

Parents for Trans Youth Equity (P-TYE)

SUBMISSION TO NSW Law Reform Commission

Anti-Discrimination Act Review

August 2025



Contents

About Parents for Trans Youth Equity (P-TYE)	3
Executive Summary	4
1. Section 38A - Interpretation & Definition	5
2. Section 38K - Private Education	6
3. Section 38P – Transgender Exclusion in Sport	7
Children under 12	8
Young people 12 to 17	8
Differences in strength, stamina and physique	9
Competitive sport	9
4. Harassment of Transgender People	10
5. A Human Rights Charter	11

About Parents for Trans Youth Equity (P-TYE)

We are a group of parents, carers and allies advocating for the equitable treatment and well-being of transgender and gender diverse children and youth (“trans children and youth”). We are actively involved in ensuring trans children and youth have the same rights and support as their cis-gender peers. We focus on issues like school safety, healthcare access, and discrimination, aiming to create inclusive and affirming environments for trans children and youth.

We contribute to a larger collective voice against anti-trans activism. Being parent led, and speaking from our distinctive parenting experiences, we complement the work of trans led organisations.

Importantly, we also provide visibility for trans children and youth, and their families, to demonstrate the importance of supporting trans children and youth. When we speak to the media, show up at rallies, and march in the Mardi Gras parade, we acknowledge trans children and youth as a normal part of our lives, deserving of the same rights as everyone else, and how – when they are loved and accepted by their families and friends – they can thrive.

Our work has included submissions and giving evidence to NSW Parliamentary Inquiries (Education Legislation Amendment Bill 2020, Equality Bill 2023, Public Toilets 2025), advocating for change with NSW Health and the NSW Education Department, advocating to overturn the recent ban on vital gender affirming care for trans youth in Queensland, and annual participation in Mardi Gras since 2019. We have also published peer reviewed research in partnership with Western Sydney University.¹

Parents for Trans Youth Equity can be contacted at: p.tye.nsw@gmail.com

¹ Townley, Cris and Carlie Henderson, ‘What Parents Know: Informing a Wider Landscape of Support for Trans and Gender Diverse Children and Adolescents’ (2024) *Children and Youth Services Review*; Townley, Cris and Brahma Putra Marjadi, ‘Good GP Care for Transgender Children: The Parent’s Perspectives’ (2024) *International Journal of Transgender Health*; Townley, Cris and Jacqueline Ullman, ‘Hypervisibility and Erasure: Parents’ Accounts of Transgender Children in Early Childhood Education and Care and Primary Schools’ (2025) *Gender and Education* 37(3) .

Executive Summary

In this submission, we use the term “trans children and youth” to be inclusive of all transgender and gender diverse children and young people under the age of 18. Our own experience and research demonstrate that some children as young as 3 know that they are trans.

Overall, P-TYE welcomes the review of the *Anti-Discrimination Act 1977 (NSW)*, (the Act). We see it as an opportunity to create a more inclusive society and enhance the lives of trans children and youth in NSW. We wish our trans children could focus on living their best life, with their rights protected from discrimination, vilification, harassment and victimisation.

We acknowledge that the Act needs extensive change. However, we have restricted our submission to the areas that we perceive significantly impact trans children and youth. As parents, we are concerned about our kids’ future as adults, and we appreciate the work of Equality Australia, ACON, Trans Justice Project and others whose submissions advocate for trans adults.

The table below summarises the key points in this submission.

	1977 Act Reference	High level summary	Page
1	S38A Interpretation	The current definition of a transgender person is outdated and incomplete. It requires change to be inclusive of all trans people, and ensure they are protected from discrimination, vilification, harassment and victimisation. In particular, the definitions should: <ul style="list-style-type: none">• be inclusive of non-binary and gender fluid people, and• remove the concept of “recognised” transgender person.	5
2	S38K Private Education Exclusion	Lawful discrimination by private educational authorities against trans children and youth must be removed.	6
3	S38P Sport Exclusion	Lawful discrimination against trans children and youth in sport must be removed. All young people should have the right to participate in sport.	7
4		Harassment Trans children and youth should be protected by law from harassment. There should be a mandatory requirement for schools and workplaces to take positive steps to prevent harassment.	11
5		Human Rights Act/Charter A Human Rights Act or Charter would protect and promote the rights of all citizens, including trans children and youth. It would complement anti-discrimination law.	11

P-TYE would be pleased to meet with the Commission to discuss any aspect of trans children and youth or this submission.

