



01 July 2022

Mr Alex Greenwich, MP
Member for Sydney
Ground Floor
21 Oxford Street
DARLINGHURST NSW 2010

Sent via email: sydney@parliament.nsw.gov.au

Dear Mr Greenwich

Re: ACON Submission to Equality Bill

ACON welcomes the opportunity to provide input to the Equality Bill process, and at the outset, we would like to commend you on your continued leadership and political stewardship in the pursuit of equality, rights, support and profile for issues impacting sexuality and gender diverse communities over many years.

As NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders, ACON is well aware of the impact that bad or out-of-date legislation has on our communities' health and wellbeing.

For this submission, we seek not to comment in great detail on the specificities of legislative reform – we defer to our expert legal partners, such as those at Equality Australia, HALC and the Public Interest Advocacy Centre in this regard – but rather to speak more broadly to key areas where NSW legislation requires urgent reform to remedy health disparities for our communities.

The submission will speak to the four key areas of interest you have previously outlined you would like this legislation to address, plus other key areas of law reform that will impact the health of our communities.

There is great ambition and breadth of reform required to ensure our laws provide the best conditions for LGBTQ people to thrive. We commend you for undertaking this process, and we are aware that this will require extensive and ongoing engagement. We look forward to working with you on this basis.

As always, we welcome the opportunity to discuss these issues with you in more detail. To arrange a time, please phone me on [REDACTED] or email at nparkhill@acon.org.au.

Kind regards

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Recommendations

Improve access to legal gender recognition

- ACON recommends that the Equality Bill:
 - Reviews and amends the *Births, Deaths and Marriages Registration Act* so that it:
 - Allows for access to amended identity documentation, which must not depend on surgery or other medical treatment, interventions or oversight;
 - Allows for access to amend identity documentation through an administrative process that must not depend on approval by any third party such as a medical professional or sponsor, and;
 - Allows for access to amended identity documentation that should be granted on the basis of self-determination, through the same simple process as a change of name
 - Allow for people under the age of 18 to update their documentation with and without parental consent
 - Enables gender markers on state documentation to be optional
 - Ensure that the third gender marker option is labelled 'non-binary' rather than 'non-specific'

End unnecessary medical procedures on people with intersex variations without their consent

- Reforms to end unnecessary medical procedures on people with intersex variations without their consent that are drafted in line with the Darlington Statement and in consultation with intersex people and organisations, in a manner similar to, and with similar provisions as, the draft reforms introduced in the ACT.

Remove targeted discrimination, including in schools

- ACON recommends that the Equality Bill process includes a full review and comprehensive reform of the NSW Anti-Discrimination Act so that discrimination legislation in NSW:
 - Protects all people of diverse sexualities and genders, people with variations of sex characteristics, and sex workers, their families, and associates
 - Does not define a 'recognised transgender person' and instead acknowledges that trans people include all people whose gender differs from that which was presumed for them at birth, including trans women, trans men and non-binary people, to ensure that all trans people (binary and non-binary) are protected
 - Does not assume that pregnancy and lactation are characteristics that apply only to women
 - Expands the definition of sexual harassment in line with the *Respect@Work* inquiry and ensures sex workers are adequately protected
 - Is consistent with the NSW Anti-Vilification framework in the Crimes Act 1900 (NSW) (Section 93Z), and extends vilification protections to sex workers.
 - Does not contain exemptions that allow for discrimination in faith-based services, especially health and social services
 - Ensures that trans people have fair access to sport and superannuation
- ACON also endorses the submissions of our partners Equality Australia, PIAC, and HALC regarding their position on anti-discrimination reform.

Ban conversion practices

- ACON strongly supports reforms to ban any and all conversion practices in NSW, and supports the development of clear processes and regulatory arrangements to provide guidance to community members who wish to bring a complaint.

Drug law reform

- ACON recommends that legislative changes are made to reduce the stigmatisation of people who use drugs, especially where those laws may not contribute to a reduction in drug demand, supply, or harm, including, but not limited to:
 - ending the use of drug detection dogs at events and venues,
 - decriminalising possession of all drug paraphernalia,
 - supporting the secondary distribution of sterile injecting equipment
- That recommendations from the *Special commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* are implemented in full, including recommendation 11: “That in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs, which includes the following elements:
 - removal of the criminal offences of use and possession for personal use of prohibited drugs
 - at the point of detection, prohibited drugs to be confiscated and a referral made to an appropriately tailored voluntary health/social and/or education intervention
 - no limit on the number of referrals a person may receive
 - no civil sanctions for non-compliance.”

