

NSW Law Reform Commission – Anti- Discrimination Act 1977 (NSW) review

PRELIMINARY SUBMISSION

JOËL MURRAY, PRINCIPAL CONSULTANT, NEOPHILE

This preliminary submission was written on Wangal and Gadigal Country. The author(s) acknowledge the Wangal and Gadigal Peoples as the Traditional Owners and Custodians of these lands, waterways, and skies, whose sovereignty was not ceded nor extinguished.

About Neophile

Neophile is a public health and social policy, research, and evaluation consultancy, with a focus on key populations:

- lesbian, gay, bi+, trans, queer, and asexual (LGBTQA+) people, and sexuality and gender diverse communities
- people living with HIV
- sex workers, and
- people who use/inject drugs.

Evidence shows that the greater and meaningful involvement of people with living and lived experience is critical to the success of policy, programs and services, and advocacy for law reform.

About the author

Joël Murray, Principal Consultant

*Qualifications: Master of Public Health in Health Economic Evaluation (UNSW);
Master of Arts (RMIT)*

Mx Murray has over 15 years' experience in public policy, program management, and evaluation roles. They have publications in peer-reviewed journals on hepatitis C, people living with HIV who inject drugs, LGBTQ+ people and sexualised drug use, and trans health.



Acronyms

AIVL	Australian Injecting and Illicit Drugs Users League
ARCSHS	Australian Research Centre in Sex, Health, and Society, La Trobe University
CSRH	Centre for Social Research in Health, University of New South Wales
GAHT	gender-affirming hormone therapy
GAS	gender-affirming surgery(ies)
HCV	hepatitis C virus
HCW	health care worker
NAPWHA	National Association of People with HIV Australia
LGBTQA+	lesbian, gay, bi+, trans, queer, asexual
NDARC	National Drug and Alcohol Research Centre, University of New South Wales
NSW ADA	<i>Anti-Discrimination Act 1977 (NSW)</i>
NSWLRC	NSW Law Reform Commission
PLHIV	people living with HIV
SCIMATS	NSW Special Commission of Inquiry into Methamphetamine and other Amphetamine Type Stimulants
SWOP	Sex Worker Outreach Project
UN	United Nations

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Introduction

The NSW Law Reform Commission's (NSWLRC) review of the *Anti-Discrimination Act 1977* (NSW) (the NSW ADA) is an opportunity. The need for the NSW ADA to be modernised is overdue and timely. Overdue, as there are a range of issues and gaps that have been identified by communities, individuals, and organisations as no longer working as intended. Outdated because our understanding of people with those experiences has evolved. The NSWLRC review is timely as it coincides with the conclusion of the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability, which provides significant findings and recommendations within the scope of the NSWLRC review.

As this is a preliminary submission, the issues are summarised. Further detail, including case studies, be provided at later public submission stages and by other subject-matter experts.

Recommended actions

- Consult with people living with and who have lived with HCV and community organisations to understand the need for protections within the NSW ADA.
- Consider how well provisions relating to HIV are working (or not) and consider provisions for HCV (and potentially all viral hepatitis) as like those for HIV.
- Consult with sex workers and peer-led organisations to understand the need for protections within the NSW ADA for sex workers and their families.
- Enact reforms that provide adequate protections against discrimination and vilification for sex workers and their families.
- Consult with people who use/inject drugs and peer-led organisations to understand the impact of s.49PA and seek views on potential reforms that would remove positive discrimination rights in employment.
- Consult with trans and gender diverse people and community organisations and groups representing trans communities on the adequacy of transgender provisions and definitions.
- Update transgender provisions and definitions to ensure they adequately protect trans people of all genders at all stages of social, legal, and medical gender-affirmation.
- Consult with LGBTQA+ people and community organisations and groups representing sexuality and gender communities on the adequacy of sexuality provisions and definitions.
- Update sexuality provisions and definitions to ensure they adequately protect all non-normative sexualities, particularly bi+, queer, asexual, and pansexual.
- Consult with Intersex Human Rights Australia to understand the unique needs for protection from discrimination and vilification for people with variation in sex characteristics.
- Adoption of all recommendations of the Royal Commission, as they relate to protecting the rights of people with disabilities, including anti-discrimination and vilification.

- Remove all automatic exemptions for religious-owned organisations that a) receive government funding to provide services to the public and b) engage solely or primarily in commercial activities.
- Ensure that processes for seeking exemptions can accommodate organisations that have lost their automatic exemptions.
- Balance the rights of individuals by reducing or eliminating human rights protections extended to organisations, to ensure the NSW ADA acts as a shield, not a sword.

