



Submission to the Office of Alex Greenwich, Independent Member
for Sydney

A New Equality Bill for New South Wales

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Submitted by
Amnesty International Australia

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.

Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is impartial and independent of any government, political persuasion or religious belief and does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience - people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, sexual orientation, gender identity or sex characteristics. Amnesty International recognises the right to freedom of thought, conscience and religion as set out in Article 18 of the UDHR.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation, gender identity, sex characteristics, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status.

Amnesty International calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors.

Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Amnesty International is a proud People Powered movement founded on the work of volunteers and activists all around the country.

1. Background

Amnesty International Australia (AIA) welcomes the creation of an Equality Bill for NSW and appreciates the work of Alex Greenwich and his team as well as the tireless efforts of the LGBTQIA+ community to advocate for equality, dignity, justice and freedom.

At this time AIA does not have the capacity to write an in-depth submission in relation to the Equality Bill. AIA is a people powered movement which means that, with staff support, a large proportion of our activism is done by volunteers and activists. The last 5-6 years have taken a toll on our LGBTQIA+ activists, in particular, the need to write multiple submissions to defend our human rights has been exhausting. It is with some disappointment that we acknowledge we cannot give you a more detailed submission when we finally have a bill that aims to do something positive for our human rights.

In that context, we aim to outline our key recommendations in relation to protecting and promoting the human rights of LGBTQIA+ people in NSW. We have ongoing consultative mechanisms with many sections of our community, in particular, with groups that are mentioned in the Equality Australia submission. We are a part of the stakeholders network and meetings with Equality Australia and officially endorse their submission as a thorough and well consulted summary of changes needed to provide equality to the LGBTQIA+ community in NSW. We acknowledge the crucial and consultative work that Equality Australia have done in creating their submission.

We are committed to continuing to add a human rights perspective to any further consultative process undertaken for the Equality Bill.

2. Recommendations

The human rights of LGBTQIA+ people in NSW (or born in NSW) are not adequately protected by current NSW legislation and legal structures. This leads to discrimination, lack of access, impacts on wellbeing, inclusion, physical and mental health and serious human rights abuses. The NSW Government must take urgent action to address this situation.

AIA recommends that:

1. The NSW Government legislates a Human Rights Act or Charter for NSW, to ensure that fundamental rights are protected and appropriately balanced. The objective of the Act or Charter should contain as a minimum; right to recognition and equality, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practice religion and use their language), rights to education, right to access health care and the rights of children and adults in detention and in the criminal process;
2. The NSW Government establish a Human Rights Commission which has the powers to facilitate redress, conciliate, investigate, take civil action or prosecute human rights abuses and discrimination. This Commission should also have a positive role to provide education on human rights to people in NSW;
3. The Anti-Discrimination Act;
 - 3.1. The NSW Government repeal the current NSW Anti-Discrimination Act and replace it with an Act that effectively protects all people in NSW from discrimination, reflects international human rights standards and is in accord with Federal and other States' anti-discrimination legislation;
 - 3.2. Pending the NSW Government taking the above action, the NSW Anti-Discrimination Act must be updated, as a matter of urgency, as outlined in Equality Australia's submission;
4. The NSW Government undertake a comprehensive review of all NSW legislation and eliminate all other sources of discrimination against LGBTQIA+ people in NSW; and
5. AIA endorses the advice and recommendations of Equality Australia's submission.

3. Why we believe the Equality Act and other human rights reforms are crucial for NSW

NSW has the oldest Anti-Discrimination legislation in Australia and it is no longer fit for purpose. NSW also lacks a human rights act or charter. As such NSW lags behind the other states and the Commonwealth in its protections for LGBTQIA+ people. The Equality Act is an attempt to address these legal issues at a time when it is desperately needed. AIA knows that legal inequality or lack of access to human rights protections have very real impacts on the lives of LGBTQIA+ people in NSW (or those born in NSW).

LGBTQIA+ people in NSW need the same human rights and legal protections as other people in NSW and need the same access to services. This is not currently the case. This situation has an impact on the wellbeing, physical and mental health, access to healthcare, education, work and accommodation, access to goods and services, recognition and the bodily autonomy of LGBTQIA+ people in NSW.

Of particular concern is the lack of protections and mechanisms to prevent the ongoing egregious human rights violations of unnecessary or deferrable, non-consensual surgeries and medical interventions on children and young people with variations of sex characteristics (intersex people). These medical interventions as well as other forms of inequality experienced by intersex people must be addressed in line with the recommendations of the Darlington Statement and in consultation with intersex lead organisations such as Intersex Human Rights Australia (IHRA).

Also of particular concern is the discrimination and prejudice (both within legal structures and in our society) against trans and gender diverse people. This impacts all areas of trans and gender diverse people's lives and has a profound impact on health and wellbeing as well as access to identity documents, work, education, sporting activities, superannuation, accommodation, goods and services and access to affirming healthcare. Trans and gender diverse led organisations must be involved in the co-design of any legal changes to eliminate these forms of discrimination and inequality.

NSW does not currently have a mechanism to prevent, ban or address the impacts of sexual orientation and gender identity conversion practices. Conversion practices have a long term and generally destructive impact on the mental health and wellbeing of those who experience them. NSW urgently needs to protect LGBTQIA+ people from these significant harms. Legal and other mechanisms to address conversion practices must be co-designed with conversion practices survivor groups, including SOGICE Survivors.