Ending HIV Stigma

- ACON recommends that the Equality Bill works to achieve the goals of the *NSW HIV Strategy 2021-2025* by:
 - Ensuring NSW legislation does not use stigmatising language, referring to HIV status rather than “HIV/AIDS infected”
 - Amending the *Public Health Act 2010 (NSW)* to ensure that reasonable precautions against spreading a disease or condition is the mutual responsibility of all parties involved in sexual intercourse, and does not attract a penalty.
- ACON further supports continued monitoring of and efforts to repeal the *Mandatory Disease Testing Act 2021 (NSW)*.

Parenting rights

- ACON supports legislative reform that improves the rights of parents in our communities.

Gender affirming care for trans people under the age of 18

- ACON recommends a review of the definition of ‘special medical treatment’ in the *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)* so that it aligns with federal precedent in order to simplify the process for young people in NSW to access gender affirming care.

1. Improve access to legal gender recognition

ACON strongly agrees that the process to access gender concordant identity documentation must be simplified. In consultation for ACON's [Blueprint for Improving the Health and Wellbeing of the Trans and Gender Diverse Community in NSW](#), the trans community-identified legal gender recognition as a top priority for action.

Adequate legal recognition of gender is fundamental for equal participation in society. Incorrect documentation can present barriers to accessing health and social services, travel, immigration, educational facilities, and employment opportunities, and infringe on trans people's privacy, safety, human rights, their health and wellbeing, their mental health, and promote further stigma and discrimination.¹

ACON has reviewed the evidence and surveyed 189 trans people and allies regarding the need for change in this area. 76% of trans respondents to our survey had not updated their gender on state documentation (such as a birth certificate).

61% of those who hadn't updated their documentation indicated they'd had to use a birth certificate in a way that forced them to disclose incorrect personal information such as a former name, or the gender recorded for them at birth. Respondents shared that if the process to update this documentation was simplified, 75% indicated they would.

It's clear from this data that a simplified administrative process is needed to avoid unnecessary stigma and discrimination.

Currently in NSW, as per the *Births, Deaths and Marriages Registration Act 1995*, trans people seeking to change their birth certificate are required to undergo a "sex affirmation" procedure, which involves the surgical alteration of their reproductive organs, always resulting in sterilisation.²

One surveyed participant commented: *"the current outdated NSW laws would require me to basically undergo sterilisation in order to do so. While I don't ever plan to use my reproductive organs, 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. This type of gatekeeping needs to stop."*

Another noted: *"...I had a choice to make: face legal discrimination under the two-tier system of recognition in New South Wales, or have a *highly invasive* surgical procedure to be able to update my birth certificate so I can't be discriminated against..."*

In addition to requiring surgery, the Act also warrants an unnecessary invasion of privacy by requiring that any application "be accompanied by... 2 statutory declarations [by registered medical practitioners] verifying that the person... has undergone a sex affirmation procedure."³ This requirement subjects trans people to multiple genital examinations, in order to comply with a civil process.

As a survey participant pointed out: *"I had gender identity alignment surgery several years ago now. However, the effort required to get two very busy doctors to sign AND THEN HAVE THEM GET THEIR*

SIGNATURES VERIFIED BY A JP was ultimately too much effort and shit to wade through. For the time being I don't require my birth certificate for much so I've let it slide. The whole process feels very demeaning and humiliating."

Other Australian jurisdictions – Tasmania,⁴ Victoria,⁵ Northern Territory,⁶ South Australia,⁷ Western Australia⁸ and the ACT⁹ – no longer require surgery to update one's birth certificate. Queensland's Attorney General has also promised to introduce reforms.¹⁰ NSW is lagging behind the rest of Australia, and many other countries in this regard.

Not all trans people affirm their gender through medical or surgical interventions.^{11,12} This may be because such interventions are not necessary to affirm their gender, the cost is prohibitive, or due to these kinds of interventions being completely unavailable within the Australian health care system.¹³

Trans people should be able to affirm their gender legally through a simple administrative process, in line with the process in other states, territories and countries. The Equality Bill must introduce amendments to allow for this. These amendments must also allow for a third option of 'non-binary' as opposed to 'non-specific' to recognise that intersex is not a third gender category.¹⁴

Part of the reform should include the removal of the current additional requirements for adolescents aged 14-17 to update their legal gender marker, with the goal of creating an easy process for people under 18 who cannot access parental consent, in line with international best practice. Young people in NSW must have access to concordant identity documents, particularly as they begin to interact independently with services like health and education, and access to employment. Young people in NSW are currently required to be sterilised to correct a birth certificate.

A review on making legal gender markers on NSW birth certificates and NSW recognised details certificates optional should also be considered.