1. People living with or who have lived with hepatitis C

Hepatitis C (HCV) is a blood-borne virus that affects more people in Australia when compared to HIV.¹ HCV is stigmatised in part due to the association with injecting drug use, as the primary but not only route of transmission. Since 2016, direct-acting antiviral treatments have been available in Australia, which enable people to clear the virus. Nearly 100,000 Australians have accessed these treatments.² Access to the treatments has been equitable and not conditional on a person's current drug use nor their likelihood of reinfection.

For many people who have put injecting drug use in their past by finally clearing HCV, the one thing that remains is stigma, prejudice, and discrimination. Recent qualitative research from the Centre for Sex Health and Society at La Trobe University found that discrimination for people who had lived experience of HCV, persisted long after completing treatment, as one participant Sandy describes:

*people don't define all the differences, they really don't. Hep C is hep C. You had it, you have it. You've cleared it, you're still classed as had it.*³

These experiences are also reflected in quantitative data. Researchers from the Centre for Social Research in Health (CSRH) at the University of NSW found that HCV stigma and discrimination was experienced by 71% of participants. One in 10 (11%) reported that this occurred 'often' or 'always'.⁴ Among the general public, 50% reported they would likely behave negatively toward people living with or who have lived with HCV, with 6% reporting 'often' or 'always'.⁵ However, among health care workers, 1 in 5 (20%) reported they would likely behave negatively toward people with a history of HCV, with less than 1% reporting 'often' or 'always'.⁶

Access to HCV treatment and cure through primary health (i.e. general practice), community (i.e. peer organisations and needle and syringe programs), substance use treatment, and custodial settings has broadened the knowledge and awareness of HCV among health care workers (HCW). Education and awareness may contribute to the lower levels of stigma among HCWs compared to the general population. However, people with history of HCV continue to report high levels of discrimination and vilification (enacted stigma). Discrimination acts as a barrier for people with a history of HCV to put those experiences behind them and move on with their lives.

¹ Compared to HIV, see NSW ADA pt 4F.

² J King et al, *HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia: Annual Surveillance Report 2022* (The Kirby Institute, UNSW Sydney, 2022) 21.

³ Dion Kagan et al, 'Hepatitis C-Related Stigma and Discrimination in a Post-Cure World: Summary Report of Project Findings and Recommendations' 39.

⁴ T Broady et al, *Stigma Indicators Monitoring Project: Summary Report. Phase Two* (UNSW Centre for Social Research in Health, 2020) 12.

⁵ Ibid 3.

⁶ Ibid 4.

HCV is mentioned in the NSW ADA but only in reference to s.49PA, insofar as that HCV is not included in the positive right to discriminate in employment against people experiencing dependent patterns of drug use.

Recommended actions

- Consult with people living with and who have lived with HCV and community organisations to understand the need for protections within the NSW ADA.
- Consider how well provisions relating to HIV are working (or not) and consider provisions for HCV (and potentially all viral hepatitis) as like those for HIV.

Suggested stakeholders.

- NSW Users and AIDS Association (NUAA), Hepatitis NSW, Australian Injecting and Illicit Drug Users League (AIVL), National Association of People with HIV Australia (NAPWHA)

2. Sex workers and their families

Sex workers (current and former) and their families are subject to discrimination and vilification in services such as accommodation and housing, employment, health, family matters, financial services, insurance, and advertising. Despite sex work laws in NSW being decriminalised since 1994, sex workers and their families remain unprotected by the NSW ADA. As Scarlet Alliance: Australian Sex Workers Association notes in their recent briefing paper, “*the current anti-discrimination frameworks enable, and in some jurisdictions legalise, discrimination against sex workers, with limited opportunities for us to pursue any protections.*”⁷ Scarlet Alliance qualify that sex worker experiences of discrimination and vilification is a result of outdated stereotypes and harmful tropes:

Sex workers are viewed and treated as amoral, lawless, or criminal, vectors of disease, a threat to children, deemed unfit parents or guardians, ridiculed as victims, and targeted for deliberate discrimination and vilification. These stereotypes are responsible for historic and current stigmatisation, marginalisation, prejudice, ignorance, and criminalisation.⁸

