

Submission to the NSW Law Reform Commission

Review of the *Anti-Discrimination Act 1977* (NSW)

15 August 2025

1. Introduction

The Eros Association (Eros) welcomes the opportunity to contribute to this critical review into the *Anti-Discrimination Act 1977* (NSW) (ADA). Eros is Australia's industry association for adults-only retail, wholesale, media and entertainment. We advocate for comprehensive anti-discrimination protections for lawful occupations, including adult retail and sex work. Our submission addresses:

- protected attributes (expanding coverage to "profession, trade, occupation or calling")
- exceptions (consider consistency with international law to balance privileges)
- vilification (protecting lawful occupations from hate speech)

NSW's current Act fails to protect adult industry business owners and workers from systemic discrimination in banking, finance, accommodation, healthcare, and digital services. This discrimination conflicts with Australia's international human rights commitments and undermines the state's decriminalisation of sex work since 1995 and the legal operation of our members' businesses.

When adult retail workers get denied financial and insurance services because of their occupation, or sex workers face threats of sexual violence from clients, the ADA has failed. Work cannot be both lawful and unprotected.

Our members are proud of the inclusivity of Australia's adult retail industry. The people working in our industry are from all walks of life, reflecting the diversity of our customers and clients. Irrespective of your gender, disability or cultural background, if you are eighteen years of age or older you are welcome in our members' stores, venues and services. Our members don't discriminate and yet they face discrimination in their professional and personal lives because of the industry they work in. We therefore support the overall aim of this review to modernise the NSW ADA.

2. Key Recommendations

<i>Issue</i>	<i>Recommendation</i>	<i>Submission section</i>
<i>Protected attributes</i>	Adopt "profession, trade, occupation or calling" and associates	3
<i>Exceptions</i>	Balance religious exceptions with other rights and freedoms	4
<i>Conclusion</i>		5

3. Occupation as a protected attribute

3.1 The case for "profession, trade, occupation or calling"

The ADA excludes discrimination based on work in lawful industries (e.g., adult retail, wholesale, entertainment, sex work). This leaves workers vulnerable to:

- **financial exclusion:** banks/payment processors denying services
- **residential and commercial tenancy refusals:** landlords rejecting business owners in commercial leases; rejecting individuals (business owners and employees) in residential leases and accommodation
- **healthcare discrimination:** 91% of sex workers report negative treatment by health workers¹

In 2021, one-third (33.9%) of Eros members reported discrimination in financial services, superannuation, and/or insurance in the previous 12-months. While more than two-thirds (70.0%) of members reported experiencing discrimination in advertising, including social media, for their stores, venues and services.²

Interstate models

ACT: *Discrimination Act 1991* (ACT) (s.7) explicitly covers "profession, trade, occupation or calling."

Victoria: *Equal Opportunity Act 2010* (Vic) (s. 6) explicitly covers "profession, trade, or occupation."

Recommendation

Include 'profession, trade, occupation or calling' as a protected attribute, covering all lawful work, including adult retail, sex work, erotic entertainment, and associated roles.

¹ T Broady et al, *Stigma Snapshot: Sex Workers 2022* (2023) <http://handle.unsw.edu.au/1959.4/unswworks_82629>; Scarlet Alliance: Australian Sex Workers Association, *Anti-Discrimination and Vilification Protections for Sex Workers in Australia* (Briefing Paper, February 2022).

² Eros Association, *Eros Members Survey* (Report, 2021).

4. Limiting exceptions

4.1 Rebalance religious exceptions (s. 56)

Section 56(d) permits religious bodies to discriminate in “*any act*” (e.g., denying banking, accommodation, healthcare, education) if “*conforming to religious doctrines*.” Broad religious exceptions conflict with international law insofar as freedom of religion or belief should not be used as a justification for discrimination, vilification or harassment and the enjoyment of freedom from religion. For example, article 5(1) of the ICCPR states:

*Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*³

Broad religious exceptions provide privileges to one protected attribute above all other rights and freedoms and may be viewed as a ‘right to discriminate’. Religious exceptions impact people working in adults-only industries – both in the provision of commercial goods and services (e.g. insurance, superannuation, advertising) and government subsidised provision of health, aged care, homelessness and related social services, who have the legal right to discriminate based on a person’s profession, trade, occupation or calling, and other protected attributes, such as gender, sexuality or marital status.

The challenge for the NSWLRC will be to achieve a balance across rights, while ensuring not to entrench the privileges afforded through broad religious exceptions. We acknowledge there are genuine reasons for specific exceptions to continue to apply, for example, for clergy appointments.

Recommendation

Consider how to balance exceptions for religious belief (s. 56(d)) with broader rights, including the right to freedom from religion, and consistent with ICCPR.

Continue to allow religious exceptions for clergy appointments (s. 56(a)–(b)).

³ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art.5(1) (‘ICCPR’).

5. Conclusion

NSW must modernise the ADA to protect all lawful occupations and align with ACT/Victorian best practice. Key reforms should:

1. Adopt "profession, trade, occupation or calling" as a protected attribute.
2. Refine and balance overbroad exceptions enabling religious discrimination.

The adult industry seeks equality—not special rights. As NSW moves toward harmonised anti-discrimination standards, these changes will uphold the Wran-era vision of a *"decent society where all persons expect equal treatment"*.

The Eros Association thanks you for your consideration and welcomes the opportunity to discuss these matters with you further.

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