The impact of reform

Removing the need for surgical interventions in order to update a NSW birth certificate or recognised details certificate would improve the health and wellbeing of trans people by: removing barriers to accessing services, employment, education and public life, affirming who they are, improving safety and privacy, and reducing the pathologisation of the trans experience.

Australian research demonstrates the impact discordant documentation has on trans people's mental health.¹⁵ Producing documents that do not match a person's name, appearance, or gender risks forced exposure. This can lead to harassment, discrimination, and abuse, which is in turn associated with avoidance of services and as a result, substantial health impacts.¹⁶

One survey participant, a parent of a trans girl, said: *"My child feels extreme anxiety and often suffers from panic attacks whenever we need to use her birth certificate."*

Trans people report substantially poorer mental health outcomes than their cis counterparts,^{17,18} largely attributable to external factors such as stigma, including discriminatory legislation. Such external factors can be removed through the proposed reforms of the Equality Bill.

Research consistently demonstrates that mental health and well-being for trans people improves, especially outcomes related to anxiety, depression, and suicide ideation, when they are recognised, supported, and affirmed for who they are.^{19,20,21,22,23,24,25,26,27} Legal recognition of gender via a change in birth certificate or recognised details certificate is an example of affirmation and recognition.

The requirement to have invasive and unnecessary medical or surgical interventions, and then be examined by two additional physicians, in order to be affirmed as who they are pathologises the trans experience, placing further stigma on trans lives without due cause or purpose.^{28,29}

Across the world, research has demonstrated that gender-concordant identification has resulted in better health and wellbeing outcomes for trans people,³⁰ in areas as diverse as mental health,³¹ reduction in tobacco smoking,³² and increased uptake of HIV treatment and prevention.³³

Further research has identified that gender-concordant identification “serves as an important structural intervention”, improving other social determinants of health, including stable housing, income, employment, and legal legitimacy.^{34,35}

As another survey participant who had been able to access gender-affirming state documentation noted: *“It was pure relief; knowing I could go about seemingly menial tasks just as opening bank accounts or applying for a rental without having to constantly worry about incongruity between my physical presentation and my birth certificate.”*

Reforming the process for changing legal sex classification will have a clear benefit for a greater number of trans people born in NSW, as well as ensuring NSW is meeting adequate human rights standards.

In jurisdictions that have adopted such reforms, there is no evidence of the misuse of such laws, and research suggests that there are adequate safeguards in place to prevent any misuse.^{36,37} Arguments against reform that focus on the possibility of misuse are misguided attempts at fearmongering.

ACON recommends that the Equality Bill:

- Reviews and amends the *Births, Deaths and Marriages Registration Act* so that it:
 - Allows for access to amended identity documentation, which must not depend on surgery or other medical treatment, interventions or oversight;
 - Allows for access to amend identity documentation through an administrative process that must not depend on approval by any third party such as a medical professional or sponsor, and;
 - Allows for access to amended identity documentation that should be granted on the basis of self-determination, through the same simple process as a change of name
- Allow for people under the age of 18 to update their documentation with and without parental consent
- Enables gender markers on state documentation to be optional
- Ensure that the third gender marker option is labelled 'non-binary' rather than 'non-specific'

2. End unnecessary medical procedures on people with intersex variations without their consent

ACON strongly supports the recommendations outlined in the [Darlington Statement](#), which were developed by people with variations of sex characteristics, sometimes known as intersex people.

This statement highlights the importance of seeking input and advice from intersex people on all issues that relate to them, and requests that intersex people are not tokenised or intersex issues co-opted. For these reasons, we defer to the expertise of Intersex Human Rights Australia with regard to policy and legislation that concerns intersex people.

The Darlington Statement calls for:

... the immediate prohibition as a criminal act of deferrable medical interventions, including surgical and hormonal interventions, that alter the sex characteristics of infants and children without personal consent. We call for freely-given and fully informed consent by individuals, with individuals and families having mandatory independent access to funded counselling and peer support.³⁸

We acknowledge the critical importance of these reforms and the improvement they will bring to the health and wellbeing of intersex people. We acknowledge and support the work of our allies, Intersex Human Rights Australia, regarding this necessary reform.

Recent reforms proposed in the ACT under the *Variations in Sex Characteristics (Restricted Medical Treatment) Bill 2022* offer a strong model for NSW to emulate, particularly in their approach to working

with intersex organisations on the development of the draft legislation.^{39,40} Victoria has already committed to similar reform, and the ACT's proposed reforms would work to address key actions under Strategic Priority 3 of the new NSW LGBTIQ+ Health Strategy: *Respond to the health needs of intersex people in NSW*.^{41,42}

ACON recommends that reforms to end unnecessary medical procedures on people with intersex variations without their consent are drafted in line with the Darlington Statement and in consultation with intersex people and organisations, in a manner similar to, and with similar provisions as, the draft reforms introduced in the ACT.