Discrimination and vilification of sex workers is well documented. CSRH and Scarlet Alliance found that 97% of sex workers (N=689) reported experiences of stigma and discrimination in the 12 months prior to the survey, with 30% reporting that this occurred ‘often’ or ‘always’.⁹ When looking at attitudes toward sex workers among the general public, 64% of participants reporting they would likely behave negatively toward sex workers, with 12% reporting ‘often’ or ‘always’.¹⁰ Forty-seven percent of health care workers reported they would likely behave negatively toward sex workers, with 5% reporting ‘often’ or ‘always’.¹¹

Stigma can have a negative impact on the mental wellbeing of sex workers. In qualitative research conducted by the CSRH, sex workers described the impact of stigma on their mental health, compounded by a lack of mental health support services that were appropriate, knowledgeable, and non-discriminatory. Researchers found that mental health support services often saw sex workers “*as victims lacking agency, imposed beliefs that sex work was the pathological root cause of mental health issues, or approached the issue with fascination or voyeurism.*”¹²

⁷ Scarlet Alliance: Australian Sex Workers Association, *Anti-Discrimination and Vilification Protections for Sex Workers in Australia* (Briefing Paper, February 2022) 2.

⁸ Ibid.

⁹ T Broady et al, *Stigma Snapshot: Sex Workers 2022* (2023) 1.

¹⁰ Broady et al, ‘Stigma Indicators Monitoring Project: Summary Report. Phase Two’ (n 4) 3; T Broady et al, *Stigma Snapshot: General Public 2021* (2022).

¹¹ T Broady et al, *Stigma Snapshot: Health Care Workers 2022* (2022).

¹² Carla Treloar et al, ‘Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia’ (2021) 268 *Social Science & Medicine* 113468.

The lack of anti-discrimination and anti-vilification protections in the NSW ADA for sex workers has led to widespread discrimination and vilification of sex workers in NSW. It is unacceptable that sex work is decriminalised, thereby viewing sex work as any other form of employment (including self-employment), and yet legal discrimination occurs based on sex work. Therefore, creating legal protections for sex workers and their families, codesigned by sex workers, is a critical step toward reducing stigma, discrimination, and vilification.

Recommended actions

- Consult with sex workers and peer-led organisations to understand the need for protections within the NSW ADA for sex workers and their families.
- Enact reforms that provide adequate protections against discrimination and vilification for sex workers and their families.

Suggested stakeholders.

- Scarlet Alliance: Australian Sex Workers Association, Sex Workers Outreach Project (SWOP) NSW, Centre for Social Research in Health (CSRH)

3. People who experience dependent patterns of substance use

Part 4A, div 4, s.49PA of the NSW ADA provides a positive right to discriminate people who experience dependent patterns of drug use, in employment, where the person discriminated against is proven to be experiencing dependent patterns of use.

Positive rights to discriminate based on a person's health status is not consistent with international human rights frameworks, as well as the intent and purpose of the NSW ADA. S.49PA is also in conflict with the *Single Convention on Narcotic Drugs, 1961* that calls for the “*early identification, treatment, education, aftercare, rehabilitation, and social reintegration*”¹³ of people who use drugs.

Discrimination in employment is counterproductive to supporting people who are in dependent patterns of substance use. The NSW Special Commission of Inquiry into Methamphetamine and other Amphetamine Type Stimulants (SCIMATS) heard evidence that stigma and discrimination act as barriers to seeking support for substance use.¹⁴ The SCIMATS made findings that although the National Drug Strategy 2017-2026 states that “*responses do not inadvertently or unintentionally further marginalise or stigmatise people who are at higher risk of experiencing alcohol, tobacco and other drug related harm*”,¹⁵ there are no actions or targets provided to achieve those aims.¹⁶ Further, experts told the SCIMATS that law reform would need to occur for attitudes among the general public and HCWs and that changes in attitudes, beliefs, and behaviours will not be immediate.¹⁷

CSRH Stigma Monitoring Program found that 81% of participants reported experiencing stigma and discrimination due to their injecting drug use. Over one-quarter of participants reported ‘often’ or ‘always’.¹⁸ Among the general public, 86% reported they would likely behave negatively toward people who inject drugs, with 28% reporting ‘often’ or ‘always’.¹⁹ Among HCWs, 56% reported they would likely behave negatively toward people who inject drugs, however, less than 4% reported ‘often’ or ‘always’.²⁰

There is a strong case for removing the positive right to discriminate against people who experience dependent patterns of substance use, in employment.

¹³ *Single Convention on Narcotic Drugs, 1961, opened for signature 24 January 1961, 520 UNTS 151 1964* (entered into force 13 December 1964).

