



29 September 2023

Our ref: Anti-Discrimination Act 1977 (NSW) Submissions

NSW Law Reform Commission  
Locked Bag 5000  
Parramatta NSW 2124

Sent by email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)

Dear New South Wales Law Reform Commission,

**Call for Submissions: *Anti-Discrimination Act 1977* (NSW)**

We write to you in response to the call for submissions on the review of the *Anti-Discrimination Act 1977* (NSW). We thank you for the opportunity to contribute to the review of this legislation.

**Pride in Law**

Pride in Law is Australia's first and only national LGBTIQ+ Law Association, aimed at connecting lesbian, gay, bisexual, transgender, intersex, queer, questioning, and asexual (LGBTIQ+) members of the legal community and their allies. Pride in Law is 'Law Focused, Pride Inspired'.

Since July 2017, Pride in Law has worked to provide visibility, education, and advocacy around issues impacting LGBTIQ+ people. We represent and promote legal professionals, increase community understanding of the law, particularly as it affects LGBTIQ+ individuals, help protect the rights of individuals and advise the community about the benefits legal professionals can provide.

In this submission we address how the *Anti-Discrimination Act 1977* (NSW) (ADA) affects LGBTIQ+ people, and those who affirm them, in NSW.<sup>1</sup> The submission raises areas of concern arising from the current operation of the ADA through addressing:

1. More suitable alternatives that are found within other sub-national jurisdictions;
2. The interaction between the ADA and commonwealth legislation;
3. The adequacy of existing provisions; and
4. Religious exemptions.

Designed to protect the right to non-discrimination, NSW's legislation is outdated and littered with too broad unfettered exemptions.<sup>2</sup> Pride in Law recommends a complete overhaul of the legislation, removing unjust barriers to protecting the rights of LGBTIQ+ people in NSW. Pride in Law supports the *Equality Legislation Amendment (LGBTIQ+) Bill 2023* (NSW) introduced by Mr Alex Greenwich, which was supported by ACON and Equality Australia, among other important organisations.<sup>3</sup>

## 1. Comparison with Other States

### **Recommendation: NSW Anti-Discrimination Laws Need Comprehensive Reform to Ensure all LGBTIQ+ People are Protected and the Reform can be Guided by Legislation in Other Sub-National Jurisdictions**

Terms of reference 1, 2, 4, 11, and 13 are addressed within this section. The ADA is not a comprehensive legislative mechanism that protects the rights of all people in NSW on the basis of their sex, sexuality, or gender identity. This is because the general protections were legislated

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<sup>1</sup> *Anti-Discrimination Act 1977* (NSW) ('ADA').

<sup>2</sup> Simon Rice, 'NSW's Anti-Discrimination Law is Confusing and Outdated. Why is it Lagging Behind the Country on Reform?' *The Conversation* (Online, 3 September 2021) <<https://theconversation.com/nsws-anti-discrimination-law-is-confusing-and-outdated-why-is-it-lagging-behind-the-country-on-reform-166753>>.

<sup>3</sup> *Equality Legislation Amendment (LGBTIQ+) Bill 2023* (NSW); Alexandra Smith, 'Greenwich to Introduce Long-Overdue Equality Bill as NSW Trails Country' *The Sydney Morning Herald* (Online, 22 August 2023) <<https://www.smh.com.au/politics/nsw/greenwich-to-introduce-long-overdue-equality-bill-as-nsw-trails-country-20230821-p5dy5z.html>>.

at a time when ‘homosexuality’ was the focus of a protected attribute.<sup>4</sup> However, since 1977 terminology and understanding of the LGBTIQ+ community has increased, yet NSW has not updated its anti-discrimination protections to reflect this language. A comparison with other sub-national jurisdictions exemplifies this notion. While other jurisdictions in Australia are advancing their protections for LGBTIQ+ people, NSW has failed to protect the same rights within its own jurisdiction. As criticised by the Public Interest Advocacy Centre, the ADA was once a leader in its field, but has fallen behind equivalent legislation in other Australian states and territories.<sup>5</sup> The restrictive protected attribute within the ADA of ‘homosexual’ illustrates this notion. Whilst NSW was the first sub-national jurisdiction to ban discrimination on the basis of homosexuality, it has fallen behind other states and territories for greater LGBTIQ+ legal protections.<sup>6</sup> The ADA limits its definition of LGBTIQ+ people to simply ‘homosexual’, referring to only ‘male or female homosexual’ people.<sup>7</sup> Comparatively, the Queensland and Tasmanian legislation expands their protections to include bisexual individuals.<sup>8</sup> Furthermore, legislation in Victorian, Western Australia and the ACT include lesbianism in their definitions of sexuality.<sup>9</sup> Hence, NSW is the only jurisdiction in Australia without anti-discrimination protections for people on the basis of their sexuality, beyond homosexuality. As leading scholar in the area of equal opportunity law, Simon Rice, has articulated, “NSW’s legislation is cumbersome, wordy, opaque, repetitive and confusing. But it need not be. The same laws in Queensland, the ACT, Victoria and Tasmania have wider scope, with fewer words in a more accessible form”.<sup>10</sup>

It is evident that NSW legislation should be updated to be more inclusive of LGBTIQ+ individuals. As stated by ACON, the current NSW legislation needs a comprehensive reform to

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<sup>4</sup> ADA (n 1) s 4 (definition of ‘homosexual’).

<sup>5</sup> Public Interest Advocacy Centre, *Leader to Laggard: The Case for Modernising the NSW Anti-Discrimination Act* (Report, 6 August 2021) <<https://piac.asn.au/wp-content/uploads/2021/08/PIAC-Leader-to-Laggard-The-case-for-modernising-the-NSW-Anti-Discrimination-Act.pdf>>.

<sup>6</sup> Alastair Lawrie, ‘Sydney may be Hosting World Pride but the NSW Anti-Discrimination Act is a Source of Shame’ *The Guardian* (Online, 18 November 2022) <<https://www.theguardian.com/commentisfree/2022/nov/17/sydney-may-be-hosting-worldpride-but-the-nsw-anti-discrimination-act-is-a-source-of-shame>>.

<sup>7</sup> ADA (n 1) s 4 (definition of ‘homosexual’).

