

## Submission to the NSW Anti-Discrimination Act Review

Submitted by: **Active Watchful Waiting Inc.**

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### 1. Introduction

Active Watchful Waiting Inc. is a registered not-for-profit organisation advocating for evidence-based policies that protect the rights, safety, and dignity of all — particularly children, women, LGB individuals, and vulnerable groups. We have extensive experience supporting parents, working with medical professionals, and collaborating with post-operative transsexuals who share our commitment to safeguarding truth and fairness in law.

We welcome the opportunity to respond to the NSW Law Reform Commission's Consultation Paper on the Anti-Discrimination Act. While we support the modernisation of legislation to ensure genuine equality, we are deeply concerned that the proposed reforms — as framed — risk:

- Undermining sex-based protections.
- Conflating biological sex with self-declared gender identity.
- Ignoring evidence-based differences relevant to healthcare, sport, and safeguarding.
- Silencing dissenting voices, particularly those most affected.

We also wish to comment on the consultation process itself, which we believe contains structural framing biases that obscure the real implications of proposed changes.

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### 2. Concerns About the Consultation Process

We identify **ten framing tactics** within the Consultation Paper that limit transparency and skew public understanding:

1. **Hidden framing changes meaning** – Replacing "homosexuality" with "sexual orientation" or subsuming it under "gender identity" erases the sex-based nature of protections for LGB people.
2. **The “modernisation” pitch masks consequences** – References to Victoria, Equality Australia definitions, and the Yogyakarta Principles are presented as inevitable norms, pressuring NSW to conform.

3. **Importing the Yogyakarta Principles without mandate** – These have been rejected federally by the Senate, yet are treated as a de facto standard.
4. **Normalisation cues** – Frequent use of “most jurisdictions...” or “it is now common...” as persuasion rather than analysis.
5. **Strategic ambiguity** – Broad definitions that can be interpreted multiple ways, creating uncertainty in application.
6. **Selective authority citing** – Only referencing advocacy groups aligned with the proposed direction, excluding dissenting expertise.
7. **Framing through omission** – Omitting discussions of competing rights or practical impacts.
8. **Option overload (Part 1)** – Presenting extreme and moderate options together to make the preferred choice seem reasonable.
9. **Option overload (Part 2)** – Listing large numbers of supportive examples to imply consensus.
10. **Cautious positioning** – Downplaying the significance of changes to exceptions in sport and other areas.

We urge the Commission to ensure that all stakeholders — especially those adversely affected — are equally represented in consultation.

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### 3. Key Issues and Recommendations

#### 3.1 Grounds of Discrimination — Protected Attributes

We are concerned about:

- The reframing of sex-based categories into identity-based language.
- The risk that sex-specific protections (e.g., for pregnancy, breastfeeding) are weakened by being separated from “sex” and listed as standalone attributes.

#### Why this matters in practice

• Erosion of sex-based LGB protections: Lesbian groups seeking female-only association have been refused venues/exemptions, with peak advocacy bodies campaigning against single-sex lesbian events. See the Victorian Pride Centre matter and follow-on decisions and coverage. ([Star Observer](#), [Equality Australia](#))

• Community evidence base: [Lost Women’s Rights](#) documents recurring losses of sex-based rights across Australia when “gender identity” displaces sex in policy and law. Plus links to thousands of testimonies on the impact of prioritising gender identity over sex in law and policy. ([Save Women’s Rights](#), [NoConflictTheySaid](#))

- Case signalling digital spaces pressure: Tickle v Giggle put a women-only app under the federal Sex Discrimination framework; outcome and commentary show how “gender identity” reframing meets sex-based association. ([Tickle v Giggle](#), [Right of Association](#))

**Recommendation:** Maintain sex as a discrete, biologically-defined protected attribute. Ensure that pregnancy and breastfeeding remain directly connected to sex in the Act.

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### 3.2 Gender Identity Recognition

The proposed removal of the “recognised transgender person” category in favour of broad “gender identity” risks:

- Eroding legal clarity.
- Allowing self-identification without evidence, with implications for [data accuracy](#), [crime statistics](#), healthcare and safeguarding.