1. Section 38A - Interpretation & Definition

Transgender is defined in section 38A – Interpretation, and reads as follows:

A reference in this Part to a person being transgender or a transgender person is a reference to a person, whether or not the person is a recognised transgender person—

- (a) who identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex, or*
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or*
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex, and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.*

This definition is outdated and incomplete.

Anti-discrimination legislation should be inclusive of all trans people and the definition of a transgender person requires change so that it includes all trans people, including non-binary, genderqueer and gender fluid people. An inclusive definition is essential to ensure the Act protects all trans people from discrimination, vilification, harassment and victimisation.

P-TYE notes the changes made after the passing of the *Equality Act 2024* (NSW), with the *Births, Deaths and Marriages Registration Act 1995* (NSW) now explicitly recognising the following sex descriptors in section 32A – definitions:

- (a) female,*
- (b) male,*
- (c) non-binary*
- (d) non-specified*
- (e) any descriptor prescribed by the regulations.*

In addition, the distinction between “recognised” and not recognised is redundant especially since “outing” someone as transgender by disclosing their gender history without their consent can now be a criminal offence in NSW under section 71(b) of the *Amendment of Crimes (Domestic and Personal Violence) Act 2007* (NSW).

P-TYE suggests the following definition:

Transgender person is a reference to a person whose gender identity does not exclusively align with the sex assigned to them at birth.

2. Section 38K - Private Education

Section 38K – Education currently reads as follows:

(1) It is unlawful for an educational authority to discriminate against a person on transgender grounds—

(a) by refusing or failing to accept the person's application for admission as a student, or
(b) in the terms on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on transgender grounds—

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

(b) by expelling the student or subjecting the student to any other detriment.

(3) Nothing in this section applies to or in respect of a private educational authority.

Section 38K(3) of the Act makes it lawful for private schools and educational facilities to discriminate against trans children and youth.

Because our children are required to attend school, and spend so much of their time there, how they are treated at school is incredibly important. Because private educational institutions are a significant and integral part of Australian education, we believe the exemption that enables discrimination against trans children and youth should be removed from the Act, and not included in any NSW anti-discrimination law. In the event this discrimination is not removed and remains lawful, there should be a positive obligation on schools to protect trans children and youth - refer to section 4 of this submission.

We have many parents of trans children and youth at private educational facilities (including faith-based schools) who have been embraced for who they are, just like their cisgender peers. We believe it is a minority of facilities who seek to segregate and punish trans children and youth for simply being who they are.

As stated by the United Nations *Convention on the Rights of the Child*,² Education is a human right for all children. Children's education should not be disrupted or cause psychological trauma. This includes trauma caused by faith leaders who have told parents to choose between their religious community or their trans child, often after these children have grown up in that community. The right to 'harm thy neighbour' should never be legally protected. 'Love thy neighbour' however appears to align with the majority of religious beliefs in NSW.

Lawful discrimination against students does not reflect the values of inclusion and equality held by the majority of schools (including faith-based schools) and the majority of the NSW population, when it comes to the education of children. It must be kept in mind that most private educational providers (except for profit schools, of which there are none in NSW) receive substantial government funding (AUD \$1.6 billion annually from the NSW government and more from the Commonwealth)³ and therefore should reflect these widely held values of inclusion and equality. It is P-TYE's view that (1) government funding should not be given to private educational facilities that discriminate against trans children and youth, and that (2) this discrimination should not be legal.

² *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

³ Department of Education NSW Government, 'Funding', *Funding* (17 December 2024) <<https://education.nsw.gov.au/schooling/non-government-schools/funding.html>>; Department of Education Australian Government, 'Reports on school funding', *Reports on School Funding* (Text, 24 March 2025) <<https://www.education.gov.au/schooling/reports-school-funding>>.