<sup>8</sup> *Anti-Discrimination Act 1991* (Qld) sch 1 (definition of ‘sexuality’); *Anti-Discrimination Act 1998* (Tas) s 3 (definition of sexual orientation).

<sup>9</sup> *Equal Opportunity Act 1995* (Vic) s 4(1) (definition of ‘sexual orientation’); *Equal Opportunity Act 1984* (WA) s 4 (definition of ‘sexual orientation’); *Discrimination Act 1991* (ACT), s 2 (‘sexuality’).

<sup>10</sup> Rice (n 2).

more effectively protect people against discrimination on the basis of their identity, and promote equality of opportunity and participation for all people.<sup>11</sup> Currently, the legislation protects trans men and trans women but it does not protect non-binary and/or gender fluid people.<sup>12</sup> Further, sexual identities outside of homosexuality, such as bisexuality, pansexuality or asexuality are not included, despite contributing to an individual's vulnerability in the same way.<sup>13</sup> Thus, the language within the ADA needs to be amended to ensure equal protection and recognition of individuals with these identities.

## 2. Commonwealth Legislation Comparison and Interaction

This section addresses terms of reference 1, 2, 4, 12 and 13, with a particular focus on term of reference 12 through reviewing the ADA, the *Sex Discrimination Act 1984* (Cth) ('SDA')<sup>14</sup> and the *Australian Human Rights Commission Act 1986* (Cth) ('AHRC Act').<sup>15</sup> The SDA is the Commonwealth legislation most relevant to protecting the rights of LGBTIQ+ Australians. It purports to protect people from unfair treatment on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, or if they are pregnant or breastfeeding.<sup>16</sup> The AHRC Act conveys the role and responsibilities of the Australian Human Rights Commission (AHRC). The AHRC is responsible for 'responding to complaints, advising government on law reform, conducting education, research, and inquiries, advising courts, and monitoring Australia's human rights practice.'<sup>17</sup> Whilst the AHRC Act attempts to give effect to Australia's international human rights obligations, the lack of codification of treaties ratified by Australia, along with politicised attacks, limited accountability measures, lack of transparency in appointments and under-resourcing has meant the AHRC has been unable to meet its mandate.<sup>18</sup>

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<sup>11</sup> ACON, Submission No 41 to Parliament of NSW, *Submissions on The Equity Bill* (1 July 2022).

<sup>12</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 August 2023 (Alex Greenwich).

<sup>13</sup> *Ibid*.

<sup>14</sup> *Sex Discrimination Act 1984* (Cth) ('SDA') s 4.

<sup>15</sup> *Australian Human Rights Commission Act 1986* (Cth) ('AHRC Act').

<sup>16</sup> Australian Human Rights Commission, 'Legislation', *Our Work* (Web Page) <<https://humanrights.gov.au/our-work/legal/legislation>>.

<sup>17</sup> Centre for Law and Social Justice, Submission No 185 to the Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (1 July 2023) 4.

<sup>18</sup> *Ibid*; Amy Maguire, 'Why Does International Condemnation on Human Rights Mean so Little to Australia?' in *The Conversation Yearbook: 50 Standout Articles From Australia's Top Thinkers* (Melbourne University Press, 2016) 70;

## **Recommendation: NSW Anti-Discrimination Laws Should be Strengthened to Meet International Human Rights Obligations**

Under the *International Covenant on Civil and Political Rights*,<sup>19</sup> which is contained in Schedule 2 of the AHRC Act, Article 26 reads:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall **prohibit any discrimination** and guarantee to all persons equal and effective protection against discrimination **on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth **or other status**. (emphasis added).*

This makes clear that discrimination on any ground should be prohibited. Use of the words ‘such as’ implies that the following examples are examples only, not intended to be an exclusive list of the grounds on which discrimination shall be prohibited. Despite this, LGBTQIA+ people in NSW are subject to discrimination, because the ADA does not provide a comprehensive protective mechanism against various grounds (such as a more comprehensive ground of sexuality, as discussed above) and contains a wide variety of exemptions that allow for discrimination in certain areas, as will be discussed below in section 4.<sup>20</sup>

## **Recommendation: NSW Anti-Discrimination Laws must be Strengthened to at Minimum, Meet the Standard set by Federal Legislation.**

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Amy Maguire, ‘Budget Cuts to the AHRC Couldn’t Have Come at a Worse Time’, *The Conversation* (Online, 30 March 2022).

<sup>19</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 26.

<sup>20</sup> See, eg, Lawrie (n 6).

On several points, the anti-discrimination legislation in NSW does not achieve the same protections for LGBTIQ+ people as are set by Commonwealth laws. Gender identity, sexual orientation and intersex status as illustrations of this are addressed in turn below:

### ***Gender identity***

The ADA prohibits “discrimination on transgender grounds” in Part 3A. A ‘transgender person’ is defined as:

*“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.”<sup>21</sup>*

It further provides an additional definition of ‘recognised transgender person’ as:

*“a person the record of whose sex is altered under Part 5A of the Births, Deaths and Marriages Registration Act 1995 or under the corresponding provisions of a law of another Australian jurisdiction.”<sup>22</sup>*

By contrast, the federal SDA prohibits discrimination on the ground of gender identity. This is defined as:

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<sup>21</sup> ADA (n 1) s 38A.

<sup>22</sup> ADA (n 1) s 4.

*“gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person’s designated sex at birth.”*<sup>23</sup>

The ADA’s protections for gender diverse people are far narrower than those under the Commonwealth SDA. The ADA does not prohibit discrimination on the basis of gender identity, but rather restricts its protections to people who identify as being a member of a different sex. Allowing for a wider definition of discrimination on grounds of “gender identity” would afford greater protection to people of diverse gender identities who are currently excluded from the ADA’s protective regime, including non-binary, gender queer or gender fluid individuals. Beyond this, there are provisions in the ADA which allow discrimination against transgender people within the administration of superannuation.<sup>24</sup> This must be repealed to be harmonised with Commonwealth Law and remove unjust discrimination that is currently allowed to occur.<sup>25</sup>

### ***Sexual Orientation***

The ADA’s protections for people of diverse sexual orientations are similarly narrow. Part 4C of the NSW Act prohibits “discrimination on the ground of homosexuality”. Homosexuality is defined as “male or female homosexual”.<sup>26</sup>

Protections are extended under the ADA to include:

“A reference in this Part to a person’s homosexuality includes a reference to the person’s being thought to be a homosexual person, whether he or she is in fact a homosexual person or not.”<sup>27</sup>

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<sup>23</sup> *Sex Discrimination Act 1984* (Cth) (‘SDA’) s 4.