#### Why this matters in practice

- **Clinical safety: record sex and gender separately:** NSW Health and RACGP both emphasise collecting **sex** and **gender** distinctly so clinicians have the data needed for safe care (dosage, screening, diagnostics). ([NSW Health](#), [RACGP](#), [Medical Republic](#))
- **Medication examples (induced lactation):** Domperidone and similar regimens carry cardiac risk (QT prolongation/arrhythmias). Induced male lactation is not clinically equivalent to female breastfeeding and requires risk counselling. ([Therapeutic Goods Administration \(TGA\)](#), [King Edward Memorial Hospital](#), [medsask.usask.ca](#))
- **Standards shift overseas (child safeguarding):** The 2024 UK **Cass Review** (and NHS England’s response) tightened youth gender medicine due to weak evidence — a useful comparator showing why NSW must not legally compel clinicians to ignore biological sex. ([NHS England](#), [www.rcpsych.ac.uk](#), [SEGM](#))

**Recommendation:** Any inclusion of gender identity must be clearly defined, with provisions to protect sex-based rights and spaces.

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### 3.3 Exceptions — Sport

The sport exception is vital for fairness, safety, and participation. Removing or narrowing it would:

- Compel inclusion of male-bodied athletes in female categories, disadvantaging women and girls.
- Ignore physiological differences affecting injury risk and competitive integrity.

## Why this matters in practice

- **NSW women’s football injuries & competitive impacts:**
  - Emergency meeting reported in NSW football re: clubs facing pressure amid safety concerns; one player’s leg broken incident cited. ([Daily Telegraph](#))
  - Media coverage of NSW competitions noting trans-identified players dominating or injuring female players; debate over policy thresholds and fairness. ([Aus Leisure](#), [Telegraph](#), [Washington Stand](#))

**Recommendation:** Retain sex-based exceptions in all sport where physical differences impact fairness or safety.

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## 3.4 Exceptions — Special Measures

Changing special measures to a “protected attribute” framing risks making sex-based affirmative action harder to defend.

## Why this matters in practice

- **Women-only initiatives chilled/blocked:** Lesbian-only community events denied space/exemptions at Victoria’s Pride Centre; official statements and allied campaign material illustrate how “attribute-based” reframing can be used to **disqualify sex-specific measures**. ([Star Observer](#), [LGB Alliance Australia](#), [Equality Australia](#))
- **Process signal:** News and NGO commentary document how decisions leaned on **identity frameworks** rather than sex-based safeguarding — a preview of how “special measures” could be reinterpreted in NSW if sex is not prioritised.

**Recommendation:** Retain [sex-based special measures](#) provisions to address women’s historic and ongoing disadvantage.

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## 3.5 Medical and Ethical Considerations

- Misrecording sex in medical settings can lead to dangerous treatment errors (e.g., dosage differences, contraindications).
- Suppressing sex-based data undermines research and public health policy.

## Why this matters in practice

- **Sex-specific dosing/screening:** Australian primary-care standards tell practices to record sex and gender separately to protect patient safety — this is your **best practice** anchor. ([RACGP](#), [Medical Republic](#))
- **Medication risk in induced lactation:** Regulatory and hospital guidelines flag cardiac risks (QT prolongation) and cautions around domperidone; these are clinical

reasons doctors must be free to advise that induced male lactation isn't equivalent to female breastfeeding. ([Therapeutic Goods Administration \(TGA\)](#), [King Edward Memorial Hospital](#), [medsask.usask.ca](#))

- **Evidence environment:** Recent Australian medical literature notes poor sex/gender handling in guidelines; conflation harms care quality. ([The Medical Journal of Australia](#))
- **Child safeguarding:** Australian reporting highlights rising parental disputes and clinical controversy in youth gender care; UK Cass Review shows the need for caution and robust mental-health assessment pathways. ([The Australian](#), [NHS England](#))

**Recommendation:** Require that medical and emergency contexts always record biological sex alongside any gender identity.

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### 3.6 Parental Rights and Child Safeguarding

- Parents must be informed of and consent to social or medical transitions of minors.
- Removing sex-based clarity invites policies that exclude parents from critical decisions.

#### Why this matters in practice

- **School-to-clinic concerns:** Coverage of early gender identity teaching and affirmation in schools cites psychiatrists/parents warning of medicalisation risks and parental exclusion — aligns with your “parents must be informed” recommendation. (Vic example shows the policy direction and risks NSW must weigh.) ([The Australian](#))
- **Clinical pathway concerns in AU media:** Documented cases of parents contesting rapid medicalisation underscore why law must not **compel** affirmation or silence clinical caution. ([The Australian](#))

**Recommendation:** Embed explicit protections for parental rights in education and healthcare policies related to gender identity.

