

**CATHOLIC WOMEN'S LEAGUE AUSTRALIA**  
**NEW SOUTH WALES INC**  
A MEMBER ORGANISATION OF CWLA INC



ABN 27 783 418 042

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New South Wales Law Reform Commission  
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**SUBMISONS BY THE CATHOLIC WOMEN'S LEAGUE AUSTRALIA-NEW SOUTH WALES INC ON  
THE ANTI-DISCRIMINATION ACT 1977 (NSW)**

Thank you for the opportunity to contribute to this review of the *Anti-Discrimination Act 1977* (NSW). These submissions build upon our preliminary submissions dated 20 October 2023.

**About the Catholic Women's League in New South Wales:**

1. Catholic Women's League Australia – New South Wales Incorporated (CWLA-NSW) has been present in New South Wales for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1600 active members in the seven (7) Catholic dioceses in New South Wales. Our organisation fosters the spiritual, cultural, intellectual and social development of women and promotes the role of lay women in the mission of the Church.
2. This submission is made on behalf of CWLA-NSW, a member organisation of the Catholic Women's League Australia Incorporated (CWLA), the national peak body representing the League's six member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

**Executive summary:**

The submissions of the CWLA-NSW focus on the need to ensure that there is legal protection in New South Wales law for freedom of thought, conscience and religion. It therefore focuses on the question within the terms of reference as to whether the range of attributes protected against discrimination requires reform. Our submissions can be summarised as follows:

1. That the *Anti-Discrimination Act* be amended to include freedom of thought, conscience and religion as protected attributes in conformity with International Declarations such as:
  - i) The Universal Declaration of Human Rights 1948 (UDHR);<sup>1</sup> and
  - ii) The International Covenant on Civil and Political Rights 1966 (ICCPR).<sup>2</sup>
  
2. That in line with the United Nations General Comment No 22 from the Office of the High Commissioner on Human Rights Committee which holds that the right to conscience is “far-reaching and profound”,<sup>3</sup> the term ‘conscience’ be interpreted broadly enough to reflect the Catholic and indeed universal understanding of it as a moral faculty of the human person, which cannot be simply disregarded or undermined without harming the dignity of the person. Whilst the concept of conscience has been developed in some detail by the Catholic Tradition (and will be briefly outlined below), as evidenced by its recognition in various international declarations, we submit that the existence of conscience is something that transcends a particular faith and has been generally recognised by many societies, historical and contemporary.
  
3. That the *Anti-Discrimination Act* (1977) should make clear and explicit that freedom of conscience, thought and religion includes the right to hold and express one’s beliefs in relation to sex and gender. Thus, where manifesting one’s conscience may be seen to conflict with another protected attribute such as being a transgender or homosexual person, a clarification be inserted to confirm that persons and organisations who respectfully manifest the view that sex is binary and immutable, and/or do not endorse homosexual activity, are not considered to have *de facto* engaged in vilification or unlawful discrimination.

**Submissions in relation to making ‘thought, conscience and religion’ a protected attribute:**

1. CWLA-NSW submits that the Act be amended so that freedom of thought, conscience and religion, are deemed protected attributes under the Act. This is a long overdue reform that would bring the NSW Legislation into line with other jurisdictions of Australia which protect conscience and/or religion as an attribute. It would also be in line with international human rights law and declarations, where freedom of thought, conscience and religion are considered fundamental and inviolable. This is also congruent with the Catholic perspective on conscience and its importance to upholding human dignity and freedom.
  
2. We would be grateful if the Commission would consider what the Catholic Church teaches on conscience. The Catholic Church upholds the awareness of the dignity proper to human persons, as rational beings capable of making moral decisions for which they bear responsibility. Respecting the dignity of the human person involves protecting the ability to act freely in conformity with one’s conscience.<sup>4</sup>

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<sup>1</sup> *Universal Declaration of Human Rights*, 1948, (resolution 217 A), adopted 10 December 1948.

<sup>2</sup> *International Covenant on Political and Civil Rights*, opened for signature 16 December 1966, UNTS 999 (entered into force 23 March 1976) art 18(3) (‘ICCPR’).

<sup>3</sup> United Nations, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion* CCPR/C/21/Rev.1/Add.4, G (‘General Note No. 22’).

<sup>4</sup> Catholic Church, *Catechism of the Catholic Church* (St Paul’s Publication, 2<sup>nd</sup> ed, 2009) 1782.