<sup>24</sup> ADA (n 1) s 38Q.

<sup>25</sup> See also, New South Wales, *Equality Legislation Amendment (LGBTIQ+) Bill 2023, Conversion Practices Prohibition Bill 2023, Second Reading Speech*, Legislative Assembly, 24 August 2023 (Alex Greenwich).

<sup>26</sup> ADA (n 1) s 4.

<sup>27</sup> ADA (n 1) s 49ZF.

The Commonwealth SDA provides a much broader protective scope for anti-discrimination on the ground of ‘sexual orientation’.<sup>28</sup>

*sexual orientation means a person’s sexual orientation towards:*

- (a) persons of the same sex; or*
- (b) persons of a different sex; or*
- (c) persons of the same sex and persons of a different sex.<sup>29</sup>*

We recommend amendments to the ADA, or the introduction of new NSW anti-discrimination legislation needs to include protection of people of sexualities other than homosexual (e.g., bisexual, pansexual, asexual, queer), and that the ‘male and female’ reference in the definition be updated to better reflect diverse gender identities.

### ***Intersex Status***

NSW legislation includes no reference to discrimination on the basis of intersex status at all.

Commonwealth legislation prohibits discrimination on the ground of intersex status.<sup>30</sup> Intersex status is defined as:

*intersex status means the status of having physical, hormonal or genetic features that are:*

- (a) neither wholly female nor wholly male; or*
- (b) a combination of female and male; or*
- (c) neither female nor male.<sup>31</sup>*

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<sup>28</sup> SDA (n 23) s 5A.

<sup>29</sup> SDA (n 23) s 4.

<sup>30</sup> SDA (n 23) s 5C.

<sup>31</sup> SDA (n 23) s 4.



Again, this illustrates how NSW has fallen behind in legal protections for LGBTQIA+ people. The vulnerability of intersex people in NSW to discrimination must be recognised and addressed through incorporating protective mechanisms that explicitly include intersex status as a ground for which discrimination is prohibited.

### *How Does Commonwealth Legislation Operate with State Legislation?*

Commonwealth laws are capable of operating concurrently with State and Territory legislation. However, a person cannot be prosecuted for an offence more than once, even if that act was an offence under both State and Federal legislation.<sup>32</sup>

Where both Commonwealth laws and state/territory laws apply, people and companies must comply with both. However, the inconsistencies between the ADA and the federal laws result in confusion and harm for people who may be protected under commonwealth legislation but not under the NSW legislation. It's imperative that NSW legislative regime be updated at minimum to reflect the standards set out within Commonwealth legislative regimes, but at best, ensure protections are afforded in line with Australia's international human rights obligations.

### **3. Adequacy of Existing Protections**

Terms of reference 2, 3, 5, 6, and 7 are addressed in this section, with a particular focus on term of reference 5.

### **Recommendation: The Anti-Discrimination Act Protections Against Vilification Should be Harmonised with the Criminal Law**

Whilst NSW boasts an inclusive and non-discriminatory legislative system, a notable disparity exists between its civil and criminal codes. This lack of harmonisation allows for many

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<sup>32</sup> AHRC Act (n 15) s 4; SDA (n 23) s 10(5).

LGBTQIA+ individuals to be uncertain about their protections and rights, and others to be left unprotected entirely. Non-discrimination provisions for LGBTQIA+ people are enshrined in the *International Covenant on Civil and Political Rights (ICCPR)*<sup>33</sup> and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,<sup>34</sup> both of which Australia is a signatory.<sup>35</sup>

The essence lies in harmonising civil and criminal laws, an essential step towards ensuring uniformity between definitions, standards, and consequences pertaining to vilification. Such harmonisation is imperative in creating a comprehensive and coherent safeguard that affords robust protection to the LGBTQIA+ community.

The ADA divides vilification law with respect to LGBTQIA+ communities into three sections, ‘Transgender Vilification Unlawful’<sup>36</sup>, ‘Homosexual Vilification Unlawful’<sup>37</sup>, and ‘HIV/AIDS Vilification Unlawful’<sup>38</sup>. It is important to note that HIV/AIDS impacts not only LGBTQIA+ people but also has a disproportionate impact on gay and bisexual men, further emphasising the relevance of these provisions to the lives of the LGBTQIA+ community.<sup>39</sup>

The ADA states that, “it is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons,”<sup>40</sup> across the three sections. Additionally, the current legal protections across the three sections apply exclusively to transgender and homosexual individuals, as well as those living with HIV/AIDS. This excludes other identities within the LGBTQIA+ community, particularly the intersex community, and leaves vulnerable people without legal safeguards.

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<sup>33</sup> *International Covenant on Civil and Political Rights* (n 19).

<sup>34</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (‘ICESCR’).

<sup>35</sup> Attorney-General’s Department, ‘International Human Rights System’ *Rights and Protections* (Web Page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Forms%20of%20Racial%20Discrimination%20>>.

<sup>36</sup> ADA (n 1) s 38S.

<sup>37</sup> ADA (n 1) s 49ZT.

<sup>38</sup> ADA (n 1) s 49ZXB.

<sup>39</sup> Kirby Institute, HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report 2017. Sydney Kirby Institute, UNSW; 2017.

<sup>40</sup> ADA (n 1) ss 38S, 49ZT, 49ZXB.

The *Crimes Act 1900* (NSW) (CA)<sup>41</sup>, however, contains only one vilification clause which defines the act as, “a person who, by a public act, intentionally or recklessly threatens or incites violence towards another person or a group of persons.”<sup>42</sup> The CA covers a significantly broader proportion of the LGBTIQ+ community, protecting “sexual orientation,”<sup>43</sup> “gender identity,”<sup>44</sup> people who are of “intersex status,”<sup>45</sup> and finally people living with HIV/AIDS<sup>46</sup>. The CA<sup>47</sup> also protects people in these groups from violence towards their property. The CA<sup>48</sup> is better able to protect LGBTIQ+ individuals as it offers a wider scope of protection, also protecting the LGBTIQ+ community against reckless acts of vilification.