P-TYE is aware the exception for private educational authorities in the area of employment equally exists. As parents of trans children and youth that may one day be affected by this exception, we feel strongly that this should also be removed.

3. Section 38P – Transgender Exclusion in Sport

Section 38P of the Act currently reads as follows:

(1) Nothing in this Part renders unlawful the exclusion of a transgender person from participation in any sporting activity for members of the sex with which the transgender person identifies.

(2) Subsection (1) does not apply—

(a) to the coaching of persons engaged in any sporting activity, or

(b) to the administration of any sporting activity, or

(c) to any sporting activity prescribed by the regulations for the purposes of this section.

P-TYE's view is that everyone should be able to participate in sport, and any exclusion of trans children and youth is unjustified, unjust and should be removed from NSW anti-discrimination law. Furthermore, we support the principle that where a sport is organised along gendered categories, trans people should be able to participate in a sports team that aligns with their preferred gender.

We understand the most important purposes of sport to be enjoyment, community participation, teamwork and fairness, and physical and mental health. Competition is of less importance than these values. Accordingly, our comments prioritise the enjoyment of participation over competition.

There have been suggestions that the Act's lawful exclusions from sport, where sport is organised by gendered categories, be revised along three lines:

- exclusions apply to competitive sport where strength, stamina or physique are relevant. Exclusions must be reasonable and proportionate
- trans people cannot be lawfully excluded from umpiring or refereeing
- trans children under the age of 12 cannot be lawfully excluded from participation in sport in their preferred gender category

These suggestions are in parallel with section 42 of the Sex Discrimination Act 1984 (Cth), which reads as follows:

(1) Nothing in Division 1 or 2 renders it unlawful to discriminate on the ground of sex, gender identity or intersex status by excluding persons from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

(2) Subsection (1) does not apply in relation to the exclusion of persons from participation in:

(a) the coaching of persons engaged in any sporting activity;

(b) the umpiring or refereeing of any sporting activity;

(c) the administration of any sporting activity;

(d) any prescribed sporting activity; or

(e) sporting activities by children who have not yet attained the age of 12 years.

We agree allowing transgender umpires, referees, sports administrators and coaches is a “no-brainer”. No physical competition is involved in fulfilling these roles, and excluding trans people from these activities is unjustified, unnecessary and unjust.

Children under 12

We strongly agree that children under the age of 12 should be protected from discrimination in sport. By this we mean that where sports are organised by gendered categories, children under the age of 12 should not be restricted to playing in a team that does not align with their gender.

In terms of implementing trans inclusion in sport, we note the Sports Australia guidelines on participation in community sport, and fully endorse these guidelines.⁴ We note, too, that a reduction in teams organised by gender for children and young people would allow greater participation of particularly non-binary children.

An additional difficulty is the verification and enforcement of exclusions from sport. How are local clubs and school sport units to “verify” someone’s gender? Are we seriously suggesting school sports teachers or local coaches need to verify a young person’s gender? And how would we suggest this is done? Parents report having to provide children’s birth certificates to prove their child’s identity and gender details. This causes stress, and parents have to find creative ways to avoid disclosing their child’s gender history.

Most children and young people play sports at school (including intra and inter-school competitions) and at local sports clubs. They mainly play for enjoyment and social connection and, while competitive, are not elite athletes.

Young people 12 to 17

P-TYE has serious reservations about the suggested approach in subsection (e) of the *Sex Discrimination Act 1984* (Cth). Whilst we recognise that this protects the rights of trans children under the age of 12, we do not support continuing discrimination against trans youth aged 12 to 17 by making it lawful to exclude them from sporting activity in the gendered teams of their choice. No child should ever be lawfully discriminated against due to who they inherently are, whether in sport or elsewhere. All trans children and youth should be able to participate in sport.