3. Far from being considered mere subjective preference, conscience is recognised by the Church as the voice of God resounding in the human heart: *Its voice, ever calling him to love and to do what is good and to avoid evil, sounds in his heart...His conscience is man's most secret core and his sanctuary*.<sup>5</sup>
4. Such teaching by the Catholic Church finds resonance in the UDHR, which outlines the following rights:<sup>6</sup>

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 18: Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom...either alone or in community, with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

5. Similarly, ICCPR Article 18(2): confers protection on its signatories for freedom of thought, conscience and religion:<sup>7</sup>

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

And further:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

6. Additionally, the UN Committee Note on the UDHR advises that:<sup>8</sup>

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18 (1) is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.

And further:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed.

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<sup>5</sup> Ibid 1776.

<sup>6</sup> UDHR (n 1 above).

<sup>7</sup> ICCPR (n 2 above).

<sup>8</sup> General Note No. 22 (n 3 above).

7. If conscience were just a feeling or an emotion, then it is of no real importance and there would be no need to recognise and protect it in law. As Newman noted, 'conscience has rights because it has duties.'<sup>9</sup> Legislation should adopt a 'thick' conception of conscience where it permits a person to follow their conscience and accepts that when a person does not follow their conscience they may suffer consequences that have not yet been fully recognised.

**Submissions in relation to preserving the current definition of 'woman', the protections for conscience, and the potential conflict this may have with the protected attribute of being a transgender person:**

1. Currently, the attribute of sex is protected under the Act where the definitions of man and woman in section 23 are consistent with the understanding of sex as being either male or female. Elsewhere in section 38A and following, the Act refers to the 'opposite sex', which implies there are only two sexes, and the balance of Part 3A of the Act refers to 'him' and 'her' which again reflects a binary understanding of sex. Of note, whilst some contemporary ideas may differ, the inherent reasonableness of a binary understanding has been attested by a recent UK case, which ruled that sex is a biological category which may not be changed via self-identification with the opposite sex.<sup>10</sup>
2. The binary understanding of sex is also supported by the teachings of the Catholic Church (and wholly endorsed by CWLA-NSW) and provides that: 'God created man in His image; in the image of God he created him; male and female He created them'.<sup>11</sup>
3. Should the definition of man and woman be amended to endorse a transgender worldview where a person can change their sex based on 'self-identification', and/or that their gender identity can include a category of sex other than male or female, the Act should make it clear that belief and respectful manifestation of the belief in a binary understanding of sex does not constitute vilification or unlawful discrimination.
4. In other words, that in-line with Article 18 and especially Article 19 of the UDHR, people who disagree with the transgender worldview and are honestly and firmly convicted that sex is binary and immutable should not be found to have unlawfully discriminated against a transgender person or be found guilty of vilification or hate speech, merely by holding, expressing and teaching this view in a respectful manner.
5. As an example, section 38M covers the provision of goods and services and makes unlawful a person who discriminates against another person on transgender grounds by refusing to provide the person with those goods and services or in the terms on which the other person is provided with those goods and services. Health care is considered to be a service and as such, this could apply to the doctor-patient scenario.

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<sup>9</sup> John Henry Newman, 'Letter to the Duke of Norfolk' in *Certain Difficulties Felt by Anglicans in Catholic Teaching II* (Longmans Green, 1885) 248.

<sup>10</sup> *Women Scotland Ltd v Scottish Ministers* [2025] UK 16).

<sup>11</sup> Genesis 1:27; cf Genesis. 5:1-2.

6. Arguably, a medical doctor who refuses to prescribe treatment to a transgender person on the basis that the transgender person who identifies as the opposite sex is not really of the opposite sex, has treated the transgender person 'less favourably' than they would a person who is not transgender and is in fact of that sex. The conclusion that the doctor in this instance is a perpetrator of unlawful discrimination is absurd.
7. Legislation exists that recognises and protects a healthcare professionals' freedom of conscience in regard to specific health services such as abortion and euthanasia.<sup>12</sup> These services, although lawful, are recognised as being morally controversial and as such, compelling a healthcare professional to perform or participate in them against their conscience is wrong. However they are not the only services that are morally controversial.
8. Division 3 of the Act focuses on exceptions to Part 3A but is confined to superannuation and sport where failure to treat the transgender person as being of the opposite sex with which the transgender person identifies is not considered to be unlawful discrimination. Whether or not the definitions of man and woman are amended, which the CWLA opposes, these exceptions should be broadened to conform to the logic and rationale for why these exceptions exist at all. For reasons of public health and safety, they ought at the very least to apply to the provision of medical services.
9. Section 38S provides that transgender vilification has occurred when a person, by way of a public act, incites hatred towards, serious contempt for, or severe ridicule of a person on the ground that the person is a transgender person, or a group of persons on the ground that the members of the group are transgender persons.
10. There needs to be sensible discussion on what constitutes hatred, serious contempt, and severe ridicule so that merely expressing the belief either explicitly or implicitly that sex is binary and immutable is not considered to be unlawful and a crime. In addition, as the definition of a 'public act' under section 38R is non-exhaustive and incredibly broad, the section seems to infringe upon any expression of belief in the binary worldview of sex. This is an unjustified silencing of a reasonable belief that has existed for hundreds of years and not reflective of a civilised and truly tolerant society.
11. Part 6 of the Act refers to general exemptions. These general exemptions are narrow in scope and in our submission need to be broadened to protect individuals who subscribe to the belief, endorsed by many, including Catholics, that the body is either male and female, but who do not fall within the definition of a religious body, voluntary body or faith-based organisation. Arguably, where an individual engages in acts that treat a person less favourably in the same circumstances (or circumstances which are not materially different) than they would treat a person who he or she did not think was a transgender person, or where they fall within the definition of a 'public act' there is no protection.