While the civil and criminal laws remain separate, “NSW’s haphazard prohibitions on vilification... create[s] confusion.”<sup>49</sup> Harmonising the protections against vilification outlined in the ADA and the CA would yield several advantages. It would establish a consistent and clarified definition of vilification, streamline resource allocation for greater efficiency, and serve a more potent deterrent against acts of vilification. Furthermore, this harmonisation would reduce the burden on complainants,<sup>50</sup> ultimately facilitating a more equitable pursuit of justice for LGBTIQ+ individuals.

The issue of vilification and discrimination in NSW, as governed by the ADA, requires comprehensive reform to extend protection to LGBTIQ+ individuals in all circumstances. Currently, NSW permits discrimination against LGBTIQ+ individuals, often through exceptions granted to various religious groups, which is addressed in depth below in section 4. Notably, however, the ADA<sup>51</sup> allows, “private educational authorit[ies],” to discriminate on the grounds of homosexuality, clearly stating that, “nothing in this section applies,” to these authorities. Consequently, both students and staff within private educational institutions are left

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<sup>41</sup> *Crimes Act 1900* (NSW) (‘CA’).

<sup>42</sup> *Ibid*, s 93Z.

<sup>43</sup> CA (n 41) s 93Z(1)(c).

<sup>44</sup> CA (n 41) s 93Z(1)(d).

<sup>45</sup> CA (n 41) s 93Z(1)(e).

<sup>46</sup> CA (n 41) s 93Z(1)(f).

<sup>47</sup> CA (n 41) s 93Z(5).

<sup>48</sup> *Ibid*.

<sup>49</sup> Public Interest Advocacy Centre (n 5) 15.

<sup>50</sup> Public Interest Advocacy Centre (n 5).

<sup>51</sup> ADA (n 1) s 49ZO(3).

exposed to discrimination, a problem that persists in this sector. Recent opposition to legislative reform by private educational institutions underscores this concern.<sup>52</sup>

Additionally, s 56<sup>53</sup> permits religious institutions to discriminate against LGBTIQ+ individuals, while s 66<sup>54</sup> allows for discrimination against LGBTIQ+ individuals employed by private households. These provisions create a wide array of circumstances in which LGBTIQ+ individuals can face differential treatment. Notably, NSW stands as the sole jurisdiction in Australia where bisexual individuals and others of non-homosexual or non-heterosexual sexual orientations can still be legally discriminated against under their respective anti-discrimination legislation. This highlights the pressing need to expand the scope of protected attributes in NSW, making them broader and more inclusive to ensure the comprehensive protection of LGBTIQ+ individuals.

### **Recommendation: Sexual Harassment Laws in the Anti-Discrimination Act Should be Strengthened to Better Protect Vulnerable People**

Sexual harassment is a pervasive issue in NSW, affecting individuals across all demographics. Recent statistics indicate that two in five Australians have experienced physical or sexual violence<sup>55</sup>, accounting for 41% of Australians. Furthermore, over the five years leading up to 2023, sexual assault rates have increased by an average of 6.8% per annum.<sup>56</sup> There is a significant lack of data available to demonstrate the number of LGBTIQ+ people who have experienced sexual harassment. However, the LGBTIQ+ community is well-established as a vulnerable group that faces an elevated risk of encountering sexual harassment and assault.<sup>57</sup>

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<sup>52</sup> Paul Karp, 'Catholic Schools to Oppose LGBTQ+ Teacher and Student Law Reform Proposal', *The Guardianship* (Online, 31 January 2023) <<https://www.theguardian.com/australia-news/2023/jan/31/catholic-schools-to-oppose-lgbtq-teacher-and-student-law-reform-proposal>>

<sup>53</sup> ADA (n 1) s 56.

<sup>54</sup> ADA (n 1) s 66.

<sup>55</sup> Australian Bureau of Statistics, *Personal Safety, Australia, 2021-2022 Financial Year* (15 March 2023).

<sup>56</sup> Australian Bureau of Crime Statistics and Research, *Recorded Crime Statistics March 2023* (ISSN: 1035-9044, 15 June 2023).

<sup>57</sup> LGBTIQ+ Health Australia, 'LGBTIQ+ Health Australia Response to News Report on Sexual Assault in Australia' (Media Statement, 28 August 2020).

Nicky Bath, CEO of LGBTIQ+ Health Australia, stated, “allowing these communities to be underrepresented and to remain at higher risk is simply not good enough.”<sup>58</sup>

While revisions on the ADA alone may not directly yield LGBTIQ+-specific sexual harassment statistics, they would serve as a more robust deterrent and protective measure for this vulnerable community. Instituting explicit protections against sexual harassment for the LGBTIQ+ community would not only signify the government’s commitment to providing equitable protection against sexual harassment but also acknowledge the disproportionate rates at which LGBTIQ+ individuals fall victim to such harassment.

### **Recommendation: Sex Workers Should be Introduced as a Protected Ground Against Discrimination**

Sexual harassment is a term usually associated with workplace environments, but in callous irony, it is crucial to recognise that the workplace for sex workers remains notoriously devoid of adequate protection. Within the culture and ideologies surrounding sex work, sexual harassment and vilification are deeply rooted, posing significant challenges to the safety and well-being of sex workers and their associates, regardless of whether they identify as part of the LGBTIQ+ community.

The Respect@Work Inquiry<sup>59</sup> provides invaluable insights into the limitations of existing legislation in NSW concerning workplace harassment. Sexual harassment and vilification against sex workers in NSW has reached a disproportionately high levels, as evidenced by 96% of 647 sex workers reporting experiencing stigma or discrimination in relation to their work across 2019 and 2020<sup>60</sup>. It is imperative that the NSW Government takes proactive measures to protect this vulnerable group and rectify its own discriminatory oversight by extending protections to sex workers, despite the stigmatised nature of their work. To align with the principles of fairness and

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<sup>58</sup> Ibid.