¹⁴ Dan Howard, *Special Commission of Inquiry into Crystal Methamphetamine and Other Amphetamine-Type Stimulants: Volume 1b* (Final Report, January 2020) 230.

¹⁵ Commonwealth of Australia, *National Drug Strategy 2017 - 2026* (Strategy, Department of Health, 2017) 10, 26.

¹⁶ Dan Howard (n 14) 228.

¹⁷ *Ibid* 230.

¹⁸ Broady et al, ‘Stigma Indicators Monitoring Project: Summary Report. Phase Two’ (n 4) 7.

¹⁹ *Ibid* 3.

²⁰ *Ibid* 4.

Recommended actions

- Consult with people who use and inject drugs and peer-based organisations to understand the impact of s.49PA and seek views on potential reforms that would remove positive discrimination rights in employment.

Suggested stakeholders

- NSW Users and AIDS Association (NUAA), Centre for Social Research in Health, National Drug and Alcohol Research Centre (NDARC), Prof. Dan Howard SC, Australian Research Centre in Sex Health and Society (ARCSHS)

4. People from sexuality and gender diverse communities

4.1 Trans and gender diverse people (binary and non-binary)

Current definitions for transgender people from discrimination and vilification based on their gender identity excludes some trans and gender diverse people. Requirements for gender-affirming surgeries is outdated.

Definitions – trans and gender diverse people

‘Trans and gender diverse’ (herein trans) is an umbrella term for people whose gender is different than the sex that was recorded for them at birth. Trans people may have binary identities, such as woman, man, trans feminine, or trans masculine, whereas some trans people are non-binary, another umbrella term that includes all people whose gender identity sits between or outside of binary gender experiences or is not in reference to binary gender at all. Some trans people prefer to use culturally specific terms, for example, Aboriginal and Torres Strait Islander people may use Sistergirl or Brotherboy, or terms in language.

Social, legal, and medical gender affirmation

Trans people may choose any, some, or all, and in any order, to socially, legally, and/or medically affirm their gender.

Social affirmation may include disclosing their gender experience to trusted people, asking friends and loved ones to start using preferred pronouns and name, or they express their gender in a new way e.g. clothes, hairstyle.

Legal affirmation refers to updating gender on government records and identification documents, including Medicare, passports, Driver’s License, birth certificate, marriage certificate, etc.

Medical affirmation refers to using gender-affirming hormone therapy (GAHT) and/or gender affirming surgery or surgeries (GAS) to medically affirm their gender and is considered medically-necessary for most individuals seeking medical affirmation. While many trans people choose to access GAHT and GAS, not all trans people want to medically affirm their gender. Similarly, a higher proportion of trans people have met demand for GAHT compared to those who have met demand for GAS. Put another way, the unmet demand for GAHT is a significantly lower proportion when compared to the unmet demand for GAS. Overall, fewer trans people have an interest in GAS than have an interest in GAHT.

Challenges with legal affirmation

Commonwealth records enable gender to be updated through a range of evidence, in NSW, birth certificates require a person to undergo “sex reassignment” surgery before they can update their gender recorded at birth. The surgery requirement is duplicated in the NSW ADA. In addition, driver’s licensing database with the Dept of Transport does not allow for people of non-binary genders to have their gender accurately recorded. Having gender on Commonwealth records and sex recorded at

birth on state records places some trans people in limbo unable to complete the legal affirmation process fully. The inconsistent gender between official records may pose a problem for processes like national police criminal checks and working with children's check.

Trans people, therefore, have kaleidoscope of experiences across social, legal, and medical affirmation. Anti-discrimination protections should protect trans people of all genders and at all and any stage of social, legal, or medical affirmation. Better protections can be easily achieved by updating the definitions and provisions to ensure that trans people of all genders are protected from discrimination and vilification.

Recommended Actions

- Consult with trans and gender diverse people and community organisations and groups representing trans communities on the adequacy of transgender provisions and definitions.
- Update transgender provisions and definitions to ensure they adequately protect trans people of all genders at all stages of social, legal, and medical gender-affirmation.

Suggested organisational stakeholders

- Blaq Aboriginal Corporation, The Gender Centre, ACON Health, Twenty10, Transcend Australia, Trans Justice Project, Equality Australia

4.2 Sexuality diverse communities

People from sexuality diverse communities include a collective of non-normative sexuality experiences that can include lesbian, gay, bi+, queer, asexual, and pansexual people (LGBQA+), among others.²¹

Current provisions in the NSW ADA relating to sexuality protect only gay and lesbian people. Separate protections are provided to some trans people. The definitions and of non-normative sexualities could be updated to better reflect contemporary understandings of sexuality diverse communities.

