AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

15 August 2025

Submission
Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct

Summary

Australian Feminists for Women's Rights (AF4WR) welcomes the opportunity to provide input into this review by the NSW Law Reform Commission of the NSW Anti-Discrimination Act 1977 (the ADA). We are a feminist group of the broad political left (i.e. not specifically aligned to any party), whose objective is research-based advocacy on women's sex-based rights.

In this submission we briefly address some of the questions in the consultation paper relating to the impact of discrimination and vilification of women and girls, with particular regard to the impact of legal recognition of the unprovable concept of 'gender identity' on sex-based rights.

More broadly, we draw the Commission's attention to the passage of the NSW Equality Act in 2024, after this review was announced. This is a regressive and dangerous Act which removes the right of women and girls to single-sex spaces, services and sport. Instead, it enshrines in law the concept of sex 'self-ID' by allowing anyone in NSW to obtain a new birth certificate recording their sex as anything they want it to be, rather than their sex determined in utero and observed at birth.

This creates the legal fiction that males can become 'female' simply by the issuing of a new document. In effect, the concept of 'sex' is now meaningless in NSW law. This presents a significant challenge in considering how the ADA should be amended to protect women and girls against sex-based discrimination while ensuring the sex-based exceptions to discrimination that allow for single-sex spaces and services are fit for purpose. A revised Act should clearly and unambiguously set out the principle that 'actual sex' – that is, sex in the biological sense – must take precedence over the concept of 'legal sex' and the even more nebulous concept of 'gender identity.' There is, after all, little point in legislating against sex-based discrimination and harassment if 'sex' is not clearly defined.

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Answers to specific consultation questions

3.8

1. Should the ADA protect against intersectional discrimination? Why or why not?

2. If so, how should this be achieved?

AF4WR recognises and supports the concept of intersectionality as outlined by Kimberle Crenshaw. Intersectionality recognises that people can experience discrimination and oppression based on a number of factors – for example, an Indigenous woman can experience discrimination because of the combined impact of both her sex *and* her race. We support this being recognised in the ADA with additional protections for people with more than one protected attribute.

However, in recent years the term intersectionality has been misused in both activist and institutional discourse to mean the inclusion of men who 'identify' as women in the spaces and protections offered to females. AF4WR rejects this concept and urges the Government to carefully consider any unintended consequences of including males in the category of female for the purposes of protection from discrimination and vilification. No man has ever been discriminated against for being female.

4.4

What changes, or any, should be made to the way the ADA expresses and defines the protected attribute of homosexuality?

There has been a move in recent years in Australian law to replace the term 'homosexuality' – meaning same-sex attracted – with 'sexual orientation.' This is a broad term that encompasses not only homosexuality, but heterosexuality as well as a range of other so-called sexualities including asexual, demi-sexual and pansexual.

In AF4WR's view these other sexual orientations are not at risk of discrimination or vilification and therefore do not need to be added as protected attributes. The term 'homosexuality' should thus remain.

People who are bisexual face discrimination due to being attracted to members of the same sex as well as the opposite sex, and could reasonably be protected in the Act under the attribute of homosexuality.

4.7

(1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of "sex"?

The consultation paper refers to the Australian Government's *Guidelines on Sex and Gender's* definition of sex as "the chromosomal, gonadal and anatomical characteristics associated with biological sex." AF4WR supports this definition, which is based on fact, with one caveat as outlined below. Furthermore, we point out that sex is determined in utero, is fixed, and is binary. There are only two sexes and no one can physically change their sex. A person of the female sex is a woman or girl; a person of the male sex is a man or boy. The review may wish to consider the recent judgement of the UK Supreme Court which confirmed these definitions. As a result we oppose suggestions to remove the words male and female from the Act.

AF4WR strongly opposes suggestions from some sections of the community that sex be replaced in the ADA with 'gender.' The guidelines refer to gender as "the way a person feels, presents and is recognised within the community." Feelings and fashion choices do not need legal protection from discrimination, and the term 'gender' does not have a common understanding in the community in the way that sex does, with some people using it to refer to 'gender identity' while others use it interchangeably with 'sex.'

The overwhelming problem with this area of the Act is the recent passage of the NSW Equality Act which means people can legally change their sex descriptor on their birth certificate through a simple administrative process. We are now in the ludicrous position where a man can become legally 'female' through filling in a form. Any man who does so is not in fact female and does not need protection from sex discrimination. It is unclear how this will be addressed in the review of the Act.

Our submission is that a revised Act needs to clearly articulate that sex means 'sex at birth', regardless of any later legal changes to a person's birth certificate; and that a woman is a member of the female sex, while a man is a member of the male sex.

(2) Should the ADA prohibit discrimination based on pregnancy and breastfeeding separately from sex discrimination?

Only women – members of the female sex – can experience pregnancy and breastfeeding. These are already protected in the ADA under the protected attribute of sex, and the Act also makes clear that if women are provided with special measures during pregnancy and breastfeeding, this does not amount to discrimination against men who do not receive these measures. It is hard to see why a separate category is needed, and any move to do so could potentially open up a pathway for transgender identifying males who induce dangerous artificial lactation to be protected under a measure meant to provide protection for breastfeeding mothers.

4.8

What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of "transgender grounds"?