3. Remove targeted discrimination, including in schools

As a health organisation, ACON's work aligns with models of social determinants of health, accordingly, we recognise that access to education, employment and income, stable housing, social inclusion, and non-discrimination are all factors that can positively or negatively influence a person's health.⁴³

It is critical that people in our communities are protected from discrimination in their lives, including in their access to education, healthcare, and employment. As such, reform to our discrimination protections is urgently required.

ACON holds the view promoted by the Public Interest Advocacy Centre, that is, *"the Anti-Discrimination Act 1977 (NSW) needs comprehensive reform, so that it effectively protects people against discrimination on the basis of who they are, and promotes equality of opportunity and participation in our society for all people."*⁴⁴

Further clarification is required regarding the protections for people who are discriminated against on the basis of multiple grounds, for example, their race and their sexuality. The current Act separates these characteristics into a series of 'mini-Acts' added in by progressive amendments, producing a piecemeal and complicated document that does not capture the complexity and intersectionality of the lives of our communities.⁴⁵

Many in our communities are affected by multiple and intersecting forms of discrimination. While this submission considers sexuality and gender protections in greater detail, the protections offered under grounds such as race, age and disability are also currently inadequate.

Our concerns with the Anti-Discrimination Act (ADA) cannot be wholly solved by more piecemeal amendments, which only serve to make the Act more complex and confusing for the layperson seeking to make a complaint. The provisions under the ADA are also inconsistent with those contained in the *Crimes Act*, causing further confusion and complexity around civil and criminal processes.⁴⁶

It is our firm belief that the Act must be reviewed and comprehensively reformed, to better reflect the experiences of discrimination – including discrimination on multiple simultaneous grounds – within our society, and to simplify the process of reporting and complaints handling so that the provisions of the Act are genuinely accessible.

Should piecemeal amendments be the only path forward, however, there are clear areas where the current Act is deficient.

ACON endorses the submissions of Equality Australia, HALC and PIAC with regard to the approach and wording of specific legislative reform.

Protected characteristics and definitions

NSW currently affords protections on the basis of ‘homosexuality’ which effectively means that bisexual+ people and people of other sexual minorities are not protected from discrimination. This must be updated to ensure people of all diverse sexualities are protected.

People with variations of sex characteristics, sometimes known as intersex, are also not protected, which sets NSW behind the Commonwealth, Tasmania, the ACT, and South Australia.⁴⁷

The ADA’s definition of ‘transgender status’ is also limited. The Act refers to a transgender person as someone who identifies as a member of the ‘opposite sex’, which presumes a male/female binary, and therefore does not protect non-binary people.⁴⁸ The Act also defines ‘homosexual’ as ‘male or female homosexual’, further excluding non-binary people.⁴⁹ It is essential that all people of diverse sexualities and genders are protected from discrimination.

In addition, the Act includes protections for pregnancy and ‘breastfeeding’ only under the provisions of sex discrimination, implying or assuming that only people of the ‘female sex’ get pregnant or lactate, therefore excluding the trans people (binary and non-binary) that need this protection.

Furthermore, according to the Act, a ‘recognised transgender person’ is a person who has been sterilised in order to legally affirmed their gender under Part 5A of *the Births, Deaths and Marriages Registration Act 1995 (NSW)*.⁵⁰ Under the current legislation, this therefore means that a ‘recognised transgender person’ is someone who has undergone a ‘sex affirmation procedure’.

As we have already noted, not all trans people affirm their gender through surgery, and indeed not all trans people seek to affirm their gender through legal recognition. Therefore, even if the provisions of the *Births, Deaths and Marriages Registration Act* are amended to remove the surgical requirement, a person may still be trans even if they have not legally affirmed their gender. **The definition of a ‘recognised transgender person’ must therefore be removed, and any definitions related to the trans experience updated to ‘trans person’, which includes all people whose gender differs from that which was presumed for them at birth, including trans women, trans men and non-binary people.**

Anti-discrimination protections must be explicitly extended to sex workers, their families, and associates.

The NSW ADA does not afford any protections on the grounds of employment status or type of employment. While these must be considered alongside other potential protected attributes outlined by the Public Interest Advocacy Centre,⁵¹ ACON endorses the view of the Sex Worker Outreach Project (SWOP)

and the Scarlet Alliance that 'sex work' must be explicitly included as a protected attribute.⁵² ACON endorses SWOP's submission to the Equality Bill for further information on how discrimination protections must be extended to sex workers.