Population research conducted by ARCSHS found that that bi+, pan, asexual, and queer people experience higher rates of stigmatisation and discrimination when compared to gay and lesbian peers. Bi+ stigma and discrimination, for example, come from within and outside of LGBTQA+ communities, resulting in poorer health

²¹ Note: People with variation in sex characteristics (intersex) are often grouped with LGBTQA+ people however, this conflates intersex variations with gender and/or sexuality, which is incorrect. This section does not include people with variation in sex characteristics. My colleagues at Intersex Human Rights Australia have expertise on this population.

outcomes among bi+ people of all genders compared with gay and lesbian peers.²² Community acceptance and reduction in stigma toward gay cis men has not necessarily occurred equitably across all LGBTQA+ people. Addressing the gaps in the NSW ADA will contribute to a reduction in stigma, discrimination, and vilification over time.

Recommended actions

- Consult with LGBTQA+ people and community organisations and groups representing sexuality and gender communities on the adequacy of sexuality provisions and definitions.
- Update sexuality provisions and definitions to ensure they adequately protect all non-normative sexualities, particularly bi+, queer, asexual, and pansexual.
- Consult with Intersex Human Rights Australia to understand the unique needs for protection from discrimination and vilification for people with variation in sex characteristics.

Suggested organisational stakeholders

- Blaq Aboriginal Corporation, ACON Health, Sydney Bi+ Network, SWOP NSW, Twenty10.
- Intersex Human Rights Australia

TABLE 1: SEXUALITY DEFINITIONS

bi+ or bisexual	sexual attraction to people of more than one gender.
queer	an umbrella term that captures many non-normative sexualities.
asexual	having no sexual attraction to people of any gender.
pansexual	sexual attraction to all people / gender does not play a role in their sexual attraction

²² Adam O Hill et al, *Private Lives 3: A National Survey of the Health and Wellbeing of LGBTIQ People in Australia* (Monograph No 122, Australian Research Centre in Sex, Health and Society, La Trobe University, 2020).

5. Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disabilities

The Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disabilities, evidence, findings, and recommendations provide significant detail on the role of anti-discrimination laws in protecting the human rights of people with disabilities. The NSWRLC should prioritise all recommendations that are applicable to state and territory governments. This should include:

- A) Onus on organisations, businesses, services, and government to demonstrate that they are not discriminating against people with disabilities and that accessibility for public services is not limited to physical disability.
- B) Processes for raising complaints of discrimination are reformed to reduce onus on the disabled person and to ensure that appropriate supports are available and provided throughout the complaints process.
- C) Anti-discrimination protections must apply to all businesses and services, including schools and the child protection system.

Recommended actions

- Adoption of all recommendations of the Royal Commission, as they relate to protecting the rights of people with disabilities, including anti-discrimination and vilification.

6. Blanket exemptions for religious organisations (excluding places of worship)

The NSW ADA provides range of automatic exemptions for charities and organisations that are owned by religious institutions and/or carry out activities that promote religion as their charitable purpose. The following section specifically relates to religious organisations and charities that either:

- a) receive government funding to deliver public services like health and education and/or
- b) engage solely or primarily in commercial activities. Places of worship and institutions of and for ministers of faith are not included in the scope of this section.

Christian privilege

Christian institutions and organisations in Australia are afforded what amounts to “*Christian privilege*”²³ through state and Commonwealth protections. All religious organisations and charities are granted automatic exemptions within the NSW ADA, which assign human rights protections to institutions, amounting to a positive right to discrimination against protected attributes such as gender identity, sexuality, marriage and parental status, and legal medical procedures such as pregnancy termination.

Individuals should have a right to free from discrimination in the provision of any service to the public, especially if the organisation providing the service is funded by local, state, or Commonwealth governments. Currently, some private hospitals and schools engage in practices that would be considered discriminatory if automatic exemptions didn't apply.

We acknowledge the importance of including provisions within the NSW ADA that allow organisations to apply for exemptions, recognising services such as the provision of emergency housing and sexual, domestic, and family violence services may have justifiable reasons to discriminate based on gender, for example. However, religious organisations that receive public funding for provision of public services and/or engage solely or primary in commercial activities should not receive automatic exemptions. These organisations should be subject to the same processes for case-by-case exemptions to ensure that discrimination is justifiable and balancing the rights of all individuals.

