

12th April 2024

Legislative Assembly Committee on Community Services
Parliament of New South Wales
6 Macquarie Street
Sydney, NSW, 2000

By email: communityservices@parliament.nsw.gov.au

Dear Legislative Assembly Committee on Community Services,

Re: Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW) Review

We thank you for the opportunity to provide feedback on the *Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW)* ('*Equality Bill*'),¹ which we support and recommend be passed by the NSW Parliament. In addition to the comments provided below, which relate to the Bill as it proposes to affect people living with HIV (PLHIV), we would like to endorse the submission of Equality Australia, which speaks to the broader benefits of the Bill for the LGBTIQA+ community at large. We also support the submission of ACON, including their commentary of the ways in which the Bill could go further to support the LGBTIQA+ community.

About us

HIV/AIDS Legal Centre (HALC) is the only not-for profit, specialist community legal centre of its kind in Australia. HALC provides free and comprehensive legal assistance to people with HIV or hepatitis-related legal matters. Community legal education and law reform activities are also carried out in areas relating to HIV and hepatitis.

Positive Life NSW (PLNSW) is the voice of all people living with HIV in NSW and the largest community-based representative organisation by and for all people living with HIV in Australia, based in NSW. PLNSW offers information, referral and advice on all relevant issues with the aim of ensuring the optimum well-being, care and support for the Body Positive including our friends, family and carers across NSW.

HALC has a particular interest in equality and non-discrimination, with a deep understanding of the stigma and exclusion that continues to affect PLHIV and LGBTIQA+ communities. HALC has represented clients in discrimination matters nationwide. This has included representation at the NSW Anti-Discrimination Board, the NSW Civil and Administrative Tribunal, the Queensland Human Rights Commission, the Equal Opportunity Commission – Western Australia, the South Australian Civil and Administrative Tribunal, the full court of the Federal Court of Australia, the Supreme Court of NSW, the Fair Work Commission and

¹ *Equality Legislation Amendment (LGBTIQA+) Bill 2023 (NSW)* ('*Equality Bill*')

the Australian Human Rights Commissions. These cases have related to clients who have been discriminated against by employers, health care workers and other service providers, amongst other organisations and bodies.

Addressing Threats and Violence

We welcome the reforms which make threats to disclose a person's HIV status without their consent a form of domestic abuse,² as well as a potential form of violence for the purposes of an apprehended violence order (AVO) or apprehended personal violence order (APVO).³ Also representing steps forward are the changes allowing AVOs to impose a restriction on someone from disclosing another's status,⁴ and requirement for a court to consider whether the defendant has engaged in harassment of a PLHIV in deciding whether to refer a matter to mediation.⁵

These changes recognise that PLHIV are at risk of unique forms of personal violence which have distinctive and potentially wide-ranging impacts on their lives. They will help protect PLHIV from unwanted disclosure and such impacts in future. 'Outing' of status is something we see frequently in our practice, and which occurs in a variety of settings, including PLHIV's personal lives, workplaces, or healthcare settings.

Both our agencies often see clients where the primary form of violence they are experiencing from someone is a threat to disclose but this is inadequate to constitute the grounds for an AVO or APVO. There are circumstances where they have either gone to the police seeking the order and it is refused or been too scared to go to the police, leaving a private order their only option, which has cost implications should it be unsuccessful and is difficult to navigate without legal representation.

These amendments are complemented by the introduction of an offence for threatening or inciting violence towards another person or group on the grounds of whether they have HIV or AIDS through a public act.⁶ Whilst such behaviour may have already met the elements of the existing offence of assault, creating a standalone offence encourages police to take action on something that historically police are hesitant to get involved in.

More Inclusive Language

Another important amendment made by the *Equality Bill* is the removal of stigmatising provisions affecting PLHIV. The Bill proposes removing archaic and discriminatory language such as 'infected' or 'suffering from' HIV or AIDS from NSW legislation referring to HIV/AIDS.⁷ This is an important step towards a more inclusive and enabling legal

² Ibid sch 8[2].

³ Ibid sch 8 [3]-[4].

⁴ Ibid sch 8[6].

⁵ Ibid sch 8[5].

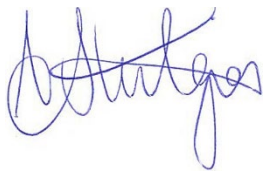
⁶ Ibid sch 6[3].

⁷ Ibid sch 1[21], [36]-[37], sch 6 [1]-[3], sch 8 [5], [7], sch 11, sch 20 [1]-[7].

environment for PLHIV, helping to dispel common misconceptions surrounding HIV as well as associated stigmatisation.

Once again, we thank you for the invitation to make a submission on the *Equality Bill* and recommend it be passed. If you would like additional information in relation to this submission, please feel free to contact Bethany Rodgers at beth@halc.org.au.

Yours sincerely,



Alexandra Stratigos
Principal Solicitor
HIV/AIDS Legal Centre



Jane Costello
CEO
Positive Life NSW