Furthermore, ACON supports a review of the below problems outlined by the Public Interest Advocacy Centre:

- the vilification protections are inconsistent with criminal law, requires a higher bar than federal law, and inadequately protects bisexual+ people, non-binary people, and sex workers from vilification.^{53,54}
- the sexual harassment sections of the Act do not adequately capture all types of sexual harassment, and is not prohibited in all areas of public life.⁵⁵

Exemptions

There are currently a number of loopholes in the Act which allow religious organisations to discriminate in a wide variety of circumstances, against people accessing their services, employees, and staff and students at educational institutions. The exemptions for faith-based organisations in NSW are the broadest in the country, not in line with community standards, and have substantive health impacts.

Nationally, figures suggest that over 133,000 people are employed by religious charities, making it a sector larger than the nation's Utilities sector.⁵⁶ Larger faith-based charities often undertake work in the human services sectors, which attracts significant amounts of public funding. This includes health care, aged care, adoptive services, homelessness services, and domestic and family violence services.

In order to meet the targets of the *NSW LGBTIQ+ Health Strategy 2022-2027*, it is critical that faith-based health services are not able to discriminate against people in our communities. All health services in NSW must deliver high quality, safe, inclusive and responsive health care to people in our communities.

Faith-based health and social services attract public funding because they provide a public service – all people should be able to access the services in their local area. That organisations which attract significant government funding can discriminate against its employees and those accessing their services compromise the 'public' nature of these services and represent significant barriers to access for those vulnerable to discrimination, including LGBTQ people.

These exemptions create an unsafe and exclusionary environment for anyone whose identity, life experience, or beliefs are in conflict with the tenets of that particular faith.

This is also the situation in religious schools, who may refuse a young person's admission, attach conditions to their admission, deny them benefits as a student, or expel them, for who they are. This applies equally to staff at religious schools. This issue has generated significant public interest in recent months, with many surprised to discover such exemptions exist, and a majority of the federal parliament supporting changes to these exemptions under the *Sex Discrimination Act 1984 (Cth)*.⁵⁷ It's clear that such protections are out of step with community standard and must be removed.

Not all discrimination against LGBTQ students and staff in schools is framed as discrimination based on a protected attribute like sexuality or gender. In instances that have garnered [media attention](#), staff at religious schools have claimed to have lost their jobs on the basis of their belief in marriage equality.

NSW's ADA does not consider religious belief (or lack thereof) a protected attribute, meaning that religious schools are free to discriminate against staff or students on the basis of their religious belief (or lack thereof).

ACON supports any move to ensure that staff and students at religious schools are not discriminated against for believing that marriage is not solely between a man and a woman. We understand the complexity of this and defer to Equality Australia's submission regarding this.

While the equal right of sexuality diverse couples to adopt was recognised in NSW law in 2010, section 59A of the *Anti-Discrimination Act 1977 (NSW)* (the "ADA") allows faith-based organisations to deny a child the best possible adoptive parents solely because they might be lesbian, gay, bi+ or trans. This exemption must be removed.

In addition to religious exemptions, there are also two exemptions that apply solely to transgender people, allowing discrimination against trans people who wish to play the sport with people of their gender, and allowing discrimination in the administration of superannuation funds.⁵⁸

There is no consistent research that suggests trans women, trans men or non-binary people have any athletic advantage at any stage of gender affirmation.⁵⁹ Even so, the Commonwealth Sex Discrimination Act allows sport organisations to exclude trans athletes on a case-by-case basis on matters of strength, stamina and physique.⁶⁰

The Commonwealth provision is already too broad, because it does not require sporting codes to balance considerations of strength, stamina or physique against other considerations, such as the benefit of allowing participation or ways that any advantages could be mitigated without completely excluding the player.

The NSW Act allows discrimination for any reason, and therefore goes beyond the provisions of the Commonwealth Act. This blanket ban is wholly unfair, and extremely damaging to the health and wellbeing of trans people, for no apparent reason. Trans inclusion is important in sport, not only because trans people shoulder some of the heaviest burdens of prejudice-driven poor mental health,⁶¹ but because sport should be for everyone.

ACON is concerned that blanket exemptions such those in sections 38P and 38Q contribute to a highly stigmatising environment, where harmful debates such as those that we've seen with regard to trans inclusion in sport are propagated. These harmful debates contribute to poorer health outcomes for trans people.

It is critical that we create safe, welcoming, and inclusive environments so that everyone in our communities has the best chance to thrive. Legislation that protects, rather than stigmatises, our communities is one component of such an environment.

The Equality Bill must review and amend our discrimination legislation in order to create opportunities for people in our communities to live their healthiest lives.

The impact of reform

Reforming the ADA is critical to ensure that all people are protected equally, and able to participate in all areas of public life without fear of stigma or discrimination.