Human rights are for individuals not organisations

We are of the view that an organisation cannot hold religious beliefs, only the people within those organisations have rights to freedom of thought, conscience, and religion or belief under international human rights conventions.²⁴ Conversely, the right to freedom from religion, including the right to not hold religion or belief is often

²³ A Sophie Lauwers, ‘Religion, Secularity, Culture? Investigating Christian Privilege in Western Europe’ (2023) 23(3) *Ethnicities* 403.

²⁴ *Christian Youth Camps Limited v Cobaw Community Health Service Limited* [2014] VSCA 75.

missing from public discourse on religious freedoms and privileges. The limitations of individual rights insofar as they begin to encroach upon the rights of others needs to be better positioned within public discourse.²⁵

The right to freedom of thought, conscience, and religion or belief, is about the right to manifest, practice, and worship alone or in community with others, in private, without interference. It does not include a right to manifest, practice, or worship in public, in a place of employment, education, or parliament. Freedom of thought, conscience, religion or belief requires respect and tolerance for the thoughts, conscience, and religion or beliefs of individuals with differing views. The NSW ADA needs to better balance the rights and freedoms for all to ensure that any discrimination that is permitted is granted on justifiable and objectively assessed grounds.

Automatic exemptions for religious organisations and charities could be aligned to the process for seeking exemptions on a case-by-case basis, while strengthening the process of seeking exemptions. Public transparency is critical to ensure justifiable grounds for discrimination, especially in the case where services are provided to the public but funded by government (e.g. hospitals and schools).

It may be worth considering that many protected attributes are innate, whereas thoughts, conscience, religion or belief is a choice for individuals, and is subject to change over time. For example, homosexuality is a recent concept of human sexuality, arising from the Victorian Era, influenced by Darwinist and Protestant thought and values, and much later was pathologised as a mental health condition, non-normative, against nature, and degenerative.²⁶ It is even more recent that the religious-right, particularly influenced by televangelism and the Pentecostal revival imported from the United States of America, constructed and manufactured moral panic (the so-called “culture wars”) against queer people leading up to and after the HIV/AIDS epidemic,²⁷ and in the last decade, an increasing focus on trans people.²⁸

The so-called ‘religious doctrine’ that compels these individuals to enact discrimination, vilification, and incite violence against trans people, are not steeped in ‘long tradition’ over millennia, but decades. That religious doctrine is flexible enough to incorporate modern concepts seems a convenient guise that acts as a positive right to discriminate and vilify. Victor Madrigal-Borloz, UN Independent Expert on Sexual Orientation and Gender Identity, made similar comments in his recent report to 53rd session of the UN Human Rights Council that many religions and faiths are inclusive of LGBTQA+ people, however that:

In some cases, religious narratives have been deliberately used to justify violence and discrimination – often in defiance of the

²⁵ AHRC, ‘Freedom of Thought, Conscience, and Religion or Belief’, *Australian Human Rights Commission (AHRC)* (Web Page, No date).

²⁶ See Michael Foucault, *The History of Sexuality* (1978).

²⁷ Mark R Kowalewski, ‘Religious Constructions of the AIDS Crisis’ (1990) 51(1) *Sociological Analysis* 91.

²⁸ Heiro Badge, *Fuelling Hate: Abuse, Harassment, Vilification and Violence Against Trans People In Australia* (Report, Trans Justice Project and Victorian Pride Lobby, 2023).

*doctrine of those faiths, and also beyond the scope of the right freedom of religion or belief.*²⁹

It is important for this review to determine the impact of religious exemptions on the groups of people being discriminated against. The NSW ADA needs to balance the rights of all individuals to ensure equity in protections.

Recommended actions

- Remove all automatic exemptions for religious-owned organisations that a) receive government funding to provide services to the public and b) engage solely or primarily in commercial activities.
- Ensure that processes for seeking exemptions can accommodate organisations that have lost their automatic exemptions.
- Balance the rights of individuals by reducing or eliminating human rights protections extended to organisations, to ensure the NSW ADA acts as a shield, not a sword.

Suggested stakeholders

- NSW Jewish Board of Deputies, National Council of Churches Australia, Religions for Peace Australia, National Secular Lobby Australia, Imam Husain Islamic Centre, Hindu Council of Australia, ACON Health, Twenty10, Sydney Alliance

²⁹ Victor Madrigal-Borloz, 'Freedom of Religion or Belief Not Incompatible with Equality for LGBT Persons: UN Expert', *Office of the High Commissioner for Human Rights* (Web Page, 21 June 2023).

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