LGBTQIA+ children and young people and those in rainbow families have a right to and need protection. Children and young people must have equal protections under the law and must be able to confidently access education, health services, accommodation, out of home care and the community in general without experiencing the impacts of discrimination and prejudice. NSW must address the legal inequalities that allow discrimination against LGBTQIA+ children and young people and those in rainbow families as well as children and adults participating in adoption

processes. Similarly the law must also protect LGBTQIA+ vulnerable adults, including those with disability, mental illness and chronic illness and those in aged care, detention and correctional facilities.

NSW laws allow a broad range of discrimination justified by religious belief which has a significant impact on the LGBTQIA+ community. These laws extend this legalised discrimination to both people crucial to the expression of a religion (such as ministers of religion) and to large organisations providing goods, services and accommodation to the public (such as welfare providers, adoption providers and hospitals run by religious organisations). NSW laws must be amended so that this widespread ability to discriminate against LGBTQIA+ staff, students and those receiving services is eliminated.

The *Anti-Discrimination Act (ADA)* must be urgently updated or replaced to ensure all of the LGBTQIA+ community are protected. Updates including changing the protected attributes to sexual orientation (so it includes bisexual, pansexual and asexual people), changing the protected attribute to gender identity (so it includes gender diverse and non-binary people) and adding a protected attribute of sex characteristics (so it includes intersex people) is an urgent necessary step.

The Equality Act, a Human Rights Act, a Human Rights Commission and a re-drafting of the Anti-Discrimination Act should allow NSW LGBTQIA+ communities equal protections under the law. This would go a long way to improve the health and wellbeing of these communities and start to remove the stress of being second class citizens in NSW.

The Equality Australia submission further details the discrimination and inequality faced by LGBTQIA+ people in NSW. We endorse their analysis of these issues and the recommendations in their submission.

4. A Human Rights Act or Charter for NSW

AIA holds the strong position that the only feasible way to protect the human rights of people in NSW is a Human Rights Act or Charter of Human Rights and Freedoms. This Act or Charter would protect the rights of all people in NSW within a framework that ensures that all people's rights are universal and indivisible. It would, for example, ensure that any oversight body established to protect people with innate variations of sex characteristics in medical settings, must consider human rights when making decisions. This is a crucial step in preventing the ongoing serious human rights violations of unnecessary, non-consensual surgeries on intersex children and young people.

In a situation where one person's accessing of their rights impacts or impinges on another person's ability to access their rights, an Act or Charter would fairly balance these rights. The Universal Declaration of Human Rights allows for rights to be balanced with each other so that no one human right outweighs another. A Human Rights Act for NSW would, for example, allow the fair and appropriate balancing of the right of a person to hold a religious belief and the rights of LGBTQIA+ people to live free from discrimination.

AIA notes that the experience of the human condition is intersectional. Notwithstanding that the focus of the proposed Equality Bill is protection of the human rights of LGBTQIA+ people, AIA believes that this is an appropriate time for the NSW Parliament to pass a Human Rights Act or Charter to properly protect the human rights of all people in NSW.

5. A Human Rights Commission for NSW

If a Human Rights Act or Charter is enacted, it would be appropriate for a properly funded Human Rights Commission to be established to accept complaints of human rights breaches. This commission must have sufficient legislative authority to facilitate redress, conciliate, investigate, take civil action or prosecute human rights abuses and discrimination. The lack of a Human Rights Commission in NSW is a significant barrier to establishing an effective mechanism to deal with the serious and pervasive harms caused by conversion practices.

Additionally, a Human Rights Commission should have a role in educating the public on human rights and encouraging all people in NSW to respect the human rights of others.

6. Review of the NSW Anti-Discrimination Act

AIA agrees with the criticisms of the *Anti-Discrimination Act* (ADA) made by Equality Australia in its submission. AIA has some doubts as to whether the extensive amendments proposed would be sufficient to resolve the current inadequacies. If the current ADA is amended (rather than repealed and re-written), it should be updated in line with the recommendations of Equality Australia's submission.

Repealing the current ADA and redrafting a new ADA would allow a more equitable, functional and precise legal framework to be drawn up and utilised to protect against discrimination in NSW. It would also allow for more accurate and appropriate definitions of current protected attributes and for the addition of attributes which are not currently protected, such as those described in Equality Australia's submission.

Any changes to the NSW ADA (amendments to current legislation or drafting of new legislation), should include the addition of a positive duty to eliminate discrimination, sexual harassment and vilification and include provisions against hate-based conduct.

7. Review of other NSW legislation

Additional NSW legislation will need to be reviewed and updated to eliminate other sources of discrimination against LGBTQIA+ people in NSW. In particular to address the broad provisions that allow religious organisations to discriminate in ways that are not essential (such as the broad powers to discriminate in employment, education and the delivery of services). These changes need to be carefully balanced to ensure that a person's right to hold a religious belief is maintained and that there are appropriate exemptions in place so that religious organisations can still select and appoint people of their faith to roles that are crucial to the faith (such as ministers of religion). These changes are outlined in more detail in the Equality Australia submission.

8. Endorsement of the recommendations of Equality Australia submission

AIA is aware of the ongoing and thorough nature of Equality Australia's community consultation and research in relation to LGBTQIA+ communities. The outcomes of Equality Australia's consultations reflect our own and we have reviewed and agree with the recommendations contained in their submission.

AIA formally endorses the submission of Equality Australia.

Thank you for the opportunity to participate in this consultation. Should you require further information, or to organise a meeting, please contact Ry Atkinson at ry.atkinson@amnesty.org.au or on 0423 270 124.