

Anti-Discrimination NSW

# Submission to the inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023

April 2024

## Acknowledgement of Country

Anti-Discrimination NSW acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this document.

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Published by Anti-Discrimination NSW

[antidiscrimination.nsw.gov.au](http://antidiscrimination.nsw.gov.au)

First published: 2024

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## Introduction

Anti-Discrimination New South Wales (**ADNSW**) thanks the Committee on Community Services (the **Committee**) for inviting submission to the inquiry into the Equality Legislation Amendment (LGBTIQA+) Bill 2023 (the **Bill**).

ADNSW administers the *Anti-Discrimination Act 1977* (**ADA**) which makes it unlawful to discriminate in specified areas of public life against a person on grounds which include their sex, race, age, disability, homosexuality, marital or domestic status, transgender status and carer's responsibilities. Sexual harassment, as well as vilification on the grounds of race, religion, homosexuality, transgender status, HIV/AIDS status is also unlawful.

ADNSW works to eliminate discrimination in NSW by:

- Answering enquiries
- Resolving complaints
- Raising awareness about discrimination and its impacts
- Managing applications for exemptions from the ADA
- Advising the government about discrimination issues.

In July 2023, the NSW Attorney General asked the NSW Law Reform Commission (**NSW LRC**) to undertake a broad review of the ADA, to consider whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards. The review is dealt with below, and is currently ongoing.<sup>1</sup>

### Equality Legislation Amendment (LGBTIQA+) Bill 2023

The Bill proposes legislation to provide interim protections within the current framework of the ADA to close gaps that leave LGBTIQA+ people vulnerable. The ADA currently provides protection based on sex, homosexuality and transgender status, however its language and provisions are outdated, and conflate concepts of sex, gender identity and gender expression. It uses binary language to describe sex, including frequent references to the 'opposite sex'.

The Bill's proposed amendments include the removal of exemptions for private educational authorities or religious institutions, and the introduction of two new protected grounds: variations of sex characteristics and sex workers.

ADNSW supports the introduction of protections against discrimination for people with innate variations of sex characteristics. In its submission to the Law Reform Commission's review of the ADA, ADNSW proposed amending the ADA to include protections on the grounds of sexual orientation, gender identity, intersex (or variations of sex characteristics) and religion or religious belief.

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<sup>1</sup> [Anti-Discrimination Act review](#), NSW Law Reform Commission, accessed 8 April 2024

Intersex Human Rights Australia has expressed a preference for protection under the ground of “sex characteristics”, on the basis that different definitions of ‘intersex status’ refer to what intersex people lack and conflate intersex with gender identity. This opinion has received support from the Public Interest Advocacy Centre<sup>2</sup>, which recommended that the protected attribute of ‘sex characteristics’ should be included in the ADA, based on the definition in the Yogyakarta Principles plus 10<sup>3</sup> and also used by the United Nations.

The proposed legislation also suggests protection from discrimination for sex workers. New South Wales was the first place in the world to decriminalise adult sex work, with most aspects of sex work decriminalised in 1995.<sup>4</sup> The proposed Bill indicates that many sex workers are ‘part of or supportive of the LGBTIQ+ community and have always marched with the group’.

The laws protecting sex workers and the sex industry vary across federal, state and territory jurisdictions.

The proposed introduction of sex work as a new ground in the ADA may need to be further considered with through more extensive stakeholder and inter-agency consultations. ADNSW does not currently have specific expertise in this area, so is not in a position to comment on the extent of discrimination faced by sex workers in NSW.

The objects of the ADA include promoting equality of opportunity between all persons, so to the extent that sex workers constitute a minority group experiencing discrimination, it would be appropriate that the protections of the ADA should cover them.

### New South Wales Law Reform Commission Reviews

The NSW LRC is currently reviewing the ADA to consider whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards.

At the same time, the Attorney General has asked the NSW LRC to review the effectiveness of section 93Z of the [Crimes Act 1900](#) (NSW) in addressing serious racial and religious vilification in NSW.<sup>5</sup>

Some of the NSW LRC’s terms of reference overlap with amendments proposed by the Bill. In particular, the ADA review will look into the range of attributes protected, existing discrimination tests, exceptions and exemptions, areas of public life, and the adequacy of protections against vilification.

ADNSW considers that anti-discrimination legislation should be clear and easy to understand, for rights holders, duty bearers, legal practitioners and the general public. The Bill’s proposed amendments to the ADA raise complex issues in relation to an area of law where there are

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<sup>2</sup> [Leader to Laggard: The case for modernising the NSW Anti-Discrimination Act](#), Public Interest Advocacy Centre, p.4.

<sup>3</sup> <https://yogyakartaprinciples.org/principles-en/yp10/>

<sup>4</sup> [gotocourt.com.au/criminal-law/nsw/sex-work-law](http://gotocourt.com.au/criminal-law/nsw/sex-work-law)

<sup>5</sup> [Serious racial and religious vilification](#), NSW Law Reform Commission, accessed on 10 April 2024

already competing and overlapping jurisdictions. Amending the ADA whilst it, and related provisions of the *Crimes Act 1900*, are already under consideration by the NSW LRC, may add further complexity in this important area of law. The Bill's provisions, whilst broadening protections, would do so in a piecemeal way and could come at the cost of a comprehensive, well-structured ADA. ADNSW considers that the Bill's proposals may benefit from the recommendations and reports of the NSW LRC reviews.

ADNSW thanks the Committee on Community Services for the opportunity to make a submission on the Equality Legislation Amendment (LGBTIQA+) Bill 2023.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jackie Lyne', with a stylized flourish at the end.

Jackie Lyne  
Manager, Governance and Advice  
Anti-Discrimination NSW

**We are committed to eliminating discrimination and promoting equality and equal treatment for everyone in New South Wales, including by resolving enquiries and complaints, raising awareness about discrimination and its impacts, and taking action to influence change.**

**Enquiries and complaints**

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