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### 3.7 Free Speech

- Expansive definitions of vilification risk chilling legitimate discussion.
- Debate on gender identity and sex-based rights must be protected.

#### Why this matters in practice

- **Compelled speech/association pressure:** Lost Women’s Rights catalogues language/policy shifts (e.g., compelled “cis” terminology, erasure of sexed terms) that chill debate and professional speech. ([Save Women’s Rights](#))
- **Public disputes over lesbian organising and women-only digital spaces** (VPC/LAG; *Tickle v Giggle*) show the **legal** and **social** pressures when sex-based association is contested. ([Star Observer](#), [Wikipedia](#))

**Recommendation:** Maintain strong free speech protections for good-faith discussion of matters of public interest.

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### 3.8 Lesbian, Gay, Bisexual (LGB)-specific Concerns

- LGB rights are rooted in same-sex attraction, defined by biological sex.
- Collapsing “homosexuality” into “sexual orientation” and “gender identity” undermines this foundation.

#### Why this matters in practice

- **Lesbian event litigation & rulings:** AHRC refusal and later tribunal decisions rejecting female-only lesbian events; Equality Australia and coalition statements opposing such events; news coverage of ongoing appeals. Together, these show how “identity” framing displaces sex-based lesbian rights. ([Equality Australia](#), [Star Observer](#), [QNews](#), [News.com.au](#), [Lesbians are Women](#))
- **Community documentation:** Lost Women’s Rights “Law” page collects examples and argues for sex-based definitions — useful to triangulate public-interest impacts. ([Save Women’s Rights](#))
- **Wider reportage on lesbian marginalisation within LGBTQIA+ spaces** further evidences real-world consequences. ([The The Australian](#)) ([Lesbians are Women](#))

**Recommendation:** Protect LGB categories explicitly, defined in relation to biological sex.

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## 4. Conclusion

Active Watchful Waiting Inc. supports genuine equality under the law but rejects reforms that:

- Erase sex as a meaningful legal category.
- Compromise safety, fairness, and evidence-based practice.
- Import contested ideological frameworks without democratic mandate.

We call on the NSW Law Reform Commission to:

- Retain clear, biologically-based definitions of sex.
- Protect sex-based rights in sport, medicine, and safeguarding.
- Ensure that reforms do not undermine the hard-won rights of women, girls, and LGB people.

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## Appendix: Lawyer-Focused Quick Reference Table

### NSW Anti-Discrimination Act Review – Quick Reference Table for Lawyers

This quick reference table summarises the key changes proposed in the NSW Anti-Discrimination Act review, their legislative location, the practical impact, and real-world examples. It is designed to accompany the full submission by Active Watchful Waiting Inc. and to provide lawyers with a concise, at-a-glance guide.

Legislative Clause / Proposal	Key Change	Risk / Consequence	Real-World Example
Attributes (Consultation Paper 5.30, pp. xii–xiii)	Replace sex-specific protections with broad 'protected attributes' including gender identity.	Removes sex-based clarity; same-sex protections become identity-based.	Lesbian patient's hospital room allocation based on 'gender identity' results in male-bodied roommate.
Definition changes (p. 62)	Remove 'recognised transgender person' definition; rely on broad gender identity definition.	No objective criteria for legal sex classification.	Male rapist prisoner identifies as female without surgery and is placed in women's prison.
Sport exceptions (9.20–9.26, pp. 52–53)	Replace sex-based sporting exception with 'reasonably necessary' fairness/safety test.	Shifts burden to prove exclusion is necessary; weakens women's sport protections.	14-year-old girl forced to compete in judo against male opponent with significant weight and strength advantage.
Special measures (9.33–9.38, pp. 54–55)	Shift from sex-specific special measures to 'protected attribute' measures.	Dilutes ability to create women-only services and programs.	Domestic violence shelter loses ability to operate as female-only space.
Pregnancy & breastfeeding (Consultation Paper 5.30)	Remove from sex category; list as separate attributes.	Breaks link between biological sex and protections; opens to identity claims.	Male employee claims 'breastfeeding' entitlement due to self-identification as female.
Process framing tactics (throughout paper)	Use of social pressure ('modernisation'), selective citation, omission of dissent.	Stakeholders unaware of full implications; biased consultation process.	Consultation cites Equality Australia but omits submissions from LGB Alliance or women's advocacy groups.