme Court the discretion to dispense with that requirement if it is in the best interests of the child to transfer parentage from the surrogate and her partner (if any) to the intended parents. The Bill ensures a surrogate will have stronger protections to manage her own pregnancy and birth. A parentage order still cannot be made without her consent, alongside other mandatory requirements.

While the Bill does not lift the ban on commercial surrogacy in NSW, it prevents the criminalisation of parents who have undertaken commercial surrogacy lawfully overseas. The overseas ban has not worked and has been counterproductive in protecting the rights of everyone involved.

No child should be disadvantaged because of the circumstances of their conception, and these changes ensure that all children have the same legal rights and protections that come from recognising their families.

EQUAL PROTECTION OF THE LAW (SECTION 6)

Everyone deserves to be treated equally under the law.

The Bill cleans up the NSW law book to remove discrimination against LGBTIQ+ people by:

- strengthening interpretative principles to ensure legal references to people, familial relationships and bodily attributes apply equally to everyone in the same circumstances, regardless of gender;
- ensuring sentencing laws apply to protect trans and intersex victims of hate crimes in the same way as they do other victims of hate crimes;
- ensuring trans and intersex people are entitled to the same dignity as others when their bodies are searched by allowing them to select the most appropriate person reasonably available to conduct that search;
- ensuring a child’s intersex variations can be relevantly taken into account in decisions that significantly affect them under the *Children’s Guardian Act 2019*;
- removing pressure from parents by giving them more time to register the sex of their intersex child where they need it;
- removing stigmatising provisions affecting people with HIV and sex workers; and
- ensuring that a person’s gender identity or expression is not reason alone to consider them ‘mentally ill or disordered’ under the *Mental Health Act 2007*.

1. BETTER PROTECTIONS FROM DISCRIMINATION

Everyone deserves to be treated with dignity and respect, no matter where they work, study or access goods, services or accommodation.

Yet outdated provisions and gaps in the NSW *Anti-Discrimination Act 1977* mean many LGBTIQ+ people have no protection if they suffer discrimination.

While the *Anti-Discrimination Act 1977* is being reviewed by the NSW Law Reform Commission, the Bill introduces interim reforms which are in line with reforms in other states and territories to address some of the key gaps. The Bill also strengthens anti-discrimination measures applying to the NSW public service.

(a) Protecting all LGBTIQ+ people from discrimination

This Bill updates existing definitions in the *Anti-Discrimination Act 1977* to protect bisexual, asexual, non-binary and intersex people from discrimination.¹ It does so by updating the definitions of 'homosexuality' and 'transgender status' in the Act and reestablishes protections for intersex people through standalone protections separate from transgender protections.

The Bill also extends standard anti-discrimination and anti-vilification protections for sex workers in key areas of public life, such as employment, education and the provision of goods and services.²

Table 1: How does NSW compare on anti-discrimination protections?

ARE THERE PROTECTIONS FOR...	ASEXUALS?	BISEXUALS?	NON-BINARY PEOPLE?	INTERSEX PEOPLE?	SEX WORKERS?
NSW	No	No	No	Partly ⁽¹⁾	No
CTH	No	Yes	Yes	Yes	No
NT	Yes	Yes	Yes	Yes	Yes
VIC	Yes	Yes	Yes	Yes	Yes ⁽²⁾
TAS	Yes	Yes	Yes	Yes	Yes ⁽²⁾
ACT	Yes	Yes	Yes	Yes	Yes ⁽²⁾
QLD	No, but proposed ⁽³⁾	Yes	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽²⁾
SA	No	Yes	Yes	Yes	No
WA	No, but under consideration ⁽⁵⁾	Yes	No, but under consideration ⁽⁵⁾	No, but under consideration ⁽⁵⁾	No, but under consideration ⁽⁵⁾

¹ Partly protected under the attribute of 'transgender status'.

² Protected under the attributes of 'lawful sexual activity' or 'profession, trade, occupation or calling'.

³ The Queensland Government has committed in principle to the [Queensland Human Rights Commission](#) recommendations.

⁴ Introduced by *Births, Deaths and Marriages Registration Act 2023* (Qld), Div 3 [not yet commenced].

⁵ The Western Australian Government are considering the [Western Australian Law Reform Commission](#) recommendations.

¹ Bill, Schedule 1 [1]-[8], [13], [22]-[28], [33]-[34].

² Bill, Schedule 1 [39] and Schedule 6 [3].

(b) Narrowing exemptions for faith-based schools and organisations

THE IMPACT OF CURRENT EXEMPTIONS

Faith-based schools and organisations employ, educate and provide goods, services and accommodation (such as healthcare, disability support and homelessness services) to thousands of people in NSW. 1 in 3 students and almost 2 in 5 staff are enrolled or employed in non-government schools, most of which are religiously affiliated.³

While not all faith-based schools and organisations discriminate against LGBTQ+ people, our experience is that such discrimination is pervasive in NSW. Equality Australia has seen or supported:

- lesbian teachers who have lost their jobs;
- gay and trans students who have been denied leadership opportunities or who have been forced to move schools;
- parents who have objected to schools requiring their staff to affirm discriminatory views about LGBTQ+ people; and
- same-sex couples who have been refused access to government-funded services provided by faith-based providers.⁴

Is my family ready to apply?

If you are interested in only applying to children whose parents have relinquished satisfy the following criteria:

- The minimum age for an applicant is 23 years and the upper limit for first placement through the Local Program is 43 years. The upper limit for placement through the Special Needs Program is more flexible, depending on the needs of the child.
- Applicants need to have been married, or in a de facto relationship for at least two years. **Anglicare Sydney does not place children for adoption with same sex couples.**
- The applicant, or one of the joint applicants, must be an Australian citizen at the time when the child is placed with them. Applicants must be domiciled in NSW.
- Applicants must be non-smokers, in good general health with normal life expectancy.
- Applicants who wish to adopt through the Local Program must provide details of their infertility. Where pregnancy would present genetic or health risks a statement from the applicant's

You have stated that **the School's interpretation regarding sexual immorality and homosexuality cannot be reconciled with your sexuality**, and therefore cannot be a genuine requirement of you as an English teacher at the School. However, as was covered in the School's letter dated 18 December to you, the Foundation Statement contained in the Summary Statement of Belief sets out that the Bible is the final authority in all matters of life and doctrine, and accordingly, interpretation is not determined from the personal point of view of the reader or by their sexual orientation. The School also notes that clause 35.1(c) of the MEA applies to all School teaching staff, regardless of their teaching role.

