

LGB ALLIANCE AUSTRALIA

Submission for the

Proposed NSW Equality Bill

About LGB Alliance Australia

Our Vision

Lesbians, gay men and bisexuals living free from discrimination or disadvantage based on their sexual orientation.

Our Mission

To advance lesbian, gay and bisexual rights

We advance the interests of lesbians, gay men and bisexuals, and stand up for our right to live as same-sex attracted people without discrimination or disadvantage.

We will ensure that the voices of lesbians, gay men and bisexuals are heard in all public and political discussions affecting our lives.

To highlight the dual discrimination faced by lesbians

We amplify the voices of lesbians and highlight the dual discrimination experienced by lesbians as women who are same-sex attracted in a male-dominated society.

To protect children who may grow up to be lesbian, gay, or bisexual

We work to protect children from harmful, unscientific ideologies that may lead them to believe either their personality or their body is in need of changing. Any child growing up to be lesbian, gay or bisexual has the right to be happy and confident about their sexuality and who they are.

To promote free speech on lesbian, gay and bisexual issues

We promote freedom of speech and informed dialogue on issues concerning the rights of lesbians, gay men and bisexuals. We assert that different opinions, even those we may disagree with, should be heard as part of the public debate.

You can find out more about us on our website – <https://www.lgballiance.org.au>
You can get in contact with us on email – contact@lgballiance.org.au

Follow us on social media:

<https://www.facebook.com/lgballianceaustralia>

https://www.twitter.com/lgballiance_au

<https://www.youtube.com/c/lgballianceaustralia>

Submission for the Proposed NSW Equality Bill

Submission Regarding the Proposed NSW Equality Bill

Thank you for the opportunity to participate in the submission process for this important piece of legislation.

We are writing on behalf of LGB Alliance Australia. Our members started this group in 2020 in response to the need for an advocacy group to represent and protect the rights of Australia's same-sex attracted community.

We are one of many LGB Alliance groups around the world and part of a global network of like-minded LGB people. We are a non-partisan organisation with supporters from diverse backgrounds around Australia.

Our submission for the 'Equality Bill' is below. Our primary objective is ensuring protections for people with a same-sex sexual orientation (LGB), as outlined in our submission.

This is an omnibus bill which attempts to address the needs of the 'LGBTIQ+' community without reference or acknowledgement that this community itself is not an homogeneous group, with at least three distinct communities facing distinct and potentially conflicting challenges. It is possible that the broad range of issues contained may be better addressed in separate, targeted bills. In order to ensure the needs of each group are met, we feel that protections would be better fit the individual needs of each group in bills separately addressing sexual orientation (LGB); transgender and gender identity (T); and Disorders of Sex Development (commonly known as 'intersex' or I).

Contents

Remove Discrimination Embedded in a Number of Laws	4
Modernise the language in the Anti-Discrimination Act	5
Response to the impact of the NSW Government LGBTIQ+ Health Strategy.....	6
Ensure access to Gender Affirming State Documentation	7
Consent in Medical Procedures on People with Intersex Variations	9
Ban Conversion Practices	10
Other Important Issues in the Consultation	12
Appendix	13

Remove Discrimination Embedded in a Number of Laws

Discrimination in Schools

We agree that children should be protected from discrimination in school settings, and teachers protected from discrimination in their workplace. No student or teacher should be excluded from their existing school as a result of their identity, whether that relate to their sexual orientation, gender identity or otherwise. We support extending existing Anti-Discrimination laws to ensure student and teacher protections from exclusion on these grounds.

We do however support the purpose of single-sex education, given the developmental benefits which are sought by some parents, as well as providing student choice. We feel that students attending a single-sex school should be entitled to remain in their school, regardless of gender identity (i.e. a female student who identifies as non-binary or as a trans-boy would be afforded protections to remain in a single-sex school for females, given their sex would be in line with the enrolment exemption offered to schools under existing Anti-Discrimination legislation). We believe this ensures children and adolescents do not have their education detrimentally disrupted, should they choose to remain in their existing school with its established formal and informal supports. For single-sex schooling to offer such protections to their enrolled students, as well as ensure the purpose of the school, it is important that enrolment remains on the principle of sex, rather than gender.

We want schools to remain professional, respectful and neutral in relation to how students understand themselves, neither directly contesting student identity, nor promoting or suggesting understandings of self that students are still exploring. The role of schools is to provide safe and informative education for minors, offering additional social supports as needed. It is not appropriate for schools or teachers to influence minors' understandings of self, however well-intentioned or inadvertent.