Stigma and discrimination, including perceived stigma and discrimination, present significant barriers to healthcare. Many providers in some areas of healthcare are faith-based, not-for-profit providers, for example in the aged care, alcohol and other drugs, disability, and housing sectors. Making it harder to access non-judgemental health care, such as sexual health, family planning, mental health, and trans-affirming health services, especially in regional and outer metropolitan areas with limited services, will only exacerbate these barriers, and the poorer health and wellbeing outcomes observed in LGBTQ populations.

Just 11% of LGBTIQ adults feel accepted at faith-based events or services, and 43% feel accepted accessing a health or social service.⁶² In addition, 60% of secondary school LGBTQA students feel unsafe or uncomfortable in their educational setting because of their sexuality or gender.⁶³ These statistics demonstrate widespread feelings of stigma and discrimination, even outside of faith-based institutions, suggesting we have some way to go to improving safety and access in all areas of public life.

While improvements to anti-discrimination legislation are not the sole key to ensuring LGBTQ people are safe at school, work, accessing services and in public life more broadly, reform is a critical action to ensure that LGBTQ people are protected from discrimination, harassment, and vilification, and empowered to reduce health disparities.

ACON recommends that the Equality Bill process includes a full review and comprehensive reform of the NSW Anti-Discrimination Act so that discrimination legislation in NSW:

- Protects all people of diverse sexualities and genders, people with variations of sex characteristics, and sex workers, their families, and associates
- Does not define a 'recognised transgender person' and instead acknowledges that trans people include all people whose gender differs from that which was presumed for them at birth, including trans women, trans men and non-binary people, to ensure that all trans people (binary and non-binary) are protected
- Does not assume that pregnancy and lactation are characteristics that apply only to women
- Expands the definition of sexual harassment in line with the *Respect@Work* inquiry and ensures sex workers are adequately protected
- Is consistent with the NSW Anti-Vilification framework in the Crimes Act 1900 (NSW) (Section 93Z), and extends vilification protections to sex workers.
- Does not contain exemptions that allow for discrimination in faith-based services, especially health and social services
- Ensures that trans people have fair access to sport and superannuation

4. Ban conversion practices

ACON supports any move to end conversion practices, which are dangerous and discriminatory.

Conversion practices are generally employed to change, suppress or repress a person's sexuality or gender identity, practices or expression. Much of this practice is founded in faith-based beliefs which centre on the idea that gender and sexuality are not intrinsic to a person's character so are therefore 'fixable' or changeable, based on the notion that diverse sexualities and genders are 'wrong' or 'broken' and therefore rectifiable, or at the very least, suppressible.

These practices play out in a variety of ways, including promoting abstinence, denouncement or subordination of a person's sexuality or gender identity, and forms of psychological influence and manipulation, such as through 'gender exploratory' approaches that engage non-evidence based, long-term psychotherapy-only approaches in order to try and force a trans person, often a trans child, to declare a cis experience of gender. Despite a recent decline in formal conversion therapy organisations, these practices continue in religious settings where diverse gender and sexuality is viewed as abnormal or pathological, offering prayer and counselling to those who do not conform to a heteronormative cisgenderist ideology.⁶⁴

Such practices violate human rights, and cause real harm and trauma to its survivors, including ongoing acute experiences of distress, feelings of guilt and shame, internalised homophobia and transphobia, low self-esteem and self-hatred, anxiety, depression, substance misuse, and suicide ideation.^{65,66}

While there is limited to no data on the number of people in NSW subject to conversion practices, the Human Rights Law Centre estimates that around 10% of Australian LGBT people have been affected by these 'therapies' and messaging that eroded their mental wellbeing, causing ongoing trauma.⁶⁷ This has clear impacts on the health and mental health of the people subjected to these practices, and is therefore of deep concern to ACON.

People from sexuality and gender diverse populations are their most resilient, healthy, and mentally well when they are accepted and loved for who they are and can live as their whole selves. Reform that seeks to address harmful conversion practices will mean that fewer sexuality and gender diverse people are subject to traumatising practices that compromise their wellbeing.

Conversion practices are so damaging that they have been outlawed in Queensland, the ACT and Victoria, and there are ongoing calls for a federal ban.⁶⁸ In May, the Tasmania Law Reform Institute released a comprehensive report recommending amendments to address the harms from conversion practices in Tasmania to the following Tasmanian laws:

- *Mental Health Act*
- *Health Complaints Act*
- *Ombudsman Act*
- *Anti-Discrimination Act*
- *Civil Liability Act*
- *Criminal Code Act*⁶⁹

Victoria and the ACT introduced Bills specifically to address conversion practices, while Queensland introduced amendments to its Public Health Act, alongside existing protections in the Qld Human Rights Act.⁷⁰

The Equality Bill should consider the legislative instruments that could be introduced in NSW to ensure this practice is prevented as much as possible. As we understand it, a Human Rights Act is not being considered as part of the Equality Bill Process, but there are other options where legislative reform can be enacted to outlaw conversion practices, using the precedents set in other states, whether that be an act in and of itself, or amendments to a number of existing legislation. A complaints process with clear processes and guidance should also be part of this reform.