<sup>59</sup> Australian Human Rights Commission, *Respect@Work* (Report, ISBN: 978-1-925917-17-8, 2020).

<sup>60</sup> Australian Sex Workers Association, *Anti-Discrimination & Vilification Protections for Sex Workers in Australia* (Briefing Paper, February 2022) 2.

equality, the ADA should incorporate a provision that defines and safeguards sex workers in accordance with the standards outlined in the Inquiry,<sup>61</sup> thereby bringing it in line with the principles established in the CA.<sup>62</sup> Such an inclusion would not only rectify a longstanding injustice but also promote a more equitable and inclusive society.

### **Recommendation: The ADA Needs to Incorporate a Positive Obligation to Prevent**

The ADA primarily serves as a declaration against discriminatory behaviour, yet it lacks provisions that mandate or oblige individuals to actively prevent harassment, discrimination, and vilification. To address this omission, it is recommended the ADA be amended to incorporate a clear and explicit obligation for individuals to proactively prevent instances of harassment, discrimination, and vilification. The absence of such a positive duty sets NSW apart from other jurisdictions that “actively promote measures to secure equality.”<sup>63</sup>

By introducing a positive duty, the ADA would significantly alleviate the burden on complainants and should eventuate in a reduction of harassment, discrimination, and vilification. The Australian government has demonstrated a commitment<sup>64</sup> to implement the recommendations contained in the Respect@Work<sup>65</sup> report, and this could result in the ADA creating a positive duty and obligation, particularly in the workplace, for people to actively prevent harassment, discrimination, and vilification.

Introducing a positive duty within the legal framework would significantly enhance the protections afforded to LGBTIQ+ individuals, and ultimately extend these safeguards to a greater proportion of the community. While it is acknowledged that legislation and policies alone may not completely eradicate discrimination and harassment faced by the LGBTIQ+

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<sup>61</sup> Australian Human Rights Commission (n 59).

<sup>62</sup> CA (n 41) s 93Z.

<sup>63</sup> Rice (n 2).

<sup>64</sup> Attorney-General’s Department, ‘Respect@Work Implementation Highlights’ (Media Statement, 2020).

<sup>65</sup> Australian Human Rights Commission (n 59).

community, it is undeniable that “reform is a critical action to ensure that LGBTQ people are protected from discrimination, harassment, and vilification.”<sup>66</sup>

NSW has faltered and been left behind its peers in this regard. A recent development in the Northern Territory led to the *Anti-Discrimination Act 1992* (NT) being updated, marking a historic milestone by extending protections to non-binary and intersex individuals for the first time.<sup>67</sup> Furthermore, the *Anti-Discrimination Act 1992* (NT) extends mechanisms to safeguard LGBTIQ+ staff members from discrimination within religious schools, setting a progressive precedent for comprehensive protection that NSW would be wise to follow.

#### **4. Exemptions Affecting LGBTIQ+ Rights, Particularly in Relation to Religious Organisations**

The following section addresses terms of reference 1, 3, 4, 8 and 13, with a particular focus on term of reference 8.

#### **Recommendation: If any Exemption is to Remain, they Must Import a Proportionality Standard, as Required by International Human Rights Law**

- Currently, as was addressed with the carve outs in QLD anti-discrimination legislation, exemptions “prioritise only the views and interests of faith-based organisations, ignoring the impact of discrimination on the individual employees and service users who may themselves have their own religious convictions and protected attributes. They effectively allow faith-based organisations to set their own rules and apply them to all aspects of their employees’, students’ and service users’ lives as a condition of employment or access to services and supports, many of which are significantly publicly funded.”<sup>68</sup>

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<sup>66</sup> ACON (n 11) 13.

<sup>67</sup> *Anti-Discrimination Act 1992* (NT).

<sup>68</sup> This is not currently the case. See eg, Equality Australia, ‘An Equality Act for Queensland’ (n 84).

- However, “Religious exemptions, if they are to be granted, must be justified and employ a better balancing mechanism to accommodate the rights of individuals with different and no religious beliefs who are employed or rely on services and supports delivered by these organisations. They must also prevent the selective application of religious beliefs to target and single out LGBTIQ+ people and the people who support them for less favourable treatment” (emphasis added).<sup>69</sup>

Every human has the right to be respected and safe<sup>70</sup> however, in Australia, LGBTIQ+ people often have these rights violated through violence, harassment and discrimination.<sup>71</sup> Exemptions within the ADA mean that anti-discrimination laws do not currently afford protection to all LGBTIQ+ human rights.<sup>72</sup> These exemptions are broad and unfettered.<sup>73</sup> Ultimately, these ‘provisions’ and ‘exceptions’ mean that there are “numerous areas ... where it is legal for sexuality, sex, and gender diverse people to be treated differently.”<sup>74</sup> For instance, the ADA allows discrimination by private educational authorities (within both the fields of employment and education), religious bodies, and by others within certain employment situations and in the provision of certain services such as accommodation or adoption services.<sup>75</sup> For example, private educational authorities are allowed to discriminate against homosexual,<sup>76</sup> intersex,<sup>77</sup> or transgender<sup>78</sup> staff or students. Broad exemptions are granted to religious bodies under

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<sup>69</sup> Equality Australia, ‘An Equality Act for Queensland’ (n 84) 18.

<sup>70</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 5; *International Covenant on Economic Civil and Political Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 23 March 1976) art 7; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 19; Australian Human Rights Commission, ‘Human Rights and Gay, Lesbian, Bisexual, Transgender and Intersex People’ (Information Sheet) <<https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRAGLBTI.pdf>>.

<sup>71</sup> Australian Human Rights Commission, ‘Lesbian, Gay, Bisexual, Trans and Intersex Equality’, *Our Work LGBTIQ+* (Web Page) <<https://humanrights.gov.au/our-work/lgbti/lesbian-gay-bisexual-trans-and-intersex-equality>>; Australian Human Rights Commission ‘Human Rights and Gay, Lesbian, Bisexual, Transgender and Intersex People’ (n 70) 2.

<sup>72</sup> See, eg, Centre for Law and Social Justice (n 17) 11-13.

<sup>73</sup> See, eg, Public Interest Advocacy Centre, ‘Equality Bill Consultation’ Submission to Parliament of NSW, *Submissions on The Equity Bill* (1 July 2022).