While we understand that some children are seeking support as a result of living with families who do not support their understanding of themselves (in relation to sexuality or gender), it is risky for schools to intervene in situations they do not fully understand, and they should maintain careful and supportive neutrality as a result, for the maximum protection of child welfare.

Modernise the language in the Anti-Discrimination Act

To take an inclusive and holistic approach, various groups need to be considered, including the impact that changes to the language of the existing Anti-Discrimination legislation would have on these groups. Specifically, existing legislation offers protections on the basis of sex; given global female oppression, itself on the basis of sex, this term is still current and relevant as protecting a disadvantaged group in society. Although the term 'gender' is sometimes used interchangeably with 'sex', these are distinct categories, requiring different protections; one on the basis of sex, one on the basis of gender identity. To ensure the rights of females as a distinct class of disadvantaged people are upheld, it is essential that the term 'sex' is retained in the Anti-Discrimination Act. As a distinct sex class, females are disadvantaged in relation to their reproductive health and status, in work settings, and are disproportionately the target of sex crimes and intimate partner violence. In order to ensure their protection and safety, we must be able to recognise them as a distinct group.

Similarly, same-sex sexual orientation (i.e., lesbian, gay, and bisexual) are formed on the basis of sex. The discrimination we face as LGB people is based on this very fact. As persons with minority sexual orientations, we require protections that would not be provided by the broader term "sexuality" or "sexual orientation" - as these terms would also include heterosexuals, who are not a minority sexuality. As such, it is essential that "homosexuality" is specifically named and maintained in Anti-Discrimination Law, although we would also like to see "bisexuality" added. This would ensure that same-sex orientation (LGB) is maintained. Should "sexuality" or "sexual orientation" replace the existing wording, heterosexuals would have grounds to demand access to LGB spaces or events, or perhaps even protest the existence of such events, on the grounds of "heterophobia". Given heterosexuals are the majority group and do not face discrimination on grounds of their sexual orientation, it is important minority sexual orientations are specifically named - homosexuality includes those with exclusive same-sex attraction, while bisexuality includes those who are attracted to both sexes.

On this basis, it is again essential that sex remains in the Anti-Discrimination Act as a separate and distinct category than gender. We support gender being additionally included for protections in workplace and public life, but - given the clash of rights - do not support gender overriding protections on the basis of sex. We believe that exemptions for single-sex spaces and sports have an important reasoning in grounds of sex, and believe that events exclusively for minority sexual groups (i.e. a male-only event for gay men; a female-only event for lesbians) offer an important sanctity for these minority sexual orientations. In order to continue to provide protection from

Submission for the Proposed NSW Equality Bill

discrimination for grounds such as women and girls, and LGB people, we must be able to accurately have these groups defined and mentioned in related legislation.

Response to the impact of the NSW Government LGBTIQ+ Health Strategy

There is no doubt that the LGB community in general, have lower health and mental health outcomes than their heterosexual counterparts. However, we want to acknowledge that the LGBTIQ+ is not an homogeneous group, with same-sex attracted communities facing materially different challenges than the needs of the transgender community, or that of the intersex or Differences of Sex Development (DSD) community, given this is a medical condition. On the basis of this, there are some challenges to develop a single strategy covering such disparate needs and we would be concerned that needs of the same-sex attracted community should not be neglected or undermined by a strategy purporting to represent the divergent needs of the entire community.

We are particularly concerned with the health and mental health outcomes for the LGB community and are particularly concerned with how legislation, spaces and community are erasing sex in favour of gender, thereby eroding LGB rights, and the ability for LGB people to gather and actually participate in community life.

This is particularly concerning as gender cannot be adequately defined, beyond being a feeling or identity, whereas sex is quantifiable and is based on scientific evidence and known fact. Although we believe people who have a gender identity distinct from their birth sex should be treated with respect and compassion, we also recognise that detransitioners exist (i.e. those who have desisted in a trans identity and have re-identified with their sex); any approach on the basis of gender must ensure that adequate protections are also offered to detransitioners, or those whose gender identity changes over their lifespan.

Where sex has been replaced with gender in legislation is particularly concerning to LGB people on the basis of same-sex only spaces. These spaces are particularly important for lesbians and gay men, who, as sexual minorities, require the ability to meet free from discrimination or unwanted advances by the opposite sex, which are rampant in mixed-sex spaces.

