



## THE EQUALITY LEGISLATION AMENDMENT (LGBTIQ+) ACT 2024 (NSW)

The *Equality Legislation Amendment Act 2024* (NSW) passed NSW Parliament and became law in October 2024. The Act includes several reforms for LGBTIQ+ people and brings NSW closer into line with best practice in other jurisdictions.

Some reforms in the Act commenced on 1 December 2024, while the rest will commence by 1 July 2025.

### WHAT'S IN THE ACT

#### ACCESS TO ID THAT MATCHES IDENTITY

The Act amends the *Births, Deaths and Marriages Registration Act 1995* (NSW) to remove the requirement for surgery on a person's reproductive organs for trans and gender diverse people from NSW who wish to update their legal gender.

Surgery requirements have been a significant barrier for trans and gender diverse people in updating their identity documentation in NSW, with more than one third of NSW-born trans 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.

#### People aged 18 years or over

Persons over 18 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.

#### Young people aged under 18 years

Young people under 18 years born in NSW will be able to have their record of sex altered with:

- the consent of their parents;
- a statement from a qualified counsellor who has provided counselling to the child in relation to the alteration and who is supportive; and
- a statutory declaration (if the child is able to make one); or
- a statement from each parent stating that they believe the alteration is in the young person's best interests.

If both parents do not consent to the alteration of the young person's record of sex, one parent can apply to the District Court. The District Court can only make a decision if it is in the best interests of the child.

#### Choice of sex descriptor

A person updating their record of sex will be able to use the following sex descriptors:

- female,
- male,
- non-binary,
- non-specified.

Other descriptors may be prescribed by the regulations in the future.

#### BETTER RECOGNITION OF FAMILIES

The Act amends the *Surrogacy Act 2010* (NSW) to provide a limited pathway for children who are born through overseas commercial surrogacy arrangements to have their intended parents legally recognised.

Prior to the Act, NSW law prevented the transfer of parentage to the intended parents



from the surrogate and their partner (if any) for the whole of a child's life, where the child was born through an overseas commercial surrogacy arrangement. This meant they may not have been legally recognised as the child of the intended parents under a range of laws, such as inheritance or superannuation laws.<sup>1</sup>

The Act maintains the requirement for a surrogacy arrangement to be altruistic but makes a minor change to the *Surrogacy Act 2010* (NSW) allowing the Supreme Court to waive this requirement and still make a parentage order if it would be in the best interests of the child.

Where the child is born after 1 July 2025, the Supreme Court must have regard to the circumstances of the surrogate and their partner (if any), the intended parents and the surrogacy arrangement itself when deciding whether to make a parentage order.

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. The changes do not apply to commercial surrogacy arrangements within Australia.

## **PROTECTING LGBTIQ+ PEOPLE FROM VIOLENCE**

**Everyone deserves to live in safety, free from violence.**

The Act amends the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to ensure that threats to 'out' (i.e. disclose without consent) a person's sexual orientation, gender history, HIV+ status, variations of sex characteristics or sex work are a potential form of violence for the purposes of making an

apprehended violence order (AVO) or apprehended personal violence order (APVO).

## **EQUAL PROTECTION UNDER LAW**

The Act also provides equal protection to members of the LGBTIQ+ community by:

- ensuring crimes motivated by hatred or prejudice towards transgender and intersex people are treated in the same way as hate crimes motivated by hatred or prejudice towards people of a particular religion, racial or ethnic origin, language, sexual orientation, age or disability;
- ensuring a child's gender identity and intersex variations can be relevantly taken into account in decisions that significantly affect them under the *Children and Young Persons (Care and Protection) Act 1998* (NSW);
- ensuring young people who have obtained court approval for gender affirming care (where necessary) do not also need the approval of the NSW Civil and Administrative Tribunal;
- removing pressure from parents by extending the timeframe for registering a child born with variations of sex characteristics from 60 days to 180 days;
- 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* (NSW);
- removing stigmatising provisions affecting people with HIV or AIDS.

---

<sup>1</sup> See *Surrogacy Act 2010* (NSW), s 39; *Family Law Act 1975* (Cth), s 60HB.



## COMMENCEMENT

Several reforms in the Act commenced on 1 December 2024. These include:

- Changes to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to ensure that threats to 'out' a person can be grounds for an AVO or APVO.
- Changes to the *Crimes (Sentencing Procedure) Act 1999* (NSW) to ensure crimes motivated by hatred towards transgender and intersex people are treated in the same way as hate crimes motivated by hatred of other groups.
- Changes to the *Drug Misuse and Trafficking Act 1985* (NSW) to remove stigmatising language affecting people with HIV or AIDS.
- Changes to the *Summary Offences Act 1988* (NSW) to remove the offence of living on the earnings of sex work.

Other aspects of the reform, particularly changes to the *Births, Deaths and Marriages Registration Act 1995* (NSW) and the *Surrogacy Act 2010* (NSW), are expected to take longer as the implementation of these changes is more complex. The latest the remaining reforms can come into effect is 1 July 2025.

## WHAT'S OUT OF THE ACT

### BETTER PROTECTIONS FROM DISCRIMINATION

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

Reforms addressing these issues were removed from the Act pending a review of the *Anti-Discrimination Act 1977* (NSW) by the NSW Law Reform Commission, which is expected to be finalised in 2025. We call on the NSW

Government to commit to strengthening discrimination protections for LGBTIQ+ people in line with reforms in other states and territories including:

- protecting all LGBTIQ+ people from discrimination;
- narrowing exemptions for faith-based schools and organisations;
- providing for accuracy in government data collection;
- providing for consistency with Commonwealth laws in sport and superannuation; and
- enabling equality in public sector employment.

### BODY SEARCHES

Changes to allow transgender and intersex people to choose a particular person or class of person to conduct body searches have also been removed from the Act. We will continue to advocate for these important reforms.

### CHANGES TO THE LAW OF CONSENT

The Act initially proposed to change the law dealing with when children and young people and their parents can consent to medical or dental treatment in NSW. The intention of these proposed changes was to overcome legal obstacles for young people accessing gender affirming care.

Since this change was proposed, major progress has been made in the regulation of gender affirming healthcare by NSW Health. The Australian Medical Association and transgender advocates say the proposed changes are no longer necessary and their removal from the Act does not impact access to gender affirming healthcare by young trans people and their families.