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<sup>12</sup> See *Abortion Law Reform Act 2019* (NSW), s 9; *Voluntary Assisted Dying Act 2022* (NSW) s 9.

**Submissions in relation to conscience, and the potential conflict this may have with the protected attribute of homosexuality:**

1. Part 4C of the Act refers to a person's homosexuality as a protected attribute. This raises similar concerns as expressed above for the potential conflict that might exist where a Catholic person manifests the Church's teaching on this subject and their communication is deemed as 'vilification' or 'hate speech'.
2. The Catholic Church has specific teachings on sexual ethics.<sup>13</sup> In regard to homosexual activity, the Catechism teaches as follows:

Basing itself on sacred scripture, which presents homosexual acts as acts of grave depravity (Gen 19:1-29; Rom 1: 24-29; 1 Cor:6:10; 1 Tim 1:10), tradition has always declared that homosexual acts are intrinsically disordered. They are contrary to the Natural Law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.<sup>14</sup>

3. The low level of religious literacy in the community means that many interpret the Catholic Church's rejection of homosexual acts as a rejection of the homosexual person *per se*, which is emphatically not the case. In fact, the Catholic Church teaches in its Catechism that:

The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion and sensitivity. Every sign of unjust discrimination in their regard should be avoided.<sup>15</sup> However, the Church further teaches that 'homosexual persons are called to chastity.'<sup>16</sup>

4. Hence, the Catholic Church, and families within her, reserve the right to uphold these precepts in the education of youth, both in the home and in the Catholic schooling system. Upholding these moral guidelines in discourse and in raising their children is the right and duty of Catholics, in accordance with conscience. They are not upheld to discriminate or to dishonour homosexual individuals, who are at all times to be treated with love and respect.
5. All persons, including those who profess Catholic beliefs about sex and gender, have a right to act in accordance with their conscience. This right and its associated obligations should be protected by the *Anti-Discrimination Act 1977*. As such, any amendments should not conflict with the rights of people to hold and teach these precepts to their children and youth by making it unlawful to do so. This especially applies to sections 3A, 38A and 49ZG.

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<sup>13</sup> See Sacred Congregation for the Doctrine of the Faith, *Persona Humana - Declaration on Certain Questions Concerning Sexual Ethics*, 29 Septem4er 1975  
[https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19751229\\_persona-humana\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html).

<sup>14</sup> Catechism of the Catholic Church (above n 4) 2357.

<sup>15</sup> Ibid 2358.

<sup>16</sup> Ibid 2359.

## Conclusion

1. As outlined above, we submit that freedom of thought, conscience and religion are important and fundamental to human dignity. Any proposed amendments should not oppose, conflict with or condemn the practice and transmission of Catholic Teaching or Christian revelation, nor impinge on the rights to hold, teach and to hand on these precepts to our youth.
2. This attribute of conscience has hitherto been protected within International Declarations to which Australia is signatory. As the federal government has not yet passed legislation to recognise and protect freedom of thought, conscience and religion, it is up to the state of New South Wales to fill the breach. In this regard, to reflect that as a multi-cultural/multi-faith society, we must find a way to co-exist so that the deeply held convictions of people of faith are respected and protected. This represents a richer conception of tolerance which allows people to hold and manifest a belief without attempting to suppress different beliefs based on a misguided understanding of the harm principle. It is not always possible to reach a rational consensus on every controversial matter. The lawmaker should accept that co-operative non-agreement can be achieved and that it can result in co-existence and harmony notwithstanding disagreements about certain beliefs.
3. We are happy to expand on any of the matters raised above and thank you again for the opportunity to contribute to this important review of the *Anti-Discrimination Act 1977* (NSW).

Yours faithfully

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