Changing legislation to exclude sex makes dissolved protections for same-sex attracted people. There is still much homophobia in the world, including in this new form, where we can no longer congregate in same-sex only spaces. We see this as impacting deeply

Submission for the Proposed NSW Equality Bill

on the health and well-being of the LGB community, worsening the outcomes for same-sex attracted people.

Ensure access to Gender Affirming State Documentation

We are not supportive of legislation that overrides biological sex in preference of gender as stated above. We have concerns about any change to legal birth sex marker that will have a detrimental effect on the fairness, safety and dignity of females and same-sex attracted people. We also have concerns around the impact that this has on transgender and gender-diverse people.

By changing the birth sex on a person's document, this essentially erases the transgender population by failing to acknowledge any difference between those of transgender people and those of the opposite sex, who they identify with. As the transgender population has unique medical needs, as well as needs specific to their sex (e.g. the common signs of heart attack are different in males and females), it is important that biological sex is acknowledged to ensure the individual's needs are met. As we acknowledge that sex and gender identity are distinct categories, we propose that the sex listed on a birth certificate should be unchangeable (reflecting the person's biological sex), however a separate optional marker is added for gender identity, which may differ from the birth sex listed. We would propose that a similar approach is applied to all legal documentation, ensuring that the person's needs can be holistically met; by addressing factors unique to their sex, while also acknowledging their gender identity. This approach would also better meet the needs of the detransitioned population, given gender identity should be able to be changed with more ease, as well as changed multiple times where required. As genderqueer people exist as well, we feel this approach meets the needs of the diverse trans population, without disadvantage to them or others.

As previously discussed, females are a minority sex category which requires unique protections. Protections on the grounds of sex are eroded if transgender women, who are biological males, identify into a sex category they are not, on the basis of gender identity. The proposed legislation in this bill would enable sex self-ID; such laws have been introduced in other states and countries, where there are numerous documented examples of males using it to gain access to single-sex spaces, including vulnerable spaces for women (e.g. prison populations, bathrooms, changing rooms). Our concern is, if the only criteria for entry to such spaces is a person stating their identity, how do we tell the difference between a transgender woman, and a male claiming this identity with the purpose of gaining access and harming women and girls in vulnerable spaces? Single-sex spaces for women were fought for and won by feminist activists, for the purpose of

Submission for the Proposed NSW Equality Bill

increasing the safety, privacy and dignity for women, who are at increased risk in mixed-sex spaces. Research conducted in the UK found that “almost 90% of reported sexual assaults, harassment and voyeurism in swimming pool and sports-centre changing rooms happen in unisex facilities”.¹

We propose that third-spaces are investigated to meet the needs of transgender and non-binary people, while also allowing the different needs for men and women to be met. For example, we propose that third-space gender neutral bathrooms/toilets should be provided in addition to single-sex space bathrooms for males and females. This ensures the privacy, dignity and safety of all groups are met. As menstruation is unique to the female sex, and often comes with shame and discrimination, women do require their own single-sex facilities, in addition to the other reasons mentioned. We believe this proposed option is truly inclusive, as it meets the needs of all groups, without disadvantaging others.

Self sex-ID laws also erode the rights of same-sex attracted people in that it inhibits our ability to congregate in single-sex spaces, as previously discussed. Such laws blur the legal distinction between males and females, which re-defines our sexual orientation and inhibits our rights as same-sex attracted people.

¹ <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk>

Consent in Medical Procedures on People with Intersex Variations

We support strengthening legislation to protect people with Differences in Sexual Development. We agree with body sovereignty and that children should not be surgically altered until they can give informed consent (and even then, as children are still cognitively developing, we do not support cosmetic surgical or medical changes to minors). We do not support medically unnecessary surgeries on anyone, especially children.

We support the aims of the DSD community in seeking to outlaw medical interventions which have historically been used to harm DSD minors and adults, typically to achieve a cosmetic result, at the detriment and harm of the individual involved.

As discussed previously, we feel that the needs of the DSD population are very different from those of other groups in this bill and would be perhaps better suited to a separate bill. The focus for ensuring the needs of DSD populations relies on decreased medical intervention for minors, while affirmative care for transgender minors is typically in favour of medical interventions e.g., puberty blockers.

Ban Conversion Practices

We support with the banning of conversion practices on the grounds of same-sex sexual orientation, which has an evidenced history of emotional, psychological and sometimes physical harms spanning decades. Although such practices are now rare or non-existent in medical settings, the primary source for conversion practices in modern life occurs in religious and pastoral settings, usually through encouraging a commitment to celibacy and the individual depriving themselves of intimate same-sex romantic relationships.