Discover if you're eligible to adopt

Are you considering adopting a child? Our self-screening checklist below can help you identify whether you meet our criteria to adopt a child with Wesley Dalmar out-of-home care service.

Do you meet the following requirements?

- A resident or call New South Wales your permanent home.
- Have a good reputation and are fit and ready to fulfil the responsibilities of being a parent.
- Over 21 and 18 or more years older than the child you're adopting. However, the court might consider your adoption even if you or both applicants don't fulfil the age requirements in accordance with Section 28 (3) (b) of the Adoption Act 2000.
- If you're applying as a couple, you need to be living together continuously for more than two years before you apply.
- If you're applying solely while living with your spouse, you need to have their consent before you apply.
- Willing to undergo all relevant suitability checks conducted under the Child Protection (Working with Children) Act 2012 and Section 58 of the Adoption Act 2000, as well as anyone else who's living on the same property as you.
- No other current adoption applications with other accredited adoption agencies.
- No previous cancelled carer registrations on the basis that they were improperly obtained.
- No child has been removed from your care and become the subject of an order made under child protection legislation.
- No conviction of an offence involving children (being investigated or sustained in the past).
- No involvement with a fertility program or considering treatments in the future.
- **Not in a same sex couple.**
- Fostering a child or willing to, while being considered to adopt a child.
- Aware you can't take on any additional foster care placements (including new respite or emergency placements) while you're exploring adopting

Above: Examples of LGBTQ+ discrimination in NSW – Termination of employment letter dated 13 January 2021; Screenshots from Anglicare Sydney and Wesley Dalmar websites dated 7 September 2023.

³ Australian Bureau of Statistics (2022) [Schools, Australia 2021](#), data release dated 23 February 2022.

⁴ For cases studies, see our submission to the [Australian Law Reform Commission](#). See also *OW & OV v Members of the Board of the Wesley Mission Council* [2010] NSWADT 293.

THE NSW EXEMPTIONS ARE AN OUTLIER

NSW has broader exemptions for faith-based schools and organisations than all other Australian jurisdictions.⁵ A majority of Australian jurisdictions have narrowed or are committed to narrowing their religious exemptions to situations where discrimination may be justified, such as where religion is relevant to a role or service.⁶

Table 2: How does NSW compare on exemptions for faith-based schools and service providers?

ARE THERE ADEQUATE PROTECTIONS FOR...	LGBTQ+ STUDENTS?	LGBTQ+ STAFF?	LGBTQ+ SERVICE USERS?
NSW	No	No	No
CTH	No, but proposed ⁽¹⁾	No, but proposed ⁽¹⁾	Partly – aged care
ACT	Yes	Yes	Yes ⁽²⁾
NT	Yes	Yes	Yes
TAS	Yes	Yes	Yes
VIC	Yes	Yes	Partly ⁽³⁾
QLD	Yes	Partly, and further protections proposed ⁽⁴⁾	No, but proposed ⁽⁴⁾
SA	Arguable, but unclear	Some, but weak	No
WA	No, but proposed ⁽⁵⁾	No, but proposed ⁽⁵⁾	No, but under consideration ⁽⁵⁾

¹ The [Australian Law Reform Commission](#) is currently inquiring into how to implement the Albanese Government commitment.

² This is the intention of the reforms introduced by the *Discrimination Amendment Act 2023* (ACT) [not yet commenced].

³ The strongest protections apply to goods, services and accommodation funded by the Victorian Government: *Equal Opportunity Act 2010* (Vic) ss 82(2), 82B.

⁴ The Queensland Government has committed in principle to the [Queensland Human Rights Commission](#) recommendations.

⁵ The Western Australian Government are considering the [Western Australian Law Reform Commission](#) recommendations, and have committed in principle to reforms protecting LGBTQ+ students and teachers in religious schools.

HOW THE BILL CREATES FAIRER RELIGIOUS EXEMPTIONS

The Bill removes some of the blanket exemptions for private educational institutions⁷ and narrows religious exemptions for faith-based educational institutions and service providers.⁸ This means that faith-based schools

⁵ See *Anti-Discrimination Act 1977* (NSW), ss 56, 59A, along with ss 25(3)(c), 31A(3)(a), 38C(3)(c), 38K(3), 49ZH(3)(c), 49ZO(3), 40(3)(c), 46A(3), 49(3)(c), 49L(3)(a) and 49ZYL(3)(b) which exempt all private educational institutions from prohibitions on discrimination based on sex, transgender status, homosexuality, marital or domestic status, disability or age. Section 56(c) and the private educational institution exemptions are broader than any comparable exemptions in other jurisdictions. NSW also do not have specific protections for discrimination based on religious belief or activity.

⁶ See *Anti-Discrimination Act 1992* (NT), s 51; *Equal Opportunity Act 2010* (Vic), ss 82-83; *Anti-Discrimination Act 1998* (Tas), s 51-52; *Discrimination Act 1991* (ACT), s 32 (as amended by the *Discrimination Amendment Act 2023* (ACT), taking effect 11 April 2024). See also Western Australia, *Parliamentary Debates*, Legislative Council, 16 August 2022, 3516 (Hon. Matthew Swinbourn); Queensland Government (2023) [Final Queensland Government response to the Queensland Human Rights Commission's report Building belonging: Review of Queensland's Anti-Discrimination Act 1991](#) at 34-36; Australian Law Reform Commission (2023) [Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper](#) at 5.

⁷ Bill, Schedule 1 [9]-[11] (transgender status), [14]-[17] (marital or domestic status), [18]-[19] (disability), [31]-[32] (sexuality), [38] (age). For non-religious non-government schools, these changes are likely to be minimal as they already must comply with federal anti-discrimination laws.

