

Submission to the NSW Law Reform Commission on the Review of the

Anti-Discrimination Act 1977 (NSW)

Dear ADA Review

I write to you on behalf of the 5,443 signatories for the Declaration of Biological Truth Australia. The Declaration has over 3,000 signatures from NSW residents.

Signatories include lawyers, professors, doctors and thousands of concerned citizens.

Transgender and gender Identity

As part of this review, we ask that the NSW Anti-discrimination Law maintains legitimacy as a legal document through use of the biological and reality-based term “sex”. The ADA should remove the non-specific term “transgender” or any term related to *gender identity*.

Why?

Because there are only two sexes as taught in every biology and medicine course in Australia. It is scientific fact.

Sex is based on objective and easily measurable characteristics. It is easily argued in law and not open to interpretation or distortion. Even Intersex individuals have a chromosomal marker of either male or female.

Transgender or gender-based attributes are based on subjective and non-measurable characteristics that can change according to an individual’s ‘feelings’ over time.

To protect individuals based on both SEX and GENDER is contradictory. It creates an immediate dissonance making judgement impossible.

It is like basing the nutritional value of food according to how it makes a person feel rather than on dietary analysis. In such a case, Tim-Tams would win every time, yet result in early death.

Homosexuality

The ADA must maintain its definition of homosexuality based on ‘male and female’ homosexual’. The term ‘bisexual’ could be added for specificity.

Why?

This is because there are only two sexes as taught in every biology and medicine course in Australia. It is scientific fact.

Should the ADA shift to a definition based on ‘sexual attraction, emotion or sexual relations’, it opens the door to all types of sexual anomalies like bestiality, child attraction or agalmatophilia.



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Homosexuality or bisexuality are clear and legal manifestations of human sexual attraction. Asexuality, sexual relations etc are unclear, subjective interpretations.

Pregnancy and Breastfeeding

We also oppose the removal of pregnancy and breastfeeding from the definition of “sex” to ensure safety during this time for women. Pregnancy and breastfeeding MUST remain protected under the ‘SEX’ category.

Only women can breastfeed or have children. This is a biological fact that is beyond doubt. Facts cannot be denied to satisfy the feelings of a few.

Extra detail

The Australian Government’s Guidelines on Sex and Gender explain the distinction as follows:

“Sex refers to the chromosomal, gonadal and anatomical characteristics associated with biological sex”;

“Gender is part of a person’s personal and social identity” and “refers to the way a person feels, presents and is recognised within the community”.

It is clear that gender is a concept and as the [WHO states](#):

“As a social construct, gender varies from society to society and can change over time”.

It is not appropriate for a NSW Act designed to protect vulnerable and or disadvantaged groups to base The Act upon a socially constructed term that can vary over time.

The resultant harms

We are already seeing the resultant harms of the conflation of sex and gender in our society including:

- Men with paraphilic tendencies being able to self-identify as women based on their “gender identity” and having access to what were previously safe women’s spaces.
- Women and girls being physically harmed playing competitive sport with men claiming to be women based on their “gender identity”.
- The medical professional using a “gender affirming” model of care that is based on the constructed concept of “trans rights” and is not evidence based or scientific. This is as a result of the findings of [UK Cass](#) and numerous overseas [systematic reviews](#).
- The introduction into our schools of gender ideology in the form of “gender studies”, social transitioning and developmentally inappropriate sex education. It has also resulted in parents being excluded from decisions regarding their children’s health and education.

The inappropriate use of “*inclusion*” into Australian institutions and laws is resulting in the loss of sex-based protections for women and children.

To keep more vulnerable members of our society safe it is structured intentionally to exclude some individuals or groups from access to or participation in certain situations.

It is dangerous and illogical to say we need to “include” everyone who requests access to a place or activity.

Ideas for extending the existing protections

As stated in the ADA Consultation Paper under **Ideas for extension**, “*the ADA protects anyone who is thought of as a transgender person, whether or not they are transgender “in fact”*

These concepts are too broad and amorphous. Any definition of transgender **must remain in binary terms**. The Declaration strongly argues against the addition of ‘gender identity’ in the ADA as discussed above.

Also, to include a “*protected attribute that someone had in the past or will have in the future (not just what they have now)*” is impossible to apply in law. It is an activist position.

To protect a micro-minority based on subjective self-assessment that trumps the protection of the vast majority based on biological fact defies common sense.

Laws do not allow children to drive cars even if they self-identify as good drivers or feel excluded. Similarly, if the term ‘gender’ rather than sex is used, men who are not and never will be biological women can gain access to the protected spaces and activities that keep biological women safe and sporting events fair.

The NSW anti-discrimination Act is designed primarily to protect our vulnerable.

The introduction of the unscientific term **gender** rather than **sex** will render this aspect of the Act being separated from reality and failing in its legal duty.

Thank you for the opportunity to contribute to this review.

Phil Dye

**Founder and Chairman: The Declaration of Biological Truth Australia
Past educator in the School of Medical Science at UNSW**