We support the banning of conversion therapy for sexual orientation, both in religious and healthcare settings, as is supported by research, however our concern is that an “affirmation only” approach (which results from including gender identity in such a ban) can inadvertently fail to address salient comorbid factors, as well as steer people who are exploring their sense of self into understanding themselves as trans or gender diverse in circumstances where that may have otherwise been the case. Recent research into “affirmative” care has shown no improvement² in mental health for persons with gender dysphoria following surgical or hormonal treatment; the core tenets of the affirmation model.

Further, under the affirmation model, a health practitioner would be forced to affirm the cross-sex gender identity of a same-sex attracted young person presenting for mental health care, which fails to address factors such as internalised homophobia or the young person struggling to accept their feelings of same-sex attraction. In this way, including gender identity in the law banning conversion therapy has the effect of legally enforcing conversion therapy for same-sex attracted individuals, who under the affirmation model, are encouraged to live heterosexual lives identifying as the opposite sex. This ban also prevents practitioners from making professional judgements regarding ethical practice and suitability of care, such as choosing not to proceed with hormonal or surgical transition in the case of a gender non-conforming or same-sex attracted young person, where the parents have encouraged transition in order for their child to live as straight; thus, in cases where gender transition is motivated by homophobia.

For example, testimonies³ from detransitioners discuss how they realised that they were same-sex attracted, which influenced their transgender identity, as a means to escape homophobia. The high-profile legal case in the UK of Bell v Tavistock in 2020 was formed partially on the grounds of Keira Bell, a detransitioned lesbian, stating that Tavistock

² https://segm.org/ajp_correction_2020

³ <https://detranscanada.com/personal-testimonials/>

Submission for the Proposed NSW Equality Bill

gender clinic had failed to explore additional factors, such as her same-sex attraction and mental health factors, when she was pursuing affirmative medical treatment at their clinic. Tavistock clinicians have stated that affirmative care for young transgender patients “feels like conversion therapy for gay children”.⁴

For other conditions where therapy is sought, as is typically the case with gender dysphoria, treatment models such as talk therapy (e.g. cognitive behaviour therapy) are widely effective and appropriate. Watchful waiting, where a young person is supported to socially transition without medical intervention, have also been used with success in the case of gender dysphoria; in such cases, these children and adolescents would be able to explore medical pathways for transition as adults, if still desired. In studies where the practices of watchful waiting have been used however, between 73% and 98%⁵, (i.e., the vast majority of children treated for gender dysphoria) were observed to reconcile with their sex as adults, stating a wide variety of factors influenced their gender identity, including sexual orientation. Other studies have shown that 88% of boys⁶ with gender dysphoria will reconcile themselves with their natal sex by the end of puberty, with up to two thirds of those being same-sex attracted.

Including gender identity in the conversion practices ban enforces an affirmation-only model, which we view as enabling conversion practices of LGB people, among others. Young LGB people are often gender non-confirming and internalised homophobia plays a significant role in dysphoria for many young people. Enforcing an affirmation approach will encourage young lesbians to live as straight men, and young gay men to live as straight women. This is a conversion practice of the LGB community and is no better than what has gone on in the past.

We would additionally be concerned that medical providers supporting detransitioners, or those wishing to detransition, could be criminalised in providing this necessary service. Without these supports, detransitioners (an already disadvantaged and under-acknowledged group of people) would be further disadvantaged by not being able to receive therapeutic or medical supports to help them live as their birth sex, given this would be viewed as assisting them to cease identifying as a gender identity they no longer identify with.

⁴<https://www.thetimes.co.uk/article/it-feels-like-conversion-therapy-for-gay-children-say-clinicians-pvsckdvq2>

⁵ <https://pubmed.ncbi.nlm.nih.gov/21216800/>

⁶ <https://www.frontiersin.org/articles/10.3389/fpsy.2021.632784/full>

Other Important Issues in the Consultation

We believe it is essential that amendments reflect the fact that sex and gender are not the same and that sex remains the basis of same-sex attraction and an axis of oppression of females. We also note that gender is not readily definable whereas sex is quantifiable and evidence-based.

We are fully supportive of a bill to provide protection to our community but we would like to include and recognise protections for detransitioners, many of whom are LGB, who may be harmed by intended protections for the trans community, if their needs are not considered. We know that detransitioners face stigma and ostracisation so would like specific services in place to ensure relevant medical and mental health support as well as legal protections.