⁸ Bill, Schedule 1 [40]-[41].

and service providers will not be able to refuse employment, education or access to non-religious goods, services and accommodation simply because of a person's race, sex, marital or domestic status, disability, carers' responsibilities, sexuality, transgender status, variations of sex characteristics, sex worker status or age.

When faith-based schools and organisations will be able to discriminate

All religious bodies (including schools and faith-based providers) will remain able to:

- select, appoint, train or educate religious leaders and members of religious orders as they wish;⁹
- select or appoint any person to participate in religious observance or practice as they wish;¹⁰
- impose reasonable employment, education or service requirements or conditions, even if they disproportionately affect a particular group protected by the Act;¹¹
- preference people of their own faith in employment, education and the provision of services, goods and accommodation; and
- rely on other general exemptions available to others, including:
 - limiting employment to people of a particular sex if it is a genuine occupational requirement,¹²
 - refusing to accommodate a disability if it would cause unjustifiable hardship,¹³ and
 - discriminating based on age to address special needs or improve access to facilities, services or opportunities.¹⁴

The Bill also leaves in place exemptions allowing sex discrimination in private educational institutions,¹⁵ and preserves existing exemptions for single-sex and special needs schools.¹⁶

In addition, religious bodies (other than schools and faith-based service providers) will also be able to discriminate based on any of the attributes protected under the *Anti-Discrimination Act* (including sex, sexuality and transgender status) where it is reasonable and proportionate to do so, and the discrimination conforms with the doctrines of their religion and is necessary to avoid religious injury to adherents.¹⁷ Examples of this might be segregating men and women, or asking only men or women to cover their heads, in sites of religious significance consistently with religious traditions.

⁹ *Anti-Discrimination Act 1977* (NSW), ss 56(a)-(b).

¹⁰ *Anti-Discrimination Act 1977* (NSW), ss 56(c), as amended by Bill, Schedule 1 [40].

¹¹ This is the effect of the reasonableness requirement which is built into the definition of indirect discrimination under the Act.

¹² *Anti-Discrimination Act 1977* (NSW), s 31.

¹³ *Anti-Discrimination Act 1977* (NSW), ss 49C, 49D(4)(b), 49F(2)(b), 49L(4)-(5), 49M(2), 49N(4), 49N(6).

¹⁴ *Anti-Discrimination Act 1977* (NSW), s 49ZYR.

¹⁵ *Anti-Discrimination Act 1977* (NSW), ss 25(3)(c), 31A(3)(a).

¹⁶ *Anti-Discrimination Act 1977* (NSW), ss 31A(3)(b), 49L(3)(b). See also Bill, Schedule 1 [20].

¹⁷ Bill, Schedule 1 [40], proposed section s 56(d) of the *Anti-Discrimination Act 1977* (NSW).

(c) Accuracy in government data collection

Recognising that rainbow families and trans and gender diverse people often face discriminatory requests for information from government, the Bill clarifies that government forms and records must allow people to provide and record information that reflects their gender and familial relationships accurately.¹⁸

This means, for example, that a government school must have forms allowing two mums or two dads to enrol their child at school, or a public hospital must allow a trans person to accurately identify their gender on a patient intake form.

These provisions clarify what government agencies should be doing already under their obligation not to discriminate on the basis of homosexuality and transgender status in the provision of services.¹⁹

(d) Consistency with Commonwealth laws in sport and superannuation

INCLUSION IN SPORT

This Bill brings NSW into line with the equivalent exception in Commonwealth law by limiting discrimination against transgender people in sport to competitive sporting activities where strength, stamina or physique is relevant,²⁰ and prohibiting discrimination against children under 12 years of age.²¹ These changes are also similar to laws in other states and territories.²²

The Bill also introduces a requirement for reasonableness and proportionality, similar to recent reforms in the ACT.²³ This ensures that where transgender people can reasonably be included in sport without disadvantaging others, measures other than a blanket ban should be considered.

EQUALITY IN SUPERANNUATION

The Bill brings NSW into line with Commonwealth law by removing an exemption that allows discrimination against transgender people in the provision of superannuation.²⁴

(e) Equality in public sector employment

By expanding definitions of workforce diversity in the public sector, the Bill ensures all LGBTIQ+ people are included for the purposes of workforce diversity planning by government sector agencies and reports made to the Public Service Commissioner.²⁵ The Bill also requires the Public Service Commissioner to publish a minimum diversity and inclusion standard for government sector agencies.²⁶

¹⁸ Bill, Schedule 1 [43].

¹⁹ *Anti-Discrimination Act 1977* (NSW), ss 38M and 49CP.

²⁰ *Sex Discrimination Act 1984* (Cth), s 42(1).

²¹ Bill, Schedule 1 [12].

²² See *Equal Opportunity Act 2010* (Vic), s 72(1); *Anti-Discrimination Act 1991* (QLD), s 11; *Discrimination Act 1991* (ACT), s 32 (as amended by the *Discrimination Amendment Act 2023* (ACT), taking effect 11 April 2024); *Equal Opportunity Act 1984* (SA), s 48; *Anti-Discrimination Act 1992* (NT), s 56; *Anti-Discrimination Act 1998* (Tas), s 29.

²³ *Discrimination Amendment Act 2023* (ACT), s 44(1)(b).

²⁴ Bill, Schedule 1 [12].

²⁵ Bill, Schedule 12 [1], amending the *Government Sector Employment Act 2013*.

²⁶ Bill, Schedule 12 [2].

Recognising that transgender and intersex people face unique challenges at work and disproportionate rates of unemployment,²⁷ the Bill also extends the ability of government sector agencies to modify their recruitment and selection processes to increase the employment of ‘eligible persons’,²⁸ which would now include transgender and intersex people.²⁹

2. ACCESS TO ID THAT MATCHES IDENTITY

Everyone deserves to be recognised for who they are.

Yet NSW has the most cruel and unnecessary requirements for updating legal gender anywhere in Australia.

The Bill amends the *Births, Deaths and Marriages Registration Act 1995* (NSW) to bring NSW into line with other states and territories, removing cruel and unnecessary barriers faced by trans and gender diverse people in NSW who wish to update their legal gender.

