



SUBMISSION TO NSW ANTI-DISCRIMINATION ACT REVIEW, AUGUST 2025

Introduction

Women's Forum Australia (WFA) is an independent think tank established in 2005 that undertakes research, education and public policy advocacy about economic, social and health issues affecting women and girls, with a particular focus on addressing behaviour and practices that are harmful and abusive to them.

WFA welcomes the opportunity to contribute to the NSW Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW) (ADA).

As an organisation dedicated to defending women and girls' sex-based rights and protections, we have deep concerns about the erosion of legal protections for females due to the conflation of sex and gender identity, particularly when it comes to the impact on female-only spaces, services and sports. While we support measures to strengthen anti-discrimination protections, this must not come at the expense of women's privacy, safety, fairness, and dignity.

Our submission addresses **Questions 4.7, 7.7, 8.1, 8.2, 9.2 and 11.2** of the consultation paper in the context of our concerns about the erosion of women's sex-based rights and protections and the current conflict between anti-discrimination protections for sex and gender identity.

Question 4.7: Sex Discrimination

Definition of "sex"

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

The ADA must contain a clear, unambiguous definition of sex as biological sex.

- Women and girls face discrimination because of their sex, not a subjective gender identity i.e. due to factors such as their capacity for pregnancy and physical vulnerability to male violence. These biological realities are precisely why single-sex spaces, services and sports exist, to protect the safety, dignity, fairness and privacy of women and girls.
- This ensures legal certainty and prevents judicial reinterpretation that undermines Parliament's intent, which can lead to the law being weaponised

against women who, for example, seek to provide female-only services (as seen in *Tickle v Giggle (2024)*).

- It is consistent with Australia's obligations under the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, which recognises rights and protections on the basis of sex, not gender.
- The UN Special Rapporteur on violence against women and girls has consistently highlighted the discrimination and harm women and girls face on the basis of sex.
- We refer you to the recent UK Supreme Court decision, *For Women Scotland Ltd v The Scottish Ministers (2025)*, which held that the terms 'woman' and 'sex' in comparative equality legislation refer to a biological female and biological sex.

We therefore strongly oppose any proposal to shift from *sex discrimination* to *gender discrimination*.

Pregnancy and breastfeeding

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

We support explicitly prohibiting discrimination based on pregnancy and breastfeeding, while making it clear that such discrimination is a form of sex-based discrimination.

- This would align with other jurisdictions and provide clarity that discrimination based on pregnancy and breastfeeding is prohibited.
- However, the wording must state plainly that pregnancy and breastfeeding are experiences of female bodies only.

Question 7.7: Exceptions Relating to Sport

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

Sex-based exceptions in sport are essential to protect female athletes, due to the significant physical advantages that come with male puberty.¹

- Female sporting categories must be reserved for biological females.
- This safeguards safety in contact sports, fairness in competition, and the dignity of women and girls.
- Without this exception, women's opportunities to participate in sport on equal terms would be severely compromised.
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¹ See our comprehensive report on this issue – [A Fair Playing Field: Protecting Women's Single-Sex Sport](#).

- Efforts to defend female-only sport, such as by highlighting the fairness and safety risks caused by trans-identified male athletes who are competing in female categories, should not be considered vilification (as seen in NSW cases *Dennis v Smith* and *Blanch v Smith* (2025)).

The ADA should therefore retain and strengthen sex-based exceptions in sport.

Question 8.1: Protected Attributes for Vilification

(1) What changes, if any, should be made to the way the ADA expresses and defines the attributes currently protected against vilification?

(2) Should the ADA protect against vilification based on a wider range of attributes? If so, which attributes should be covered and how should these be defined?

Currently, gender identity is protected under NSW vilification laws, but sex is not. This creates a hierarchy of rights where women lack protections against vilification while those asserting a gender identity are protected. This is particularly problematic given the violence and harassment women have faced from transgender rights activists for speaking out about sex-based rights and protections.³

- Sex should be added as a protected attribute for vilification.
 - Any expansion of vilification provisions must ensure robust public interest exemptions to protect free expression, legitimate advocacy, academic research, and women's ability to organise on the basis of sex.
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Question 8.2: The Test for Vilification

(1) Should NSW adopt a "harm-based" test for civil vilification? If so, should this replace or supplement the existing "incitement-based" test?

(2) What, if any, other changes should be made to the incitement-based test for civil vilification?

³ See for example <https://terfisaslur.com/> or consider the violent transgender rights activists who have turned up to disrupt multiple rallies in Melbourne where women have gathered to speak about their sex-based rights i.e. Regan Hodge, Olivia Jenkins and Anna Shreeves, 2025. *Pro-trans activists taken into custody after violent counter rally in Melbourne's CBD*, *Herald Sun*, 16 August 2025. Available at: <https://www.heraldsun.com.au/truecrimeaustralia/police-courts-victoria/watch-as-police-confront-masked-protrans-activists-targeting-womens-rights-rally-in-melbourne-cbd/news-story/ba900c8ba9d08e0c10f92124d1665de0>

We oppose adopting a broad “harm-based” test.

- Such a test risks silencing legitimate debate on matters of public interest, including women’s advocacy for sex-based rights.
- The current “incitement-based” threshold better balances protections with freedom of expression and the implied constitutional right to political communication.

If reform is considered, only targeted adjustments should be made to clarify incitement standards – without expanding to subjective or vague concepts of “harm” that could criminalise women’s advocacy.

Question 9.2: Other Sex-Based Conduct

(1) Should harassment on the ground of sex be expressly prohibited by the ADA?

Yes. Harassment on the ground of biological sex should be expressly prohibited to provide clarity and comprehensive protection for women.

- Women often face conduct that falls short of sexual harassment but is nonetheless hostile or degrading because of their sex.
- The federal *Sex Discrimination Act* already includes protections against sex-based harassment, and harmonisation with federal law would enhance consistency and accessibility.

(2) Should the ADA prohibit workplace environments that are hostile on the ground of sex?

Yes. The ADA should prohibit hostile workplace environments on the ground of biological sex. Hostile workplace environments undermine women’s participation, safety, and equality in employment.

Question 11.2: Special Measures

(1) Should the ADA generally allow for special measures? Why or why not?

(2) If so, what criteria for a special measure should the ADA apply?

(3) If a general special measures section is added to the ADA, should it replace the existing exemption and certification processes? Why or why not?

We support special measures provisions that explicitly recognise the legitimacy of initiatives that advance women’s rights on the basis of biological sex. Such measures are not discriminatory but necessary to achieve substantive equality.

Conclusion

Women's Forum Australia urges the Commission to retain and strengthen sex-based rights and protections in the ADA by:

1. Defining sex clearly as biological sex.
2. Including pregnancy and breastfeeding protections as female-specific.
3. Ensuring sex-based rather than 'gender-neutral' language.
4. Strengthening sex-based exceptions in sport.
5. Adding sex as a protected attribute for vilification while safeguarding free speech.
6. Rejecting a harm-based vilification test.
7. Explicitly prohibiting harassment on the ground of sex.
8. Affirming special measures for women as lawful and necessary.
9. Explicitly protecting female-only spaces and services including refuges, prisons, bathrooms, changerooms, gyms etc on the basis of biological sex.
10. Ensuring that gender identity protections do not override women's sex-based protections.

True equality requires recognition of sex as a distinct and material category. Anti-discrimination law must not erode the very protections women fought to secure.