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The Hon. Michael Daley MP

Attorney General

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**By email:** [office@daley.minister.nsw.gov.au](mailto:office@daley.minister.nsw.gov.au)

18 September 2023

Dear Attorney-General

**Re: Alex Greenwich's Equality Legislation Amendment (LGBTIQA+) Bill 2023**

Feminist Legal Clinic Inc. is a community legal service established to advance the human rights of women and girls. We are also the Australian country contact for Women's Declaration International.

We refer to our recent meeting with your Chief of Staff, Mr Phillip Kelly, who invited us to send a letter raising our concerns with self-declaration of sex and other amendments proposed by Alex Greenwich's *Equality Legislation Amendment (LGBTIQA+) Bill 2023*.

The scope of the amendments proposed by Mr Greenwich is too broad to be properly addressed and debated in a single legislative instrument. We suggest the Labor Government opposes the Bill in its entirety. The amendments proposed are not only lacking in merit, but pose a substantial threat to the human rights of women and children. We expect the Government will, at the very least, vote to refer the Bill to a parliamentary committee for consideration and extended public consultation before debate commences in the House on any of these proposed amendments.

In the attached submission we provide brief details of our specific concerns in relation to each of the amendments proposed by Mr Greenwich.

We would be very happy to meet in person or otherwise expand on any of the concerns identified in the attached document.

Yours faithfully

Anna Kerr

Principal Solicitor

Feminist Legal Clinic Inc.

*Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.*

CC:

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### **Feminist Legal Clinic's Submission on Alex Greenwich's Equality Legislation Amendment (LGBTIQA+) Bill 2023**

#### **Schedule 1 - Amendment of Anti-Discrimination Act 1977**

We understand from Mr Philip Kelly, that Mr Greenwich's amendments relating to the *Anti-Discrimination Act* will not be considered by Parliament until the NSW Law Reform Commission has completed its review. We have significant concerns regarding these proposed amendments but will make a submission to that review and not address that topic further in this submission.

#### **Schedule 2 - Amendment of Births, Deaths and Marriages Registration Act 1995**

Mr Kelly indicated that the Government does not have a settled position in relation to the proposed amendments to the *Births, Deaths and Marriages Registration Act 1995* (NSW). These amendments will permit applicants over the age of 16 to alter the sex marker on their birth certificate on provision of a statutory declaration and a supporting statement from a person who has known them for 12 months (sex self-identification). Parent(s) can apply to register such a change, with evidence of counselling, for children under the age of 16. Non-parent guardians or children without parental support can apply to the NSW Civil and Administrative Tribunal to register a change, with the decision to be made 'in the best interests' of the child.

Birth certificate sex markers can be 'male', 'female', or any other permitted sex descriptor, such as 'non-binary'.

Sex self-identification creates a 'legal' sex category that deliberately obfuscates the understanding of 'sex' as an immutable biological reality and thereby entirely compromises the sex-based rights of women and girls. This is a matter that has a fundamental and devastating impact on the human rights of women and girls, and we urge the Government to strongly oppose these proposed amendments.

Sex self-identification at law facilitates the fraudulent 'sex change' industry and must be strongly opposed unless the NSW Government wishes to be dragged further into the global scandal that is currently unfolding. Sex is binary and aside from some provision for those rare individuals with intersex conditions, there is no need to allow for unlimited descriptors of sex on official documents. The suggestion in this Bill that "agender, genderqueer and non-binary" are appropriate sex descriptors should alert all parliamentarians to the extreme and nonsensical nature of the amendments proposed by Mr Greenwich.

Not only should the NSW Government not pass provisions allowing for the alteration of sex descriptors on birth certificates based on self-declaration, but they should consider repealing the existing provisions that allow for alteration of sex where an individual has undergone a so-called ‘sex affirmation procedure’. The suggestion that it is possible to change sex by undergoing surgery, let alone by self-declaration, offends both scientific understanding and common sense.

Further, the misconception that it is possible to change sex is causing significant harm to young and vulnerable people. There is nothing kind or compassionate about encouraging delusional thinking that results in substantial injury to young people struggling with relatively common adolescent anxieties about their bodies and their identities.

Provisions allowing for the alteration of children’s sex only encourages proponents of an agenda that, at its most extreme, resembles a Skoptsy castration cult. It is important to be aware that the WPATH Guidelines heavily relied upon by health practitioners conducting these interventions have been drafted by individuals with some very questionable connections.

Legislation plays an important educative role, and it is urgent that the NSW Government acts to reverse the harm it put in train with the provisions introduced in 1996 allowing for change of sex on birth certificates.