Table 3: How does NSW compare on legal gender recognition?

	SURGICAL REQUIREMENTS REMOVED?	RECOGNITION OF NON-BINARY GENDERS?	ACCESSIBLE PATHWAYS FOR YOUNG PEOPLE TO UPDATE GENDER? ⁽¹⁾
NSW	No	Partly, subject to surgery requirement ⁽²⁾	No
QLD	Yes ⁽³⁾	Yes ⁽³⁾⁽⁴⁾	Yes ⁽³⁾
VIC	Yes	Yes ⁽⁴⁾	Yes
TAS	Yes	Yes ⁽⁴⁾	Yes
SA	Yes	Yes	Yes
ACT	Yes	Yes	Yes
NT	Yes	Yes	No
WA ⁽⁵⁾	Yes ⁽⁶⁾	No	Yes
Cth	Yes	Yes	Not specified

¹We have determined a pathway as ‘accessible’ if a young person can update their gender with the consent of only one parent or authorisation by a court or tribunal.

²New South Wales offers a ‘non-specific’ gender marker for people who meet the surgery requirement: *Norrie* [2014] HCA 11.

³Introduced by *Births, Deaths and Marriages Registration Act 2023* (Qld) [not yet commenced].

⁴Victoria, Tasmania and Queensland allow people to specify their gender descriptor, meaning there is a broader range of gender descriptors available. Tasmania and Queensland also allow parents to choose whether to record a gender on their child’s birth certificate.

⁵The Western Australian Government has announced proposed reforms which are expected to improve recognition.

⁶Western Australia does not require surgery but does require some medical treatment: *AB v WA* [2011] HCA 42.

²⁷ See e.g. Equality Australia (2019) [Inequality Magnified: Submission to the Australian Senate Inquiry into Australia’s response to COVID-19](#) at 19; Australian Human Rights Commission (2015) [Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights](#) at 25; A Hill et al, La Trobe University (2020) [Private Lives 3: The health and wellbeing of LGBTIQ People in Australia](#).

²⁸ *Government Sector Employment (General) Rules 2014*, r 26.

²⁹ Bill, Schedule 13, amending the *Government Sector Employment (General) Rules 2014*.

“I haven’t updated my gender because the current outdated NSW laws would require me to undergo sterilisation...I don’t think I (or anyone) should have to undergo an invasive operation of that nature in order to have my gender marker corrected. My reproductive organs have nothing to do with my gender identity.”

– Non-binary person, age 25-34 years

(a) The need for reform

ACCESS TO SERVICES, EDUCATION AND EMPLOYMENT WITH DIGNITY

Trans and gender diverse people need access to identification documents that accurately reflect their gender, ensuring they are treated with dignity and respect whenever they seek services, education or employment opportunities that require them to prove their identity.

“I recently had to submit ID for a job application with a government agency. Whilst I was okay with the police check requiring my previous name, I was uncomfortable with the fact that I had to submit my birth certificate which had female on it. The resignation and frustration was hard because I just wanted to start a new job and have autonomy and control over how and when I disclosed my gender identity. Whilst I know that it was unlikely for my trans status to be shared or spread from such a tiny thing on my application, it feels like unavoidable breach of privacy.”

– Non-binary person, 18-24 years

Having mismatched ID or a birth certificate that does not align with a person’s gender risks outing trans people and puts them at risk of harassment and violence when they have to provide their ID or prove their identity. This is particularly important for young people for whom a birth certificate may be the only piece of identification they have access to.

Because all other Australian jurisdictions now have less onerous requirements for updating government records and documents (such as passports and Medicare cards), mismatched ID is a particular problem for trans and gender diverse people born in NSW.

“Because I socially and medically transitioned (and had an X passport) for many years before I met NSW’s birth certificate requirement, any time I had to produce 100 points of ID I was outing myself. Accessing services with mismatched ID can be very hard especially when workers don’t have training in trans awareness.”

– Non-binary person, age 18-24 years, NSW

“I had to out myself to change my license and passport. Both people were shocked and uncomfortable with me upon disclosing my trans status.”

– Trans woman, 35-44 years

CURRENT LAWS DON’T WORK

A 2021 survey of 153 trans and gender diverse people born in NSW by Equality Australia found that only 14.9% had been able to update their gender under existing laws. Yet more than 80% of these people indicated that they would do so if reforms like those in this Bill were passed.

Surgery requirements are a significant barrier for trans and gender diverse people in updating their gender in NSW, with more than one third of NSW-born transgender people who have been unable to update their gender indicating that surgery on their genitals or reproductive organs was not an option for them because of cost or medical reasons. In our survey, a clear majority of NSW-born transgender people were either unwilling or unable to meet the surgery requirement.

HEALTH BENEFITS

The health and wellbeing of trans and gender diverse people improves where they are recognised, supported and affirmed for who they are.³⁰ This includes having access to gender affirming identification.³¹ Conversely, having documents that do not align with a person's affirmed gender contributes to poor mental health outcomes.³²

In a 2018 NSW consultation with 450 trans and gender diverse people by ACON, being able to change the legal sex classification and name on a NSW birth certificate or recognised details certificate through a simple administrative process was outlined by respondents as the number one priority.³³

"[after receiving gender affirming ID] I finally could avoid forced outings when I applied for jobs, uni, housing, medical etc. which at times put me in danger or had me miss out on jobs or housing because I was trans... it made me feel like I could be safe and it finally reflected who I was rather than who society felt I was. Having it updated also helped medically, I was afraid to go to hospitals or doctors (who did not specialise with trans patients) due to transphobia in the medical field."

– Trans man, 18-24 years, NSW

(b) Removing cruel and unnecessary barriers to gender recognition

UPDATING GENDER WITHOUT SURGERY

The Bill amends the *Births, Deaths and Marriages Registration Act 1995* to remove the requirement for surgery on a person's reproductive organs in order to change a record of sex on identity documentation in NSW.³⁴

NSW is the only jurisdiction in Australia where surgery is still required.