Participating in sport has wide ranging benefits. As stated by the American Psychological Association “There is ample evidence that an opportunity for adolescents to participate in sports results in positive outcomes, such as better grades, greater homework completion, higher educational and occupational aspirations, and improved self-esteem.”⁵

The lawful exclusion of trans adolescents from sport is inconsistent with NSW Education Department policy which mandates participation in PDHPE (including physical activity/sport) until year 10. It is ridiculous to mandate participation and then enable discrimination against trans children and youth so they cannot participate in sporting activity. Sporting activities at school level, like community sports, should prioritise community inclusion and enjoyable participation.

Most school and local sports competitions do not have resources to stand up to loud, and sometimes violent voices of bigotry that can arise on the sidelines of playing fields. These voices are fed by divisive debate against trans women playing elite competitive sport, which we consider below. Having non-discriminatory rules will protect trans children and youth and also benefit cisgender girls who do not conform to western stereotypes of feminism from being denied access to sport or being harassed when they do participate.

⁴ Australian Human Rights Commission, ‘Guidelines for the Inclusion of Transgender and Gender Diverse People in Sport, (June 2019), <[Trans-and-gender-diverse-guidelines-KYKyNPYEGkPQGXXcWPdNLQ \(1\).pdf](#)>

⁵ American Psychological Association, ‘Transgender Exclusion in Sports’ (online December 2013), <<https://www.apa.org/topics/lgbtq/transgender-exclusion-sports>>.

Differences in strength, stamina and physique

Presumed gendered differences in strength, stamina and physique are used to justify the exclusion of trans children and youth from sports. However, let's not lose sight of the reality that differences in strength, stamina or physique are evident amongst non-transgender youth. Some of these are inherently genetic advantages, while others are the result of the opportunities provided by coaching and training – all of which have important impacts on strength and stamina. Indeed, scientific review found that biomedical factors related to puberty do **not** predict athletic performance,⁶ whereas social factors (such as nutrition, training and access to equipment) greatly impact an athlete's performance.⁷

In relation to variations in ability, the American Psychological Association has stated: "Transgender children vary in athletic ability, just as other youth do. There is no evidence to support claims that allowing transgender student athletes to play on the team that fits their gender identity would affect the fairness of the sport of competition."⁸

In addition, it is worth keeping in mind that

1. Strength, stamina or physique not applicable in all sports (such as boccia, e-sports) and blanket exceptions would make no sense.
2. Gender does not have to be the key criteria for sports. There are junior sports (such as AFL or volleyball) which have "mixed" teams, so young people of any gender can play. Some junior rugby teams assess players by height and weight to determine team allocation.

In addition, as gender affirming medical care, in the form of puberty blockers and hormones, becomes more accessible to children and young people from the onset of puberty, differences in strength, stamina and physique between bodies born male and bodies born female will reduce. This supports our argument that young people up to the age of 18 should have no restrictions on the gendered sports team they choose, in alignment with their gender identity.

Competitive sport

Another popular suggestion is for exclusions to be only for "competitive sport." While that might be an improvement, we feel this still discriminates against trans children and youth who want to start engaging in competitive sport. If any distinction is to be made, it should be limited strictly to **adults** engaged at a **high-performance** level in **competitive sports** where **strength, stamina, or physique is a vital part of the sport**. This is in line with the Transgender and Gender-Diverse Inclusion Guidelines for High Performance Sport, as developed between the Australian Institute of Sport (AIS) and the Australian Human Rights Commission (AHRC).⁹

It is also important to keep in mind that the focus on transgender people in sports has far-reaching implications, including for non-trans athletes. Most opposition to trans people playing sport is focussed on trans women seeking to play in women's

⁶ American Psychological Association, 'Transgender Exclusion in Sports' (online December 2013), <<https://www.apa.org/topics/lgbtq/transgender-exclusion-sports>>.

⁷ Canadian Centre for Ethics in Sport (CCES) E-Alliance, *Transgender Women Athletes and Elite Sport: A Scientific Review* (2022) executive summary.

⁸ American Psychological Association, 'Transgender Exclusion in Sports' (online December 2013), <<https://www.apa.org/topics/lgbtq/transgender-exclusion-sports>>.