<sup>74</sup> Gay and Lesbian Rights Lobby, Submission No 122 to Uncloseting Discrimination: Consultation Report on the Intersections of Discrimination’ (March 2012) 1.

<sup>75</sup> ADA (n 1) ss 49ZO(3) (re private educational authorities), 49ZH(3)(a) (re employment within private households), 49ZQ(3)(a)-(b) (re provision of accommodation), 56 (re religious institutions) 59A (re adoption services provided by ‘faith-based organisations’); Public Interest Advocacy Centre, ‘Equality Bill Consultation’ (n 73).

<sup>76</sup> ADA (n 1) ss 49ZH(3)(c), 49ZO(1)-(3).

<sup>77</sup> ADA (n 1) ss 25(3)(c) and 31A(3)(a).

<sup>78</sup> ADA (n 1) ss 38C(3)(c), 38K(1)-(3).



subsections 56(c) and (d) and because ‘religious body’ isn’t defined and the parameters of this provision have been interpreted loosely, publicly funded organisations providing public services can deny service to LGBTIQ+ people.<sup>79</sup> The basis for the inclusion of these exemptions within the ADA is the right to ‘freedom of religion.’<sup>80</sup> However, this right is not absolute, and should not be given priority over other human rights.<sup>81</sup> Freedom of religion is not the freedom to discriminate.<sup>82</sup> The right to non-discrimination<sup>83</sup> is a condition on which freedom of religion needs to operate. This means that as the ADA currently operates, the exemption provisions are in breach of international human rights law which requires competing rights to be balanced and requires a legitimate purpose to breach the right to non-discrimination.<sup>84</sup> Furthermore, the link between religious freedom and exemptions to discrimination on the basis of sex, sexuality, and/or gender identity and/or beliefs about LGBTIQ+ rights frames LGBTIQ+ rights as being in direct conflict with religious freedom.<sup>85</sup> This is not the case and LGBTIQ+ rights are not something that people of faith must be protected against.<sup>86</sup> It’s important to note that there are many religious people who are LGBTIQ+ affirming, demonstrating the two rights are not in stark contrast.<sup>87</sup>

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<sup>79</sup> ADA (n 1) s 56(d). See, eg, *OW & OV v Members of the Board of the Wesley Mission Council* [2010] NSWADY 293 (10 December 2010) (‘OW & OV’) which allowed for discrimination against a homosexual couple within the provision of foster care services by Wesley Mission. See also Public Interest Advocacy Centre, ‘Equality Bill Consultation’ (n 73); Centre for Law and Social Justice (n 17) 11-13.

<sup>80</sup> *International Covenant on Civil and Political Rights* (n 19) art 18.

<sup>81</sup> Allowing religious organisations to discriminate on the basis of sexuality or gender identity conflicts with the human rights of LGBTIQ+ people to freely express their sexuality and/or gender identity. See, eg, Pride in Law, Submission to Australian Law Reform Commission, *Inquiry into Religious Educational Institutions and Anti-Discrimination Laws* (2023); Go to Court Pty Ltd, ‘Religious Exemptions to Anti-Discrimination Act’, *Civil Law* (Web Page, 2023) <[<sup>82</sup> Provisions which allow for unfettered discrimination is not necessary or proportionate and unjustly infringes the right to non-discrimination. See Public Interest Advocacy Centre, ‘Equality Bill Consultation’ \(n 73\) 13: “\*Exceptions to laws designed to protect human rights need to be carefully and closely limited to ensure they are necessary and proportionate. The broad NSW approach fails to do this.\*”](https://www.gotocourt.com.au/civil-law/religious-exemptions-discrimination/#:~:text=The%20religious%20exemption%20in%20the,of%20followers%20of%20that%20religion.></a></p></div><div data-bbox=)

<sup>83</sup> *International Covenant on Civil and Political Rights* (n 19) arts 2,16, 26. See also Public Interest Advocacy Centre, ‘Equality Bill Consultation’ (n 73).

<sup>84</sup> Equality Australia, ‘An Equality Act for Queensland’ Submission No 124 to Queensland Human Rights Commission, *Queensland's Anti-Discrimination Act Review* (March 2022) 17; United Nations Human Rights Committee (HRC), CCPR General Comment No. 18: Non-Discrimination, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html> [accessed 25 September 2023] [13].

<sup>85</sup> Pride in Protest, Submission to Australian Law Reform Commission, *Inquiry into Religious Educational Institutions and Anti-Discrimination Laws* (2023) 3.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*; For example, the Uniting Church in Australia, the third largest Christian group in Australia, is LGBTIQ+ affirming: See, Australian Bureau of Statistics, ‘Religious Affiliation in Australia’ *Cultural Diversity: Census 2021* (4 August 2022) <<https://www.abs.gov.au/articles/religious-affiliation-australia>> and Robyn J. Whitaker, ‘After a

**Recommendation: Ensure all LGBTIQ+ People are Protected Under Anti-Discrimination Laws by Repealing or Removing the Exemptions that Allow Private Educational Institutions and Religious Bodies to Sack, Expel or Deny Service to LGBTIQ+ People.**<sup>88</sup>

Unfortunately, the current operation of the ADA in NSW allows discrimination to be legal across the areas of education, employment, and services. In addition to breaching human rights and international human rights law, this discrimination contributes to inequity among already vulnerable people within New South Wales, such as in the area of health and wellbeing along with economic status and ability to participate freely within society. Each of the areas of education, employment and services will now be addressed in turn.

Education is recognised as a universal human right.<sup>89</sup> It is fundamental to being able to fully participate within society and is therefore also important for development. Despite this, as evidenced by the exemption provisions outlined above, LGBTIQ+ students are not protected against discrimination by private schools. Of particular issue is that the wording ‘private educational authorities’ within the ADA allows all private schools to discriminate against LGBTIQ+ people, regardless of whether they are a religious school or not.<sup>90</sup> In effect, this means all private schools, colleges and universities in NSW are able to discriminate against LGBTIQ+ people.<sup>91</sup> This adds to LGBTIQ+ students’ vulnerability, in relation to receiving a quality education, and in relation to overall wellbeing. As MP Alex Greenwich stated in his second reading speech regarding the *Equality Legislation Amendment (LGBTIQ+) Bill 2023* (NSW), at present, ‘LGBTQ+ students can lawfully be targeted, sent to counselling, suspended, expelled, asked to leave or have bullying against them ignored.... Students' education is suffering

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Long Struggle, the Uniting Church Becomes the First to Offer Same-Sex Marriage’, *The Conversation* (Online, 17 September 2018) <<https://theconversation.com/after-a-long-struggle-the-uniting-church-becomes-the-first-to-offer-same-sex-marriage-102842>>.