People aged 16 years or over

Persons over 16 years of age born in NSW will be able to alter their record of sex with a statutory declaration and the support of a person who has known them for 12 months.³⁵

³⁰ See E Smith et al, ARCSH (2014) [From Blues to Rainbows: Mental health and wellbeing of gender diverse and transgender young people in Australia](#); A Hill et al, La Trobe University (2020) [Private Lives 3: The health and wellbeing of LGBTIQ People in Australia](#); P Strauss et al, Telethon Kids Institute (2017) [Trans Pathways: The mental health experiences and wellbeing of gender diverse and transgender young people in Australia](#).

³¹ A Schiem et al, The Lancet Public Health (2020) [Gender-concordant identity documents and mental health among transgender adults in the USA: A cross-sectional study](#); W King et al, Transgender Health (2021) [A scoping review examining social and legal gender affirmation and health among transgender populations](#).

³² Z Hyde et al, Curtin University School of Public Health (2013) [The Australian National Trans Mental Health Study](#).

³³ See ACON (2018) [Trans and Gender Diverse Community Health Strategy Consultation Report](#).

³⁴ Bill, Schedule 2 [5].

³⁵ Bill, Schedule 2 [5], proposed s 32B.

Young people aged under 16 years

Young people under 16 years born in NSW will be able to have their record of sex altered with the consent of their parents, approval from NCAT or with the consent of a parent where it is not practicable or reasonable to obtain the consent of the other parent (such as where the identity of the other parent is not known).³⁶ In all cases, proof that the young person has had counselling regarding the application will be required.³⁷ NCAT can only make a decision if it is in the best interests of the child.³⁸

Further safeguards

The Bill retains or introduces several safeguards to ensure the new process is not used for unintended purposes or misused. These include:

- existing penalties for knowingly providing false or misleading information;³⁹
- a prohibition on nominated gender markers that are obscene, offensive or impractical;⁴⁰
- the general need for an NCAT order to update a child's legal gender where at least one parent has not provided consent;⁴¹ and
- NCAT must give notice about any application to alter a person's sex to each parent of the child unless the child would be adversely affected.⁴² However, a child is not adversely affected merely because their parent disagrees with the application and the disagreement causes the child discomfort.⁴³

CHOICE OF GENDER MARKERS

When updating their gender, people will be able to nominate a gender descriptor that best reflects their gender identity.⁴⁴ This is consistent with laws in Queensland, Tasmania and Victoria, and leaves Western Australia as the only jurisdiction that does not currently recognise non-binary genders.

However, a nominated gender marker must be refused by the NSW Registrar if it is obscene, offensive, or could not practicably be established by repute or usage (e.g. too long, or inclusive of unpronounceable symbols).⁴⁵ Gender markers such as agender, genderqueer and non-binary are among those that could be available.

³⁶ Bill, Schedule 2 [5], proposed ss 32C, 32D and 32E.

³⁷ Bill, Schedule 2 [5], proposed ss 32C(2), 32D(2), 32E(3).

³⁸ Bill, Schedule 2 [5], proposed s 32G(2).

³⁹ *Births, Deaths and Marriages Registration Act 1995* (NSW), s 57.

⁴⁰ Bill, Schedule 2 [5], proposed ss 32A and 32F(4).

⁴¹ Bill, Schedule 2 [5], proposed ss 32D-32E.

⁴² Bill, Schedule 2 [5], proposed s 32CA.

⁴³ Bill, Schedule 2 [5], proposed s 32CA(3).

⁴⁴ Bill, Schedule 2 [5], proposed ss 32A, 32H.

⁴⁵ Bill, Schedule 2 [5], proposed s 32A.

PEOPLE BORN OUTSIDE NSW

The Bill also introduces a similar process for residents born outside NSW to have their sex acknowledged in NSW records. This gives people born overseas access to a mechanism to update their legal gender where their place of birth does not afford them that opportunity.⁴⁶

CHANGE OF NAME AND OTHER DOCUMENTS

The Bill allows people to change their name at the same time they update their legal gender.⁴⁷ This reduces the administrative burden and simplifies the process for many trans and gender diverse people who wish to update both their legal name and gender.

The Bill also gives the NSW Registrar power to correct records of sex on marriage certificates or when describing the parent-child relationship on a child's birth certificate. This addresses issues arising in recent cases in NSW and Queensland which prevented the correction of other records following an update in legal gender.⁴⁸ For example, the NSW Court of Appeal decision of *FJG* found that the Registrar was unable to reissue a marriage certificate sought by a married female couple (where one of the spouses was a transgender woman) recognising them as each other's wives instead of husband and wife.⁴⁹

3. PROTECTING LGBTIQ+ PEOPLE FROM VIOLENCE

Everyone deserves to live in safety, free from violence.

The Bill ensures LGBTIQ+ people are adequately protected from domestic and family violence by making threats to 'out' (i.e. disclose without consent) a person's sexual orientation, gender history, HIV+ status, variations of sex characteristics or sex work a potential form of violence for the purposes of making an apprehended violence order (AVO) or apprehended personal violence order (APVO).⁵⁰ These threats are a form of violence experienced uniquely by LGBTIQ+ people, people living with HIV and sex workers in abusive relationships.⁵¹

4. ACCESS TO HEALTHCARE WITHOUT DISCRIMINATION

Everyone should be able to access the healthcare they need.

(a) The current law on consent to treatment for children and young people

Under long-standing legal principles, health professionals can generally provide therapeutic treatment to a young person when a parent consents to the treatment or the young person is themselves mature enough to understand the risks of the treatment and can thereby consent to their own treatment.⁵²

⁴⁶ Bill, Schedule 2 [5], proposed ss 32EA – 32ED.

⁴⁷ Bill, Schedule 2 [4].

⁴⁸ *Attorney General for New South Wales v FJG* [2023] NSWCA 34; *Coonan v Registrar of Births, Deaths and Marriages* [2020] QCAT 434.

⁴⁹ *Attorney General for New South Wales v FJG* [2023] NSWCA 34.

⁵⁰ Bill, Schedule 8 [2], [3], [4].