ACON defers to law reform experts such as our colleagues at Equality Australia over how reforms may be best enacted in the NSW context.

ACON strongly supports reforms to ban any and all conversion practices in NSW, and supports the development of clear processes and regulatory arrangements to provide guidance to community members who wish to bring a complaint.

5. Other LGBTQ health issues that may be improved through law reform

As a health organisation, ACON has approached this submission by considering the areas in which law reform could contribute to an improvement in the health of our communities.

It is for this reason we believe that the Equality Bill, or subsequent action from Mr Greenwich, represents an opportunity for reform related to drug laws, HIV stigma, parenting rights, and gender affirming care.

Drug law reform

In 2020, ACON produced a position paper regarding drug harm reduction and treatment.⁷¹ ACON has always advocated that drug use be considered a health and social issue, rather than a criminal one. Treating drug use as a health issue requires the review of laws and practices that criminalise personal use and possession of drugs. There is extensive evidence of the disproportionate harm that arises from a criminal conviction – and even unpaid fines – for personal possession or use of drugs.^{72,73,74}

We understand that Attorney General Mark Speakman is currently considering reform in this area.⁷⁵ We support reforms that remove criminal punishments **and fines** where a health intervention is more appropriate.

These reforms may precede the Equality Bill in terms of timing, so while this may not be an appropriate space for the Equality Bill to enact change, we would be grateful for your support of reform in this area and would be happy to meet with you to and discuss further.

Diversion into appropriate health interventions is not only a more useful response for the individual but has benefits across a range of health; family and community services; and criminal justice indicators. It is also far more cost effective.

Such a diversion is particularly of benefit to our communities, who consistently demonstrate higher levels of drug use than the general population. The latest National Drug Strategy Household Survey (NDSHS) revealed that cis lesbian, gay, and bisexual people were, in the last 12 months, 3.9 times as likely to have used meth/amphetamines, and 2.6 times more likely to have used ecstasy when compared to the general Australian population.⁷⁶ While the NDSHS did not survey trans people, data from Private Lives 3 reveals that trans people report similar levels of drug use to cis LGB people.⁷⁷

Our communities report higher use of illicit substances, and in addition have a slowly improving relationship to policing in NSW that is historically associated with police targeting, violence, abuse, corruption, and neglect^{78,79} and documented experiences of discrimination, and prejudice motivated violence in carceral settings.⁸⁰ It is therefore of huge benefit to our communities to consider ways in which drug use could be considered a health and social issue rather than a criminal one.

Outside of this submission, ACON has made a number of additional policy recommendations around alcohol and other drugs, including a consistent call for a funded whole of government NSW Drug and Alcohol Strategy where LGBTQ people are a priority population.

While ACON will continue to advocate for such policy reforms, we believe that there is an opportunity either within the Equality Bill, or in other future legislative processes to enact reforms to drug laws that will reframe drug use as health and social issue.

- ACON recommends that legislative changes are made to reduce the stigmatisation of people who use drugs, especially where those laws may not contribute to a reduction in drug demand, supply, or harm, including, but not limited to:
 - ending the use of drug detection dogs at events and venues,
 - decriminalising possession of all drug paraphernalia,
 - supporting the secondary distribution of sterile injecting equipment
- That recommendations from the *Special commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* are implemented in full, including recommendation 11: “That in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs, which includes the following elements:
 - removal of the criminal offences of use and possession for personal use of prohibited drugs
 - at the point of detection, prohibited drugs to be confiscated and a referral made to an appropriately tailored voluntary health/social and/or education intervention
 - no limit on the number of referrals a person may receive
 - no civil sanctions for non-compliance.”

Ending HIV Stigma

While we appreciate that it may be outside the scope of the Equality Bill, we also wish to draw your attention to existing legislation that hinders progress towards achieving NSW's goal to end HIV transmissions and HIV stigma, as per the *NSW HIV Strategy 2021-2025*.

Legislation in NSW needs to use de-stigmatising language. In order to end HIV stigma, our laws must lead by example and allow people living with HIV to be empowered rather than stigmatised. Equality Australia has audited NSW legislation to understand the extent of stigmatising language in NSW legislation, and we defer to their forthcoming second submission for where instances of this language occurs. Any references to "HIV/AIDS infected" or similar must instead refer to "HIV status" to reduce stigma.

