



27 August 2025

NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124

Sent by email: ADAreview@dcj.nsw.gov.au

Dear NSW Law Reform Commission

Re: Review of the *Anti-Discrimination Act 1977 (NSW)*

Thank you for the opportunity to respond to the Unlawful conduct consultation paper as part of the Review of the *Anti-Discrimination Act 1977 (NSW)*.

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. We have long advocated for changes to discrimination legislation in NSW to better protect all of us, equally, including in our [preliminary submission](#) to the NSWLRC.

We refer you to the submission we have co-signed with the HIV/AIDS Legal Centre (HALC), the National Association of People with HIV Australia (NAPWHA), Positive Life NSW, and the Bobby Goldsmith Foundation. We also endorse the submissions of our partners, Equality Australia, the Inner City Legal Centre, the Justice Equity Centre, NUAA, and SWOP NSW.

This brief submission highlights matters of critical importance to ACON that are articulated in detail in our co-signed submission and in the submissions of our partners.

It is ACON's view that the Act must be repealed and replaced with a new Act to better reflect contemporary standards, language and the experiences of discrimination – including discrimination on multiple simultaneous grounds – within our society, and to simplify the process of reporting and complaints handling so that the provisions of the Act are genuinely accessible.

Tests for discrimination

ACON supports the view that the comparator test for direct discrimination should be removed and replaced with an unfavourable treatment test, as is the case in Victoria, the ACT, and Queensland. Similarly, the test for indirect discrimination should be the disadvantage test already used in other jurisdictions. It is also ACON's strong view that the ADA should expressly provide that discrimination can occur on the basis of one or more attributes, or a combination of attributes.

Discrimination: protected attributes

ACON has long advocated for changes to the protected attributes in the ADA. Specifically, it is critical to replace homosexuality with **sexual orientation** as a protected attribute, and to replace the outdated 'transgender' definition with a protected attribute related to **gender identity and expression**.

Furthermore, the public health exception for infectious diseases should be removed in order to progress our goals of reducing stigma and discrimination for people living with blood-borne viruses in NSW.

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Discrimination: potential new protected attributes

ACON strongly supports the view of our partners SWOP NSW that 'sex work activity' be added as a protected attribute, as is the case in Queensland, and that 'personal association with a person with a protected attribute' is also added. We also support the inclusion of a new and separate attribute for people with innate variations of sex characteristics.

We also hold the view that further protected attributes could be added regarding medical condition or health status, immigration status, irrelevant criminal record, and religious belief.

Discrimination: Areas of public life

ACON supports extending protection to voluntary workers, and the repeal of outdated exceptions to the ADA with regard to areas of public life. These repeals will facilitate better access to insurance for people living with HIV, access to superannuation for trans people, protections for those with substance use disorders, and better protections for small business workers.

Wider exceptions

ACON has long advocated for the removal of faith-based exceptions from discrimination laws, particularly when it comes to educational settings. The exemptions for faith-based organisations in NSW are the broadest in the country, not in line with community standards, and have substantive health impacts. There should be no exceptions for private schools or religious organisations to discriminate against students, staff, and workers.

Should the ADA require exceptions for religious belief in a workplace, these exceptions should be extremely narrow, related only to where there is a need for genuine religious duties in a role, and reasonable and proportionate.

Exceptions related to adoption services, sport and aged care accommodation must also be removed.

Civil protections against vilification

ACON has contributed to the independent review of criminal law protections against the incitement of hatred. In that submission, as elsewhere, we have argued that civil and criminal vilification protections must be harmonised. ACON supports the changes introduced in Victoria and Queensland that offer harm-based protections and incitement-based protections, to refocus the legislation on how communities experience hate. This is especially pertinent in the current climate, given both the documented instances of hate experienced by LGBTQ+ communities in recent years, and the concurrency with criminal processes of reform.

Harassment

The ADA should prohibit sexual harassment and attribute-based harassment on the basis of all protected attributes, and should include in the definition of harassment threatening to disclose a person's sexuality, gender, or HIV status.

Promoting substantive equality

The ADA should allow for positive obligations to promote equality. This should also include the ability to accept representative complaints and pseudonymous complaints. Anti-Discrimination NSW must be adequately resourced to conduct proactive investigations, as well as receive complaints, and expand efforts to promote equality and positive obligations based on all areas and attributes in the law.

As an organisation grounded in health promotion and prevention initiatives, it is our firm belief that efforts to prevent discrimination before it occurs form a critical component of efforts to promote equality and social cohesion in NSW.

We look forward to the next phase in this process, as NSW works to ensure that all people are equally protected from discrimination. We would be more than happy to discuss further. Please do not hesitate to get in touch with me, Michael Woodhouse, at

Kind regards

Michael Woodhouse
Chief Executive Officer