⁵¹ See Equality Australia and Centre for Family Research and Evaluation (2020) [There's No Safe Place At Home: Domestic and family violence affecting LGBTIQ+ people](#) at 12.

⁵² As to the competence of a child to provide consent to their own medical treatment, see *Gillick v West Norfolk and Wisbech Health Authority* [1986] 1 AC 112; affirmed in *Secretary, Department of Health and Community Services v JWB and SMB (Marion's Case)* (1992) 175 CLR 218. As to the ability of each parent (or person with parental responsibility) to give consent to medical treatment on behalf of a child, see *Re B and B: Family Law Reform Act*

In the case of gender affirming healthcare, a 2020 decision of the Family Court (*Re Imogen*) has instead stated that court authorisation is required unless all parents, the treating clinician and the young person consents, even if the young person is *Gillick* competent.⁵³

The practical effect of this legal approach has been to deny or delay time-critical gender affirming healthcare to transgender young people, imposing unnecessary cost, time and effort on young people and their families by requiring them to obtain court authorisation where a second parent is unavailable or unwilling to provide consent and even when the young person is themselves *Gillick* competent.

Despite the requirement for court authorisation, treatment has been authorised by the Family Court across several years of numerous published decisions except for one involving insufficient evidence about a young person who was only 1 month from being able to consent as an adult.⁵⁴

Court authorisation is particularly problematic in the case of puberty suppressants, a time-critical treatment which prevents irreversible bodily changes (such as a voice breaking or the development of breasts) that can cause significant distress to transgender young people. Puberty suppressants have been medically used for over 30 years to delay puberty, including for non-trans youth experiencing precocious (early) puberty who do not require court authorisation like their transgender peers.

In one of the worst cases illustrating the cost and delay imposed by the requirement for court authorisation, clinicians for a young person and her supportive mother were forced to seek urgent court authorisation for puberty suppressants in 2020 because the whereabouts of the child's estranged father was unknown. The father had a history of emotional, verbal and physical abuse towards the child and her mother, an interstate criminal record including drugs and weapons offences, and had previously been forcibly removed from the family home by police.⁵⁵ While the court authorised the treatment, it took a court application in circumstances where the same treatment for a non-transgender young person would not have required a court process at all.⁵⁶

(b) Ensuring the law on medical consent applies equally

The Bill clarifies the law on when all children and young people and their parents can consent to medical or dental treatment in NSW. The Bill will amend the *Children and Young Persons (Care and Protection) Act 1998* as follows:

- Young people aged 16 years and over will be able to consent to their own treatment as validly and effectively as an adult.⁵⁷
- Except in the case of '*special medical treatment*', children aged under 16 years will be able to consent to their own treatment if, in the opinion of the doctor or dentist administering the

1995 [1997] FamCA 33 at [9.28]-[9.30]. In some cases, the general capacity of a parent or child to give consent to medical treatment may be limited by statute or supervised by courts: see e.g. *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 175; *The Sydney Children's Hospital Network v X* [2013] NSWSC 368 and *X v The Sydney Children's Hospital Network* [2013] NSWCA 320 (refusal of blood transfusion by a 17-year-old competent child who was a member of the Jehovah Witness' faith); *Re Ryder* [2020] NSWSC 895 (refusal of chemotherapy treatment by the parents of the patient).

⁵³ *Re Imogen (No 6)* [2020] FamCA 761 at [35].

⁵⁴ In *Re Kelvin*, the point was made that, out of 63 cases involving applications for either gender affirming hormone treatment or surgery between 31 July 2013 and 16 August 2017, treatment was approved by the Family Court in 62 cases and one case was dismissed for want of evidence in respect of a child who was one month shy of being an adult: *Re Kelvin* [2017] FamCAFC 25 at [51]-[52]. Since that time, the federal family courts have authorised treatment in a number of cases: see e.g. *Re Imogen (No 6)* [2020] FamCA 761; *Re Ryan* [2019] FamCA 112; *Re Chloe* [2018] FamCA 1006; *Re Matthew* [2018] FamCA 161; *Re Elliot* [2017] FamCA 1008.

⁵⁵ *Re a Declaration Regarding Medical Treatment for "A"* [2020] QSC 389 at [9]-[10] per Lyons SJA.

⁵⁶ *Re a Declaration Regarding Medical Treatment for "A"* [2020] QSC 389 at [36] per Lyons SJA.

⁵⁷ This will be subject to and consistent with the requirements in Part 5 of the *Guardianship Act 1987* (NSW).

treatment, they are capable of understanding the nature, consequences and risks of the treatment. Otherwise, they will need the consent of a parent; and

- In respect of ‘special medical treatment’ – which includes non-life saving treatment which is reasonably likely to render a person under 16 years permanently infertile – the existing requirement for NCAT to approve the treatment will not apply in cases where another court has already approved the treatment.⁵⁸

As is presently the case, a parent (or any person with concerned with the care, welfare or development of the child) will still be able to dispute any decision regarding treatment by application to the Federal Circuit and Family Court or Supreme Court.⁵⁹

For trans and gender diverse young people, these provisions will help clarify that they can consent to healthcare in the same way as their peers.

(c) Why these changes matter to trans and gender diverse young people

Trans and gender diverse young people are a population group that experiences soberingly high rates of self-harm and suicide. 4 in 5 trans young people aged 14-25 years report having self-harmed, and around 1 in 2 have attempted suicide.⁶⁰

For trans and gender diverse young people, the prospect of experiencing a puberty that does not align with their gender can be profoundly distressing and exacerbate their mental anguish.⁶¹ Legal barriers and uncertainty over who can consent to gender affirming healthcare means denying or delaying timely access to medical treatment that can lessen this distress.

In 2020, then Commonwealth Health Minister the Hon. Greg Hunt MP asked for and received advice from the Royal Australasian College of Physicians regarding the care and treatment of trans and gender diverse children and adolescents. The advice stated that gender affirming healthcare for trans and gender diverse young people should be a ‘national priority’ and ‘withholding or limiting access to care and treatment would be unethical and would have serious impacts on the health and wellbeing of young people.’⁶²

The advice supported the principles underlying the *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents*,⁶³ which have also been considered by Australian courts to represent the ‘orthodox middle’ of current medical practice, ‘accepted by the majority of the medical profession’.⁶⁴

⁵⁸ *Children and Young Persons (Care and Protection) Act 1998*(NSW), s 175.