The ADA currently defines a transgender person as someone who 'identifies or lives as the opposite sex.' It is important to point out two things: no one can 'identify' as something they are not, and no one can 'live' as a member of the opposite sex. A man who wears 'feminine' clothes or makeup, who changes his name, takes cross-sex hormones or even has surgery is still a man who is presenting in what he views as a 'womanly' way to the world. His sex is unchanged, and women should not be forced by law to treat him as anything other than male.

It is AF4WR's view that transgender status does not need to be a separate protected attribute under the ADA. Everyone has a right to dress and present how they want. If a man in 'women's clothes' is discriminated against in a public place, he is being treated differently from other *men,* i.e. on the basis of his sex. Therefore, he would be protected under the Act under the attribute of sex.

However, if 'transgender grounds' remains an attribute, it is AF4WR's submission that the definition should remain unchanged. We are strongly opposed to the inclusion of 'gender identity' in the ADA. Gender identity is an unscientific, unproven and unverifiable concept that is based on regressive stereotypes of how women and men should dress and behave. It covers a range of nonsensical identities such as non-binary, genderqueer, gender diverse and agender. Regardless of how individuals feel about themselves and their bodies, they are still only ever male or female. Laws should be based on facts, not feelings. Furthermore, AF4WR has found no evidence of a person being discriminated against in employment or any other public sphere because, for example, they use 'they/them' pronouns. Given there is no systemic or historic oppression or discrimination against people claiming a special gender identity, there is no need for their identity to be protected.

5.2

(1) Should any protected attributes be added to the prohibition on discrimination in the ADA? If so, which what should be added and why?
(2) How should each of the new attributes that you have identified above be defined and expressed?
(3) If any of new attributes were to be added to the ADA, would any new attribute specific exceptions be required?

Understanding the biological reality of sex, and that women and girls face sex-based discrimination and therefore need sex-based rights and protections, is arguably not a 'political' belief but a simple matter of fact. Nonetheless, women in Australia and elsewhere have been discriminated against, have lost jobs, and have been vilified in public for speaking out about the reality of sex-based oppression and the loss of single-sex spaces due to the ideology of gender identity. For example, Victorian MP Moira Deeming won a defamation action after being publicly labelled a Nazi for attending a women's rights rally.

Members and supporters of AF4WR tell us they are worried that if they speak publicly about the impact of gender identity ideology they could lose their jobs. Judgements such as Tickle v Giggle and Clinch v Rep have had a chilling effect on women's right to express their concerns openly. In Tasmania, Hobart City councillor Louise Elliot was discriminated against by council staff who blocked her from using a council venue to host a women's rights event.

Political beliefs/opinions should therefore be added as a protected attribute under the ADA. No one should lose their job or be taken to court for stating that sex is real and transgender women are male. An exception would need to be made for workplaces or organisations based on political belief or activity – it is reasonable to expect a person working for a political party would support the platform of that party, for example.

AF4WR supports the suggestion on page 92 of the consultation document that protection against discrimination be extended to victim-survivors of family violence, who are overwhelmingly women.

6.3

(1) What changes, if any, should be made to the definition and coverage of the protected area of "education"?

(2) What changes, if any, should be made to the exceptions relating to: (a) single-sex educational institutions, and (b) disability and age discrimination in educational institutions?

AF4WR notes on page 104 of the consultation paper that Equality Australia has argued that the exception for single-sex schools "should clearly state that it does not allow discrimination against transgender students." We disagree: it is not discrimination to ensure that only female students are enrolled in a single-sex school for females, i.e. a girls' school. In fact, it is the expectation of parents and carers that a girls' school will not enrol boys, regardless of their identity. If a boys' school refused to enrol a boy who 'identifies' as a girl, that is where discrimination would apply. The Act needs to clearly state that single-sex schools have an exception to allow them to enrol only students of that sex, and that they cannot discriminate against a student of that sex who may claim an identity as the opposite sex.

7.6

(1) Should the ADA contain exceptions for private educational authorities in education? Should these be limited to religious educational authorities?

AF4WR oppose exceptions for religious schools that allow them to discriminate against same-sex attracted people, either by refusing to hire homosexual teachers, or refusing to enrol gay or lesbian students.

7.7

Should the ADA provide exceptions to discrimination or vilification in sport? If so, what should they cover and when should they apply?

AF4WR supports the current exceptions in the ADA which allow sporting organisations to discriminate against members of one sex in order to allow members of the other sex to fairly compete. Women and girls deserve their own sporting competitions free from men and boys, regardless of how those males identify. We strongly oppose any suggestions that the exception be watered down or restricted in any way – for example, by only applying to those aged 12 and over, to competitive sport or to sport where physique and stamina are important.

Regardless of whether the sport is rugby, swimming, snooker or chess, women and girls deserve their own categories. Participation in sport is declining among Australian girls, and we cannot support any measure that would risk further reducing participation because girls understandably do not want to compete against, or share changerooms with, men or boys. There are numerous examples of transgender identifying men winning female sporting competitions or taking the place of women and girls on sports teams (see our website for more information). Fairness and safety need to be prioritised over 'inclusion.'

People who identify as transgender have the same right to participate in sport as everyone else, either in their sex category or in a mixed sex category.