<sup>88</sup> This reform has been advocated by various relevant organisations, for instance, see, eg, Equality Australia, ‘Act for Equality’ (Petition to the NSW Premier and Deputy Premier, the NSW Opposition Leader, and all members of NSW Parliament) <<https://equalityaustralia.org.au/actforequalitynsw/>>; Public Interest Advocacy Centre, ‘Equality Bill Consultation’ (n 73).

<sup>89</sup> ICESCR Art 13; Attorney-General’s Department (n 35).

<sup>90</sup> ADA (n 1) ss 49ZO(3), 49ZH(3)(a), 49ZQ(3)(a)-(b); Public Interest Advocacy Centre, ‘Equality Bill Consultation’ (n 73).

<sup>91</sup> Public Interest Advocacy Centre (n 5) 15.

to protect [a] right to discriminate.<sup>92</sup> LGBTIQ+ people can be denied opportunities or treated less favourably because of these exemptions within the ADA.<sup>93</sup> This discrimination can also extend beyond LGBTIQ+ students, to students who love or affirm them.<sup>94</sup>

As outlined by the Public Interest Advocacy Centre, this certainly falls short of community standards in contemporary society.<sup>95</sup> In addition to this, NSW has portrayed themselves as inclusive of LGBTIQ+ people, by celebrating Mardi Gras in Sydney every year, and being host to the first World Pride held in the southern hemisphere, earlier this year.<sup>96</sup> It's important to recognise the commitments that were also made within Sydney World Pride, both by other sub-national jurisdictions and federally. One of which was the commitment to advancing the rights of LGBTIQ+ peoples in the global south, particularly the south pacific region.<sup>97</sup> In order to align with Australia's national commitments and the reputation NSW boasts, legislation must fall in line with these aspirations, starting with basic principles of equity within education.

Similarly, the same discriminatory treatment is legal against LGBTIQ+ staff (and those who love or affirm them)<sup>98</sup> at these private educational institutions (regardless of whether they are religious or not). The provisions as outlined above allow teachers or staff to be denied employment opportunities, to be treated less favourably, or to be fired.<sup>99</sup> This is severely problematic in the impact on socio-economic inequity for LGBTIQ+ people and those who affirm them, but also can have significant ramifications for the delivery of quality education to

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<sup>92</sup> New South Wales (n 25); Gay and Lesbian Rights Lobby (n 74).

<sup>93</sup> Equality Australia, Submission No 375 to Australian Law Reform Commission, *Inquiry into Religious Educational Institutions and Anti-Discrimination Laws* (28 February 2023).

<sup>94</sup> Ibid.

<sup>95</sup> Public Interest Advocacy Centre (n 5) 15.

<sup>96</sup> See, eg, Lawrie (n 6).

<sup>97</sup> Equality Australia, 'Sydney World Pride Human Rights Conference' (Web Page) <<https://equalityaustralia.org.au/swp-human-rightsconference/>>.

<sup>98</sup> For instance, staff at religious schools have been fired allegedly due to their belief in marriage equality. See, eg, ACON (n 11); Ghassan Kassisieh from Equity Australia to SBS News: Biwa Kwan and Nicole Ng, 'Karen Says She Was Fired by a Christian School Due to Her Sexuality. She's Not Alone' *SBS News* (Online, 22 April 2023) <<https://www.sbs.com.au/news/article/karen-says-she-was-fired-by-a-christian-school-due-to-her-sexuality-shes-not-alone/155fd7f8v>>; Equality Australia, 'An Equality Act for Queensland' (n 84) 18; Ben Schneiders and Royce Millar (2021) 'Steph Lentz was Sacked This Year for Being Gay. It was Perfectly Legal', *Sydney Morning Herald*, 10 August.

<sup>99</sup> New South Wales (n 25); Gay and Lesbian Rights Lobby (n 74).

all students.<sup>100</sup> Excellent teachers are able to be fired.<sup>101</sup> For example, an excellent teacher at a tertiary institution lost her job after she announced plans to marry her same-sex partner.<sup>102</sup> Another occurrence was how a high school teacher with 20 years' experience was fired in 2020.<sup>103</sup> The exemptions demonstrate a right to equal treatment before the law is clearly being breached and also the right to an education is impacted. It is not only LGBTIQ+ people who face the consequences of these exemptions allowing for discrimination, but all of society within NSW.

Beyond the exemptions for private educational institutions, LGBTIQ+ people can also be denied employment or fired from a range of various other employment situations. For instance, because religious bodies are able to discriminate broadly, workers in employment adjacent to religious practice (for example, carers or cleaners) could be fired on the basis of their gender or sexuality.<sup>104</sup>

This broad exemption infiltrates community services too, due to s 56(d) of the ADA. The exemption is applied even if the organisation has not been established for the purpose of religious worship.<sup>105</sup> Therefore, religious organisations are allowed to discriminate in healthcare, age care, accommodation, housing, disability, and other human services.<sup>106</sup> This increases disparity in overall health and wellbeing as LGBTIQ+ people can be denied access to and involvement in essential services. Allowing religious organisations that are providing services to the community, and often in receipt of public funding, to be discriminatory certainly falls short of expected

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<sup>100</sup> Public Interest Advocacy Centre, 'No Time for Tinkering: PIAC Calls for Rewrite of NSW Discrimination Law as Law Reform Commission Review Announced' (Media Release, 28 June 2023).