⁵⁹ See *Family Law Act 1975* (Cth), ss 64B(1)(a), 64B(2)(i), 65C and 65D(1); *P v P* (1994) 181 CLR 583; *X v Sydney Children’s Hospital Network* [2013] NSWCA 320; *Minister for Health v AS* [2004] WASC 286 but see *Townsville Hospital and Health Service v R* [2022] QSC 251 at [3]-[6].

⁶⁰ Strauss et al, Telethon Kids Institute (2017) [Trans Pathways: The mental health experiences and care pathways of trans young people](#). Similar data is reported in Hill et al, La Trobe University (2021) [Writing Themselves In 4: The health and wellbeing of LGBTQA+ young people in Australia](#) at 142-3.

⁶¹ Coleman et al (2012) ‘World Professional Association for Transgender Health Standards of Care for the health of transsexual, transgender and gender-nonconforming people’, *International Journal of Transgenderism* 13(4): 165–232; Hembree et al (2017) ‘Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: an Endocrine Society Clinical Practice Guideline’ *Journal of Clinical Endocrinology and Metabolism*, 102(11):1–35.

⁶² [Letter from Royal Australasian College of Physicians to the Hon. Greg Hunt MP](#), 5 March 2020.

⁶³ Telfer et al, The Royal Children’s Hospital (2020) [Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents](#).

⁶⁴ *Re Imogen (No 6)* [2020] FamCA 761 at [4].

Under the Australian Standards, gender affirming medical treatments for adolescents can involve:

- **puberty suppressants.** Puberty blockers give transgender young people more time to explore their gender without the fear of developing bodily changes that may require invasive surgery to reverse in future or can never be reversed. If a young person reverts to identifying with their sex assigned at birth, ceasing puberty blockers will allow the young person to continue with puberty in their assigned sex. Puberty blockers are most effective in preventing the development of secondary sex characteristics when commenced at Tanner pubertal stage 2.⁶⁵
- **gender affirming hormone treatment.** Gender affirming hormones are used to feminise or masculinise a person's appearance to accord with their gender. The timing of gender affirming hormone treatment depends on the individual and requires a consideration of their maturity (and thereby their ability to provide informed consent) along with the biological, psychological and social risks of delaying treatment.⁶⁶
- **top surgery** (chest reconstructive surgery) among trans males during adolescence, generally recommended for over 16 years.⁶⁷ Genital surgery for people aged under 18 years is not recommended.⁶⁸

Not all trans and gender diverse people seek medical gender affirming treatment, but for those that want it and can give informed consent to their own medical treatment, gender affirming healthcare can be lifesaving.⁶⁹

5. BETTER RECOGNITION OF FAMILIES

Every child deserves the economic and emotional security that comes with legal recognition of their parents.

(a) The current law on legal parentage

Children who are born through surrogacy arrangements may not have the same economic and emotional security that comes with having their intended parents legally recognised. This is because NSW law prohibits a surrogacy parentage order being made in circumstances where the child was conceived through a commercial surrogacy arrangement,⁷⁰ and where, other in exceptional circumstances, several formal requirements of the parentage scheme have not been fully complied with or complied with in the time required by the scheme.⁷¹

⁶⁵ Telfer et al, The Royal Children's Hospital (2020) [Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents](#) at 15, 23.

⁶⁶ *Id* at 17.

⁶⁷ *Ibid*.

⁶⁸ *Id* at 25.

⁶⁹ See Tordoff et al (2022) 'Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care', *JAMA* 5(2); Allen et al (2019) 'Well-being and Suicidality among Transgender Youth after Gender Affirming Hormones', *Clinical Practice in Pediatric Psychology* 9: 3, 302-311; Achille et al (2020) 'Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Well-being of Transgender Youths: Preliminary results', *International Journal of Pediatric Endocrinology* 2020:8.

⁷⁰ *Surrogacy Act 2010* (NSW), s 23.

⁷¹ See *Surrogacy Act 2010* (NSW), s 18. The formal requirements include:

- counselling and legal advice be obtained *prior* to entering into a surrogacy arrangement (ss 29(2), 35 and 36);
- the birth mother be at least 25 years (rather than at least 18 years) (s 27(1));
- the surrogacy arrangement be in writing (s 34);

The effect of these provisions is to prevent the transfer of parentage to the intended parents from the surrogate and their partner (if any) for the whole of the child's life. It means a child may not be legally recognised as the child of the intended parents under a range of laws, such as inheritance or superannuation laws.⁷² It also means that intended parents who seek the (more limited) parenting orders available through the federal family courts do so in the shadow of the criminal law and may be fearful of being frank with the court regarding the circumstances of the conception of their child.

Whatever the arguments for or against commercial surrogacy, a child should not be discriminated against because of the circumstances in which they were conceived. This is particularly so where they were conceived under a surrogacy arrangement that is lawful overseas and in circumstances where the surrogate parent has consented in a fully informed and non-coerced way to the arrangement and the relinquishing of the child to the intended parents.

(b) Protecting the best interests of the child

The Bill maintains the requirement for a surrogacy arrangement to be altruistic but makes a minimal change to the *Surrogacy Act 2010* by enlarging the Supreme Court's residual discretion to depart from this requirement and still make a parentage order if it would be in the best interests of the child.⁷³

This newly framed residual discretion requires the Supreme Court to have regard to the circumstances of the surrogate and her partner (if any), the intended parents and the surrogacy arrangement itself. The Bill also clarifies that the surrogate has the same right to manage her own pregnancy and birth as any mother.⁷⁴

Other mandatory requirements of the scheme will remain (and the Supreme Court will not have the power to depart from them), including the requirements:

- concerning consent from all affected parties (including the surrogate and her partner, if any);
- that the surrogate and intended parents are all adults; and
- that the wishes of the child are considered when making the order, if the child is of sufficient maturity to express their wishes.⁷⁵

These minimal changes prevent a child being punished for the circumstances in which they were conceived where a Court is convinced that it would be in their best interests to recognise the reality of their family.

