

Reforming the Anti-Discrimination Act 1998 to Restore Sex-Based Protections for Women and Girls

Prepared for:

The Hon. Guy Barnett MP
Attorney-General of Tasmania

Prepared by:

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Organisation:

Women Speak Tasmania

Date:

15 December 2025

Contact:

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Monday, 15 December 2025

The Hon. Guy Barnett

Attorney General

Level 10 Executive Building

15 Murray Street, Hobart, 7000

Email: guy.barnett@dpac.tas.gov.au

Dear Attorney-General Barnett,

**Re: Submission on Reforming the Anti-Discrimination Act 1998 to Restore
Sex-Based Protections**

Women Speak Tasmania (WST) welcomes the opportunity to provide the attached submission regarding necessary reforms to the Anti-Discrimination Act 1998 (Tas). WST is a community-based organisation dedicated to safeguarding the rights, safety, and dignity of women and girls in our state. Our work is grounded in international human rights law, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which recognises women as a sex class entitled to specific legal protections.

As outlined in our submission, the current Act does not include “sex” as a protected attribute. This omission has created significant legal and practical consequences for the protection of women and girls, including uncertainty around single-sex sport, services, accommodation, facilities, and safeguarding practices. We propose a series of minimal, evidence-based amendments that would restore clarity, uphold Tasmania’s human rights obligations, and ensure equitable protections for all Tasmanians, including transgender and intersex people.

We respectfully request that the Government prioritise review of the Act to address these urgent issues. Women Speak Tasmania would welcome the opportunity to meet with you or departmental officers to discuss our recommendations in more detail.



Thank you for your consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Caballero', with a long horizontal flourish underneath.

Dr. Elizabeth Caballero
Retired General Practitioner
Director, Women Speak Tasmania
Email: women@womenspeaktas.au



Reforming the Anti-Discrimination Act 1998 to Restore Sex-Based Protections for Women and Girls

Submission to the Attorney General of Tasmania

Submitted by: Women Speak Tasmania (WST)

Date: 15 December 2025

1. Introduction

Women Speak Tasmania (WST) welcomes the opportunity to provide this submission regarding urgent reforms to the Anti-Discrimination Act 1998 (Tasmania) (“the Act”).

WST is a community organisation committed to safeguarding the rights, safety, and dignity of women and girls in Tasmania. Our advocacy is grounded in international human rights law, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which protects women on the basis of sex, not gender identity.

This submission sets out a clear legislative problem within the Act and provides practical solutions aligned with Tasmanian law, national obligations, international standards, and best practice.

2. Executive Summary of the Issue

The Tasmanian Anti-Discrimination Act 1998:

- **protects gender, gender identity, and sex characteristics**
- **does not protect sex**

This omission creates a structural failure in the Act:

- Women as a biological sex class are not explicitly protected.



- Gender identity protection is robust and specific, while sex is legally invisible.
- Misinterpretation of “gender” regularly displaces sex-based protections.
- Women’s access to single-sex services, facilities, sports, accommodation, and safeguarding is not clearly supported in law.
- Tasmanian vilification provisions protect gender identity, but not sex.
- The Act is inconsistent with international human rights law, including CEDAW.

The absence of “sex” from the Act has significant legal and practical consequences for women and girls.

3. The Current Structure of the Act

The Act lists the following relevant protected attributes:

- gender
- gender identity
- intersex variations (sex characteristics)

However:

- “Sex” is not included at all as an attribute, despite being foundational in anti-discrimination law globally.
- “Gender” is not defined.
- “Gender identity” is defined, and sex characteristics are defined.

This unusual structure creates confusion, inconsistency, and legal imbalance.

4. Legal Analysis: Key Deficiencies



4.1 Absence of Sex as a Protected Attribute

The omission of “sex” renders women’s rights dependent on undefined and ambiguous references to “gender,” which different agencies interpret inconsistently.

Without sex, the Act cannot clearly protect:

- women-only sport
- female-only changerooms
- women’s hospital wards
- women’s shelters
- female-only prisons
- accurate sex-disaggregated data
- female victims of male violence
- female employees needing single-sex spaces
- women in intimate care settings

This is a significant legislative gap.

4.2 Undefined “Gender” Produces Legal Ambiguity

Because “gender” is not defined:

- decision-makers often interpret “gender” as “gender identity”
- “gender” is treated as a subjective identity rather than a material reality
- women’s sex-based needs can be reframed as discrimination against gender identity



This undermines legal clarity and exposes women’s services to litigation risk.