<sup>101</sup> **Error! Hyperlink reference not valid.** New South Wales (n 25); Michael Vincent and Laura Kewley, 'Karen Pack was Praised as an 'Excellent' Educator, but She Says She was Sacked by Her Employer Morling College for Being Gay - But The College Disputes This' *ABC News*, (Online, 8 April 2021) <<https://www.abc.net.au/news/2021-04-08/openly-gay-teacher-karen-pack-sacked-morling-college-email/100055422>>.

<sup>102</sup> See Vincent and Kewley (n 101); Linc Jenkin, 'Sydney Christian College Sacks Educator for Being Gay' *Star Observer* (Online, 9 April 2021) <<https://www.starobserver.com.au/news/sydney-christian-college-sacks-educator-for-being-gay/202129>>; Emma Powys Maurice, 'Lesbian Minister 'Sacked From Teaching Job at Bible School' Over Cowardly Letter Calling Her 'Demonic'' *Pink News* (Online, 14 April 2021) <<https://www.thepinknews.com/2021/04/14/morling-college-sydney-karen-pack-lesbian-teacher-sacked-sexuality/>>; Schneiders and Millar (n 98); DNA Online Coordinator, 'Australian Educator Sacked, Allegedly For Being Gay' *DNA Magazine* (Online, 9 April 2021) <%20<https://www.dnamagazine.com.au/australian-educator-sacked-for-being-gay/>>.

<sup>103</sup> Kwan and Ng (n 98).

<sup>104</sup> See, eg, New South Wales (n 25): '*sweeping exemptions that permit religious bodies to discriminate in employment, like firing trans carers or bisexual cleaners, to employment that is relevant to religious practice.*'

<sup>105</sup> PIAC; OW & OV (n 79); ACON (n 11).

<sup>106</sup> ACON (n 11) 13; Public Interest Advocacy Centre (n 5) 11.

standards within modern civil society.<sup>107</sup> The instance outlined above where a gay couple were turned down from foster care because of their homosexuality is one example of how s 56(d) can operate across a large range of circumstances.<sup>108</sup> Not only is this unfair treatment but also this fails to take into consideration what is otherwise said to be paramount when considering caring arrangements for children – that is, ‘the best interests of the child’.<sup>109</sup> It is also at odds with the legal recognition that was granted in NSW in 2010 for the equal right of sexuality diverse couples to adopt.<sup>110</sup> Pride in law echoes the sentiments of ACON, that:

It is critical that we create safe, welcoming, and inclusive environments so that everyone in our communities has the best chance to thrive. Legislation that protects, rather than stigmatises, our communities is one component of such an environment.<sup>111</sup>

Evidently, the discrimination that is allowed to remain against LGBTIQ+ people in schools, universities and public services has a significant detrimental impact on people’s overall health and wellbeing. Statistics indicate the majority of LGBTIQ+ adults do not feel comfortable accessing a public service and the majority of LGBTIQ+ children do not feel comfortable at school.<sup>112</sup> This is despite universal human rights to education, non-discrimination, health, etc existing.

LGBTIQ+ people are furthermore affected by exemptions within the ADA that allow for discrimination in other areas. These include within sport and within the administration of superannuation, specifically affecting transgender people.<sup>113</sup> These exemptions are also unjustified and in breach of the right to non-discrimination and need to be repealed.

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<sup>107</sup> Public Interest Advocacy Centre (n 5) 15; Equality Australia, ‘An Equality Act for Queensland’ (n 84).

<sup>108</sup> OW & OV (n 79); Public Interest Advocacy Centre (n 5).

<sup>109</sup> *Family Law Act 1975* (Cth) s 60CC; New South Wales (n 25).

<sup>110</sup> ACON (n 11); *Adoption Amendment (Same Sex Couples) Act 2010 (No. 2)* (NSW).

<sup>111</sup> ACON (n 11).

<sup>112</sup> ACON (n 11) 13.

<sup>113</sup> See eg, ADA (n 1) s 38P for provisions regarding sport and s 38Q for provisions regarding superannuation.

## Conclusion

Pride in Law notes that this review comes at a time when anti-discrimination legislation across the country have been reassessed and amendments have begun. As outlined by anti-discrimination NSW in their submission to the federal review of commonwealth anti-discrimination legislation, “if the proposed amendments are made (and other state-based reform proposals are enacted), the ADA will be the only jurisdiction in Australia still containing broad exceptions from anti-discrimination law for religious educational institutions. ADNSW is concerned that the ADA will be out-of-step with anti-discrimination reforms around Australia and would support a consultative review of the current exceptions for religious institutions in the ADA.”<sup>114</sup> Therefore, it is crucial that steps toward adequate protections for LGBTIQ+ people in NSW must occur as a matter of priority. Until a new, more suitable piece of legislation is enacted that provides a comprehensive protection framework from discrimination, as an alternative to NSW’s outdated, piecemeal legislation, Pride in Law recommends exemption provisions are suspended. While the exemption provisions are suspended and legislation is undergoing reform, reiterating the recommendations as outlined in this submission, Pride in Law supports the following:

- **The enactment of the *Equality Legislation Amendment (LGBTIQ+) Bill 2023* (NSW) introduced by Mr Alex Greenwich**
- **Legislation in Other Sub-National Jurisdictions Can Guided NSW Reform**
- **NSW Anti-Discrimination Laws Should be Strengthened to Meet International Human Rights Obligations**
- **NSW Anti-Discrimination Laws Must be Strengthened to at Minimum, Meet the Standard set by Federal Legislation.**
- **The Anti-Discrimination Act Protections Against Vilification Should be Harmonised with the Criminal Law**
- **Sexual Harassment Laws in the Anti-Discrimination Act Should be Strengthened to Better Protect Vulnerable People**

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<sup>114</sup> Anti-Discrimination NSW, Submission No 412 to Australian Law Reform Commission, *Inquiry into Religious Educational Institutions and Anti-Discrimination Laws* (3 March 2023).

- **Sex Workers Should be Introduced as a Protected Ground Against Discrimination**
- **The ADA Needs to Incorporate a Positive Obligation to Prevent**
- **Remove the Exemptions that Allow Private Educational Institutions and Religious Bodies to Sack, Expel or Deny Service to LGBTIQ+ People**
- **If any Exemption is to Remain, they Must Import a Proportionality Standard, as Required by International Human Rights Law**

### **Contributors**

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Sincerely

Pride in Law (NSW)