These changes would also result in better protections for surrogates and intended parents than currently exist. This is because the usual mandatory requirements concerning consent will remain in place, the surrogate's right to manage her own pregnancy and birth will be explicitly stated, and the Court will be able to look into the circumstances surrounding the surrogacy arrangement to ensure that each person's consent was freely and voluntarily given.

The Bill does not lift the ban on commercial surrogacy in NSW, but it does prevent the current ban continuing to operate in respect of commercial surrogacy lawfully entered into overseas.⁷⁶ This prohibition has simply not worked and has made people scared of being upfront about the circumstances of their child's conception. Ignoring

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- the intended parent(s) live in New South Wales at the time of hearing (s 32); and
 - the child lives with the intended parent(s) at the time of hearing (s 33).

⁷² See *Surrogacy Act 2010* (NSW), s 39; *Family Law Act 1975* (Cth), s 60HB.

⁷³ Bill, Schedule 19 [3], [5].

⁷⁴ Bill, Schedule 19 [1].

⁷⁵ *Surrogacy Act 2010* (NSW), ss 26(2), 27(3) and 31.

⁷⁶ Bill, Schedule 19 [2].

the reality of commercial surrogacy available lawfully overseas does not provide additional safeguards or protections to surrogates, intended parents or the child.

6. EQUAL PROTECTION OF THE LAW

Everyone deserves to be treated equally under the law.

(a) Applying laws to everyone equally

Hundreds of NSW laws use unnecessarily gendered terms (such as ‘sister or brother’, ‘his or her’) meaning that legal rights and protections may not apply equally to rainbow families and trans and gender diverse people.

The Bill strengthens existing statutory interpretative principles in the *Interpretation Act 1987* to clarify that legislative references to people, familial relationships and bodily attributes should be interpreted inclusively, regardless of gender, subject to any contrary statutory intention.⁷⁷ This helps ensure NSW laws apply in the same way to everyone in the same circumstances, regardless of gender.

For example, this clarifies that expressions like ‘sister or brother’ used in succession laws include a non-binary sibling, and gendered expressions referring to parents, pregnancy or birth include rainbow families and trans and gender diverse parents where they are intended to do so.

(b) Equal protection from hate crime

Courts can impose a harsher sentence when a crime has been motivated by prejudice or hatred for a particular group. This recognises that offences committed against a person or their property because of their race, religion, sexuality, age or disability can leave more than just physical or economic scars but affect a person’s sense of safety and feelings of communal belonging. For example, vandalising a person’s property has a different impact for the victim if the vandalism includes derogatory and demeaning phrases attacking a group that the victim belongs to.

The Bill amends the *Crimes (Sentencing Procedure) Act 1999* to ensure that, when sentencing, crimes motivated by hatred or prejudice towards transgender and intersex people are treated in the same way as crimes motivated by hatred or prejudice towards people of a particular religion, racial or ethnic origin, language, sexual orientation, age or disability.⁷⁸

(c) Equal dignity when searched without consent

The Bill amends all five Acts that authorise body searches and forensic procedures in NSW to allow transgender and intersex people to choose a particular person or class of person to conduct the body search to the extent such a person is reasonably available. If no election is made, the search will be conducted by a person of the sex the person identifies with.⁷⁹

This makes search laws across NSW consistent with existing NSW police powers and policy and affords transgender and intersex people the dignity of being searched by an available person who makes them feel most comfortable.

⁷⁷ Bill, Schedule 14.

⁷⁸ Bill, Schedule 10 [1], [2].

⁷⁹ Bill, Schedules 5, 7, 9, 15, 17.

(d) Extending protections to intersex children

In the same way that the *Children's Guardian Act 2019* currently takes into account culture, disability, language, religion, gender identity and sexuality of a child or their parents, the Bill ensures that any relevant intersex variations must also be considered when decisions are made under that Act that will significantly affect a child.⁸⁰

Recognising that the assignment of sex for an intersex child may be more complex, the Bill amends the *Births, Deaths and Marriages Registration Act 1995* to extend from 60 to 180 days the time for registering the birth of a child where variations of sex characteristics do not allow for an easy assignment of sex.⁸¹ This is consistent with the law in Queensland and Tasmania.⁸²

(e) Removing legal stigma

The Bill affords people with HIV and AIDS the dignity they deserve by removing stigmatising and outdated language like 'infected' or 'suffering from' from NSW laws that refers to HIV or AIDS.⁸³

The Bill removes summary offences that specifically target and stigmatise sex workers,⁸⁴ leaving intact criminal laws that protect people from sexual servitude, abuse or offensive and obscene behaviour in public.⁸⁵

In the same way that the *Mental Health Act 2007* currently deals with expressions of a particular sexual orientation, political opinion or religious belief, the Bill clarifies that the mere expression of a person's gender identity does not by itself amount to a mental illness or disorder.⁸⁶ This ensures that people are not considered mentally ill or disordered simply because of their gender identity.

⁸⁰ Bill, Schedule 4, amending the *Children's Guardian Act 2019*.

⁸¹ Bill, Schedule 2 [2], [3].

⁸² *Births, Deaths and Marriages Registration Act 2023* (QLD), s 9 [yet to commence]; *Births, Deaths and Marriages Registration Act 1999* (Tas), s 15.

⁸³ Bill, Schedule 1 [21], [36], [37]; Schedule 6 [1], [2], [3]; Schedule 8 [5], [7]; Schedule 11; Schedule 20 [1], [2], [3], [4], [5], [6], [7].

⁸⁴ Bill, Schedule 18.

⁸⁵ See e.g. *Summary Offences Act 1988* (NSW), ss 4 (offensive conduct), 5 (obscene exposure); *Crimes Act 1900* (NSW), Div 10 (sexual offences against adults and children), 10A (sexual servitude), Div 14A (procuring for prostitution) and Div 15 (child prostitution).

⁸⁶ Bill, Schedule 16.