4.3 “Gender identity” receives stronger protection than biological sex

The Act defines and protects gender identity. This is appropriate and consistent with international practice.

However, without an equivalent recognition of “sex,” this produces an imbalance:

- gender identity can override sex in every context
- sex-specific services can be challenged as discriminatory without lawful justification
- women’s organisations may be unable to lawfully uphold female-only boundaries

This imbalance is not a matter of ideology but a structural legal flaw.

4.4 Vilification protections exclude sex

Section 19 prohibits inciting hatred or serious contempt on the basis of:

- race
- disability
- sexual orientation
- religious belief
- **gender identity**
- **sex characteristics**

But not **sex**.

This means:



- misogynistic vilification is not explicitly covered
- hatred of women as a sex class receives less protection than gender identity
- women are a uniquely unprotected group in anti-vilification law

This gap is both unjust and inconsistent with contemporary understandings of violence against women.

4.5 Inconsistency with International Human Rights Law

CEDAW requires Australia to:

- eliminate discrimination against women
- on the basis of sex

The United Nations has repeatedly confirmed that women's rights are grounded in biological sex, not gender identity.

Tasmania's Act:

- protects gender and gender identity
- does not protect sex
- therefore fails to meet Australia's international obligations

5. Real-World Impacts on Women and Girls in Tasmania

The absence of "sex" protection has tangible consequences:

5.1 Erosion of women-only sport

Without sex as a ground, women and girls lack legal recourse when fairness, safety, or participation is compromised.



5.2 Weak protection for women-only spaces

Women-only shelters, wards, toilets, and prisons lack an explicit statutory basis.

5.3 Compromised safeguarding

Policies default to gender identity, even in contexts involving:

- sexual trauma
- domestic violence
- female children
- intimate care

5.4 Chilling effect on women's speech

Women expressing political beliefs about sex (e.g., “sex is immutable”) face complaints under gender identity provisions.

5.5 Inaccurate data

Government and institutions are pressured to use “gender identity” instead of sex, undermining:

- health statistics
- crime statistics
- employment equity programs
- violence against women data

6. Recommended Amendments to the Act

WST proposes a suite of practical, minimal, legally robust amendments.



6.1 Insert “Sex” as a Protected Attribute

Add:

“sex” — referring to the biological classification of female or male

6.2 Insert a Definition of Sex in Section 3 (Interpretation)

Recommended wording:

“sex” means the biological classification of a person as female or male, determined by reproductive anatomy and genetics, and recorded at birth, except in cases of recognised differences of sex development.”

This definition:

- aligns with medical, biological, and legal standards
- is consistent with CEDAW
- provides clarity for courts and service providers
- prevents confusion between sex and identity

6.3 Remove “Gender” from the Attributes List

Remove the undefined and legally unreliable term **“gender”**, which has no consistent meaning and creates ambiguity.

6.4 Retain “Gender Identity” and “Sex Characteristics” Separately

This preserves protections for transgender and intersex Tasmanians without compromising women’s sex-based rights.

6.5 Add “Sex” to the Inciting Hatred Provision

Amend s19 to include:



“the sex of the person or any member of the group”

This brings protection for women in line with protections for gender identity and sex characteristics.

6.6 Insert Explicit Single-Sex Exceptions

Add a provision allowing sex-based distinctions where necessary for:

- privacy
- safety
- dignity
- fairness
- therapeutic needs
- risk management

Examples may be included (sports, shelters, wards, toilets, change rooms, prisons, accommodation, intimate care roles) or left to policy.

7. Conclusion

The Anti-Discrimination Act 1998 is no longer fit for purpose in its current form. Its omission of “sex” deprives women and girls of essential legal protection and creates a structural imbalance that elevates gender identity over biological sex.

These reforms:

- restore clarity
- align Tasmania with international human rights obligations
- protect women’s safety, dignity, and fairness



- maintain protections for transgender and intersex individuals
- reduce legal uncertainty and service-provider risk

WST urges the Attorney-General to prioritise these amendments to ensure that Tasmanian women and girls receive adequate, equitable, and evidence-based protection under the law.

Supporting Documents (Separate Files)

- *How Gender Policies and Anti-Discrimination Laws Discriminate Against Tasmanians: Personal Accounts Revealing the Impact of Policy Failure and the Erosion of Sex-Based Rights (2025)*

These documents provide firsthand accounts relevant to the issues outlined in this submission and may be referred to for additional context and evidence.