⁹ 'Australian Sports Commission | Transgender & Gender-Diverse Inclusion Guidelines for HP Sport' <https://www.ausport.gov.au/ais/position_statements/content/transgender-gender-diverse-inclusion-guidelines-for-hp-sport>.

sports competitions. Whilst we focus this submission on children and young people, we argue that anti-trans sports bans on trans women harm all women and girls¹⁰. The majority of women support the inclusion of transgender women in sport¹¹.

There have been many discussions about transgender people in sport. However, much of the debate is based on hyperbole about physical advantages linked to hormone levels that holds no scientific basis. In fact, a recent Canadian review found 'there is currently no substantial research evidence of any biological advantages that would impede the fairness of trans women competing in elite women's sport.'¹²

As the E-Alliance found, '[t]he very existence of the women's sports category is the result of the historical exclusion of women from competitive sport, which was underpinned by pathologizing (sic) discourses about their bodies and the harms of their participation in physical activities. Policies that impact the practice of trans women in competitive sport emanate from the parallel history of efforts to define the female category in ways that excluded those women whose bodies were deemed not to conform to normative standards of femininity.'¹³

In summary, P-TYE advocates that the lawful exclusion of trans children and youth in sport be removed in its entirety from the Act. We suggest the following wording,

Nothing in this part makes it lawful to exclude a transgender person from participation in a sporting activity or administration for members of the sex the person lives, seeks to live or identifies with. Any exceptions must strictly apply to transgender adults engaged at a high performance level in competitive sports where strength, stamina or physique is a vital part of the sport.

¹⁰ Hallie Meisler, 'Why Arizona's Anti-Trans Sports Ban Harms All Women and Girls', *National Women's Law Center* (online 16 October 2023), <<https://nwlc.org/why-arizonas-anti-trans-sports-ban-harms-all-women-and-girls/>>.

¹¹ Erik Pringle and Richard Denison, 'Majority of Female Athletes Support the Inclusion of Transgender Women', *Sydney Morning Herald* (online 19 April 2022), <<https://www.smh.com.au/sport/majority-of-female-athletes-support-the-inclusion-of-transgender-women-20220419-p5aehx.html>>.

¹² *Ibid* 40.

¹³ *Ibid* 34.

4. Harassment of Transgender People

We know first hand from the experience of our children that trans children and youth are harassed and bullied simply for who they are. We have seen the damage this does. Bullying and harassment happens at school, in sporting clubs and kid's activities, as well as in the wider community. The incidence of bullying and harassment increases during periods where anti-trans disinformation and hate are profiled in the media, on social platforms, and in politics.

In particular, bullying and harassment at school is hugely problematic. It affects mental health, physical health, and education outcomes – it can have a whole-of-life impact.

School attendance is mandated by the NSW Education Department. Schools must be safe places. Forcing trans children and youth to attend a place where they are bullied and harassed is unconscionable. There should be a positive obligation, and duty of care, on schools to protect trans children and youth, prevent bullying and harassment, and create inclusive environments.

Trans children and youth deserve to be protected from bullying and harassment (including sexual harassment) by NSW law.

P-TYE advocates that:

- It should be unlawful to harass trans people
- There should be a positive obligation on schools, workplaces, clubs etc to prevent bullying and harassment of trans people.

5. A Human Rights Charter

P-TYE strongly recommends that NSW establish a Human Rights Act or Charter to protect and promote the human rights of all its citizens, including from the point of view of the trans children and youth of NSW. Anti-trans moral panics which are sweeping the globe, endanger all young people, sending messages that bodily autonomy is not acceptable.

P-TYE notes that Queensland, the ACT and Victoria all have a Human Rights Act or Charter of Human Rights and Responsibilities, making NSW an outlier on human rights compared to our neighbours.

P-TYE is a signatory organisation to the HRA4NSW Alliance, a group of NSW organisations working together to raise awareness of the need for the state to have a Human Rights Act as other Australian states do.

All children deserve to grow up without discrimination. Trans children and youth particularly do not currently enjoy this right across all aspects of society and this discrimination is not okay. A Human Rights Act or Charter would go some way towards bridging this inexcusable divide.