ACON remains firmly opposed to the *Mandatory Disease Testing Act 2021*, which was adopted by the NSW Parliament in 2021 and is due to commence in June 2022. Granting police officers, and other government employees who have no public health qualifications, the power to force people to test for HIV is dangerous. This legislation is contrary to scientific evidence. It makes frontline workers less safe and perpetuates false beliefs about HIV and blood-borne viruses. We believe the impacts of this scheme should be monitored closely and will continue to advocate for its repeal.

To end HIV stigma, **changes to the *NSW Public Health Act 2010* should also be considered.** In NSW, a person with a sexually transmissible disease, including HIV, is no longer required by law to disclose that they have such a condition prior to sexual intercourse. Instead, 'a person who knows that he or she has a notifiable disease, or a scheduled medical condition, that is sexually transmissible is required to take reasonable precautions against spreading the disease or condition'.⁸¹ While this change was welcome when it was introduced in 2017, as it currently stands, this legislation puts the onus solely on the person living with HIV. This instead should be a **mutual responsibility principle**, where responsibility sits with all parties involved in the sexual intercourse, and is not penalised.

Current penalties associated with section 79 are disproportionate, overly burdensome on the person living with HIV, and not in line with public health principles. Acknowledging mutual responsibility without penalty ensures the safety of all parties.

ACON endorses HALC's submission in drafting this reform.

ACON recommends that the Equality Bill works to achieve the goals of the *NSW HIV Strategy 2021-2025* by:

- Ensuring NSW legislation does not use stigmatising language, referring to HIV status rather than "HIV/AIDS infected"
- Amending the *Public Health Act 2010 (NSW)* to ensure that reasonable precautions against spreading a disease or condition is the mutual responsibility of all parties involved in sexual intercourse, and does not attract a penalty.

ACON further supports continued monitoring of and efforts to repeal the *Mandatory Disease Testing Act 2021 (NSW)*.

Parenting rights

Families with LGBTQ parents can look similar, or very different, to traditional family structures that many NSW legislative frameworks are built around. This creates difficulties in recognising the parental rights of some people in our communities, and therefore must be rectified.⁸²

All families have the right to be recognised, protected, and access basic governmental services, including perinatal care that is safe, welcoming and inclusive.

ACON promotes healthy relationships in our Sexual, Domestic and Family Violence programs, and works to build healthy communities. Uneven institutional recognition – which occurs as a result of heteronormative cisgenderism,¹ – of our relationships and family structures¹ is a driver of family violence.⁸³ Reform is needed to dismantle drivers of violence that occur at the systems level, promote healthy relationships, and address family violence.

ACON is aware that Equality Australia is providing comment on parentage recognition following surrogacy in a forthcoming second submission, and we support their recommended reforms.

ACON supports legislative reform that improves the rights of parents in our communities.
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Gender affirming care for trans people under the age of 18

It is well established that gender affirming care improves mental health outcomes for trans people.⁸⁴

A recent study from a large sample of trans people in the US found that access to gender-affirming hormones, for those that desired this kind of care, greatly reduced suicidality and increased mental health. This was especially pronounced for those that were able to access gender-affirming hormones as adolescents.⁸⁵

In Australia, processes to access phases of gender-affirming care for trans people under the age of 18 are complex, and often governed by the Family Court and the *Family Law Act 1975 (Cth)*, and in NSW, additionally by the *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*.

As we understand it, since the 2013 ruling *Re Jamie*, stage 1 and stage 2 treatment (that is, puberty blockers and gender-affirming hormones) are now regarded federally as therapeutic treatment, rather than special medical treatment that requires court authorisation.⁸⁶ This has been complicated by subsequent rulings, particularly *Re Imogen* (2020), however, generally, treatment can commence when there is no dispute between parents, medical practitioners, and the young person.⁸⁷

These rulings interact in complex ways with NSW legislation under the *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)* and its definition of 'special medical treatment'.⁸⁸

¹ Heteronormativity is the perspective that sees heterosexuality as the only, preferred or 'normal' sexuality, and cisgenderism is a form of prejudice that denies, denigrates and/or pathologises non-cisgender identities and expressions.

NSW law should align with federal precedent to ensure a simplified process for young people to access forms of health care that are a documented protective factor against suicide. Given that 38% (almost 2 in 5) of trans young people aged 14-21 have attempted suicide, and 89% (almost 9 in 10) have experienced suicide ideation, any legislative change that can help to reduce these alarming statistics is urgently needed.

ACON recommends a review of the definition of 'special medical treatment' in the *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)* so that it aligns with federal precedent in order to simplify the process for young people in NSW to access gender affirming care.

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