We would also not want to see sex erased or replaced with gender for the reasons mentioned above. We would suggest that sex is retained in current legislation, adding gender where appropriate so it does not erase sex or sexual orientation categories.

Appendix

What Our Supporters Said:

“First and foremost, it is critical that females are recognised and protected in law - our right to gather in exclusively female spaces, our right to protection against male violence in all its forms, and our right to form same-sex relationships.”

“Only by insistence on sex categories can we explain the need for equality of the sexes.”

“Children of both sexes have a right to duty of care, which includes 1. counselling during their troubled times to explore their issues, 2. protection from misinformation about sex and same-sex relationships, and 3. protection from medical and surgical interventions on healthy bodies.”

“Since 2018, Cancer Research UK has promoted its cervical-cancer screenings not to women but to ‘people with a cervix’. Similarly, Public Health England (PHE) wants us all to know that it thinks men can have cervixes, too. So even in cases where biological sex is a question of life and death, PHE sees trans inclusivity as a priority, while anything targeted at women is deemed exclusionary. But the reality is that aiming screening campaigns at ‘people with a cervix’ is what is truly discriminatory. Many women will simply not understand that they are the target audience of calls to get tested since, according to polls, nearly half of all women don’t actually know what a cervix is... Transgender people have their own health and mental illness issues, and they can use whatever terminology they like but not to the detriment of biological men and women when it is a matter of life or death.”

“One aspect that is crucial that doesn’t get changed is the removal of the word “sex” in the Anti-discrimination Act. Here in Tassie, the word sex was removed and replaced by the word gender and the words gender identity. That meant in one fell swoop that women, lesbians and gays were no longer protected under the Act. Here in Tassie it is technically no longer legal for lesbians to publicly meet together [to the exclusion of males].”

“For lesbians and gays, we are same SEX attracted. So removing sex from the act means we aren’t covered. Sex and gender have different meanings and you can’t replace one with the other.

Submission for the Proposed NSW Equality Bill

Redefining the word woman to include men is a nightmare that means that the largest group of oppressed people - women - are made powerless through no longer legally existing as our human selves."

"Are there stringent protections for 'single-sex exemptions' in the Bill, to be able to legally have some single-sex spaces?"

"I live in Tasmania where "people" are "bodies" with various gender expressions/identities/persona's under the Tasmanian law. There is NO definition or description of the "Human Species/race" which consists of the "Male and Female Sexes," under Tasmanian Law. This is incredibly dehumanising."

"Government legislators need to learn to understand that gender expression/identity/persona is subjective, intangible and changeable, and not the same as being a sex class of Human - Male or Female."

"It is hypocritical of the LGBTQ+ movement to strive to outlaw voluntary and informed conversion therapy, while promoting chemical interventions for young people who have insufficient experience to understand the long-term effects of extreme and unnatural biological (and psychological) disruption."

"Regarding the concept of "gender", it is evident that there is no consensus on the meaning of this word, now that it has been applied to an ever-changing array of attitudes and behaviours by the LGBTQ+ movement. Until there is a legal definition acceptable to the general population, there can be no law based on the concept. Such a law would rightly invite unending dispute. Legal documentation must not confuse gender identity - which the LGBTQ+ movement describes as fluid and subjective - with objective biological sex."

"The Legislation must not prescribe language. It must not interfere with or regulate the ability of people to express themselves according to their own cultural standards and traditions. It is unacceptable for the novel and contentious contemporary demands of a small activist group to be imposed upon millennia of linguistic cultural inheritance."

"There's not much space left for lesbians in general. Now under the authority of the alphabet soup, we are told we have to accept 'lady penises' - NO!"

Submission for the Proposed NSW Equality Bill

“Equal rights does NOT mean the right to trample over others - especially women and children.”

“I am dubious that gay conversion therapy actually happens today, but I don't have an issue with banning it. I am quite certain that banning gay conversion therapy is just cover for the main goal of banning "trans conversion therapy" and enforcing an affirmation only model to treating gender dysphoria.”

“My great concern is that a "trans conversion therapy ban" which will undoubtedly be included, will in effect enforce an affirmation only approach to young people with gender dysphoria. We all know that young LGB people are often gender non-confirming and that internalised homophobia plays a significant role in dysphoria for many young people. If anything other than affirmation is criminalised, this will result in actual gay conversion therapy.”