While we understand that other Australian jurisdictions and various countries around the world have been similarly afflicted with gender mania, the tide is now turning on the issue of medical and surgical interventions for gender non-conforming children and young people. Some jurisdictions have banned these interventions and others have limited them to carefully controlled clinical trials. This Bill is an opportunity for the NSW Labor Government to respond in a way that demonstrates leadership rather than having its policy dictated by an extreme and dangerous lobby.

### **Schedule 3 - Amendment of Children and Young Persons (Care and Protection) Act 1998**

‘Gender’ is a socially constructed concept based on stereotypical notions of femininity and masculinity. While the term has in the past been used as a euphemism for ‘sex’, it is essential to avoid legislative conflation of the evolving concept of ‘gender’ or ‘gender identity’ with ‘sex’, which relates to a fixed biological reality. The Government should oppose amendments requiring the inclusion of definitions for ‘gender identity’ or ‘transgender person’ in legislation. This makes about as much sense as including a definition of ‘femininity’ or ‘masculinity’. Gender ideology does not liberate men and women from sex-based reality but instead imposes new socially constructed constraints.

The Government must strongly resist Mr Greenwich’s proposed amendments as they will further expose children to fraudulent and harmful ‘gender affirming’ medical and surgical interventions. A young person is clearly more vulnerable than adults and even adults are unduly influenced by those wielding medical authority, not to mention legislative approval. Those medical professionals poised to deliver these life altering interventions are not to be trusted to determine a young person’s best interests and their capacity to consent, since they are likely to have conflict of interest in the matter.

Mr Greenwich proposes to ‘legislate Gillick competence’ by amending the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to provide that ‘a young person who is 16 or over is able to make a decision about their own medical and dental treatment as validly and effectively as an adult’, subject only to the standard requirements for informed consent. The notion of the ‘mature minor’ put forward in *Gillick* was premised on young people having ‘a sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law’.

Given the wealth of research demonstrating that human executive function is not fully mature until the age of approximately 25 years, it is entirely plausible that a 16-year-old will not be capable of ‘sufficiently’ understanding the impact of medical and surgical interventions that will likely render him or her infertile or sterile, and incapable of adult sexual function. In fact, the full health and developmental consequences of medical and surgical transition commenced in adolescence are entirely unknown. To legislate for the ability of a 16-year-old to fully understand and consent to these consequences is dangerous in the extreme.

The WPATH Guidelines which have been widely relied upon by health professionals engaged in ‘gender affirming’ medical interventions have now been discredited as having an insufficient evidence base. Investigation of individuals involved in the development of these guidelines has shown connections to paedophile groups and castration cults.<sup>1</sup> The Government must decline amendments that will otherwise embroil the state in an emerging global scandal.

#### **Schedule 4 - Amendment of Children’s Guardian Act 2019**

The proposed amendment should be opposed. Since ‘variations of sex characteristics’ are unlikely to be visible, this amendment could conceivably open the way for intrusive and inappropriate examinations of children placed in care.

#### **Schedule 5 - Amendment of Court Security Act 2005**

These amendments open the way for female security staff to be compelled to conduct personal searches of males who identify as women. They must be opposed.

#### **Schedule 6 - Amendment of Crimes Act 1900**

The proposed amendment to the *Crimes Act 1900* (NSW) to add sex workers to a list of those deemed worthy of protection from threats or incitement of violence is piecemeal and inadequate. Surely it must be an offence to publicly threaten or incite violence against any person or group of persons?

For example, there are many public threats currently being made against women advocating for their sex-based rights, with ‘Kill TERFs’ a popular rallying cry among those who support Mr Greenwich and his agenda. If anything, we would recommend that this list should be amended with the addition of ‘feminists’ as a protected group,

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<sup>1</sup> <https://reduxx.info/top-academic-behind-fetish-site-hosting-child-sexual-abuse-fantasy-push-to-revise-wpath-guidelines/>  
<https://genevievegluck.substack.com/p/castrating-children-in-the-service>

as those advocating for women's liberation have been hunted and attacked throughout history.

In terms of protecting women from the perils of prostitution, we would recommend that the NSW Government instead introduce the Nordic Model adopted by many countries around the world. Legislation along these lines is currently under consideration by the South Australian Parliament.

#### **Schedule 7 - Amendment of Crimes (Administration of Sentences) Act 1999**

Again, these amendments open the way for female staff to be compelled to conduct intimate searches of males who identify as women.

It is our experience that females who identify as men would still prefer to be searched by a woman rather than a man. This amendment caters to the wishes of trans identifying males only, while ignoring the rights of female staff and should be opposed.

#### **Schedule 8 - Amendment of Crimes (Domestic and Personal Violence) Act 2007**

The Government must strongly oppose amendments to include 'threats to out a person' as a form of domestic violence. This domestic violence legislation was originally intended to protect women from male violence. However, increasingly it is being weaponised by men and unfairly used against women. These amendments are designed to further constrain women from voicing objections to emotional abuse by males and will effectively silence 'trans widows' and other women suffering from their male partner's unbridled sexual indulgences. Expanding the list of specific topics on which harassment is to be regarded as domestic abuse is also counter-productive in terms of protecting women from male cruelty. This legislation will work to further constrain women from objecting to their male partner's illicit sexual behaviour rather than keeping women and children safe from violence and abuse in keeping with the objects of the legislation.

#### **Schedule 9 - Amendment of Crimes (Forensic Procedures) Act 2000**

The proposed definition of 'private parts' does not add anything to the existing definitions in the legislation which already take account of the needs of transgender individuals.

The proposed definition of 'transgender person' also adds nothing other than to use the words "different sex" rather than "opposite sex" to further obscure the reality that there are only two sexes.

The remaining amendments similarly are an effort to obscure the binary nature of human sex and to open the way for female staff to be compelled to conduct forensic procedures on male suspects.

#### **Schedule 10 - Amendment of Crimes (Sentencing Procedure) Act 1999**

It is proposed to amend this legislation to introduce prejudice or hatred based on gender identity or variations in sexual characteristics as aggravating factors to be considered in sentencing for a criminal offence. This amendment is unnecessary as

the list of attributes provided in the legislation is not intended to be exhaustive. If gender identity is to be added, then sex must also be added to capture the many violent crimes that are fuelled by misogyny.

### **Schedule 11 - Amendment of Drug Misuse and Trafficking Act 1985**

This amendment is insignificant and unnecessary. We note that the World Health Organisation still refers to HIV as an infection on its website.

### **Schedule 12 - Amendment of Government Sector Employment Act 2013**

This amendment is unnecessary. The definition of ‘workforce diversity’ is not intended to be exhaustive and there is no advantage in expanding the list in the manner suggested.

Efforts to mandate ‘gender affirming leave’ should also be strongly opposed. Are leave arrangements going to be extended to all cosmetic procedures and body modifications desired by those dissatisfied with their appearance?

If these amendments are passed, men wanting breasts will be given greater priority and more generous leave entitlements than women seeking reconstructions following breast surgery for cancer.

### **Schedule 13 - Amendment of Government Sector Employment (General) Rules 2014**

This is another unnecessary amendment to expand a list that is not intended to be exhaustive in the first place.

### **Schedule 14 - Amendment of Interpretation Act 1987**

We suggest that the term ‘gender’ should be dispensed with altogether in legislation and replaced instead with the more precise term ‘sex’ to avoid ongoing confusion.

### **Schedule 15 - Amendment of Law Enforcement (Powers and Responsibilities) Act 2002**

Again, these amendments are unnecessary and primarily aim to replace the words ‘opposite sex’ with ‘different sex’ to obscure the binary nature of human sex. Other provisions proposed open the way to compel female staff to conduct searches of male suspects.

### **Schedule 16 - Amendment of Mental Health Act 2007**

We do not support this amendment. We believe that the desire to take hormones and surgeries in a misguided effort to change sex is an example of mentally disordered thinking and appropriate mental health treatment should not be prevented.

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**Schedule 17 - Amendment of Sheriff Act 2005**

These amendments again attempt to obscure the binary nature of sex and compel female staff to conduct personal searches of males who identify as women and should be opposed.

**Schedule 18 - Amendment of Summary Offences Act 1988**

We support the repeal of Part 3 on Prostitution insofar as it creates offences for which exploited women may be prosecuted. However, we do not support the repeal of those provisions which criminalise pimps, traffickers, brothel owners and clients of prostitution.

We support the repeal of this section if it is to be replaced with provisions implementing the Nordic Model such as the Bill recently introduced in the South Australian Parliament.

**Schedule 19 - Amendment of Surrogacy Act 2010**

I note Mr Kelly's assurance that the Government does not intend to revisit the subject of surrogacy since it was reviewed recently and the Labor Government will therefore not entertain Mr Greenwich's proposed amendments on this topic. Our position is that the existing prohibitions against commercial surrogacy need to be more rigorously enforced rather than reduced in the manner proposed by Mr Greenwich. The involvement of dozens of Australian couples in the recent scandal in Greece is evidence of the urgent need for Australian Governments to begin enforcing our laws in this area.

**Schedule 20 - Amendment of Workers Compensation Act 1987**

As for Schedule 11, these amendments are insignificant and unnecessary. We note that the World Health Organisation still refers to HIV as an infection on its website.

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