



Community Legal Centres NSW

Review of the *Anti-Discrimination Act 1977*

September 2025

Our submission

Community Legal Centres NSW welcomes the opportunity to provide this submission to the review of the Anti-Discrimination Act 1977 (NSW), and appreciates the Law Reform Commission's extensive and considered consultation throughout the process of this Review.

Our submission adheres closely to our preliminary submission to the Commission's Review, which was based on views collected through sector-wide consultation. Our submission is not designed to be comprehensive, and we refer the Commission to the analysis and recommendations of our member centres on their specialist matters of law. We have updated our submission to consider the issue of geographic exclusion and locational discrimination, and to highlight the importance of the adoption of a Human Rights Act in NSW to enhance protections against discrimination, abuse, and social, economic and cultural marginalisation.

Having had the benefit of reading the submissions of our members the Seniors Rights Service, the Justice and Equity Centre, Kingsford Legal Centre, and the Australian Centre for Disability Law, we endorse their submissions and recommendations.

Acknowledgement of Country

Community Legal Centres NSW acknowledges the Gadigal people of the Eora Nation who are the Traditional Owners of the Country on which we work. We acknowledge that this land was never ceded. Always was, always will be, Gadigal Land.

About Community Legal Centres NSW

Community Legal Centres NSW is the peak representative body for 41 community legal centres in NSW and represents the views of Community Legal Centres to the government and broader community. Community Legal Centres NSW supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW. Community Legal Centres are independent non-government organisations that provide free legal services to people experiencing deep and persistent disadvantage and dislocation.

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General comments

Community Legal Centres NSW recommends that the Anti-Discrimination Act 1977 (NSW) (The Act) is modernised and simplified to ensure that it effectively promotes the equal enjoyment of rights, aligns with contemporary community standards and contributes to a more just and inclusive society.

Efforts should be made to harmonise definitions and standards of prohibited discrimination across state and federal anti-discrimination laws. This alignment ensures that similar conduct is treated consistently, regardless of the jurisdiction in which a complaint is filed. Harmonisation can also reduce legal complexity and enhance clarity for both complainants and respondents.

The Act should be designed to be flexible enough to adapt to evolving societal standards and emerging forms of discrimination. This includes incorporating protections for LGBTQI people and older people, recognising that discrimination can take new forms and affect different groups over time. Ensuring that the Act remains relevant in the face of changing social norms and demographics and emergent scholarship is essential.

Human Rights

The Act should incorporate the non-discrimination clauses found in key human rights instruments to which Australia is a signatory, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Integrating these provisions into the Act is in line with our international commitments to uphold human rights. In the absence of a comprehensive, actionable Human Rights Act, these inclusions in Anti-Discrimination law are of particular importance.

The absence of a comprehensive human rights framework at a state and Commonwealth level leaves many members of our society vulnerable to human rights breaches which are not covered by discrimination law, and serves to limit the effectiveness of anti-discrimination law. The ADA would be strengthened and complemented by a robust Human Rights Act.

Discrimination on the basis of location

In addition to incorporating existing international human rights commitments, the Act should be future-proofed to adapt to evolving societal norms and standards. It should include provisions that allow for flexible responses to emerging forms of discrimination and inequalities, and those which have been customarily elided by policy-makers.

Locational bias in policy-making and persistent locational disadvantage give rise to structural discrimination in access to services, employment, care, justice and necessities of life such as fresh food, clean water, adequate communications infrastructure and acceptable dwelling quality; and disproportionate exposure to economic exclusion, punitive social policy and carceral justice policy. People living in very remote, remote and rural communities are not conceived of in discrimination law as members of a social group who experience unfair treatment and exclusion on the basis of their belonging to that group, despite remote and rural areas of the state experiencing sustained regional disinvestment, persistent locational disadvantage and heightened climate change-related risk.

The intersection of marginalisation on the basis of race, Indigeneity, disability, gender, age, socio-economic status and location is well-established in social sciences literature. Considering locations outside cities as producing social groups in their own right, and the protection of the rights of members of those social groups, should be considered by the Law Reform Commission and civil society with a view to identifying location as a protected attribute, and confirming locational disadvantage as discrimination.

Responses to questions

3. Tests for discrimination

The Act's tests generally recognise that discrimination can occur regardless of the intent behind an action, as it is the consequences and outcomes that matter most in the experience of those affected. This approach acknowledges the complex and nuanced nature of discrimination, which can often be subtle or indirect.

The split definition of discrimination in the Act can lead to complexities and challenges in legal interpretation. The definition should be combined to reduce confusion.

The comparator test is not fit for purpose and problematic. Instead, tests should focus on the concept of unfavourable treatment to make it easier to identify and address instances of discrimination.

This shift would simplify the burden of proof for individuals who have experienced discrimination and ensures that the focus remains on whether unjust treatment occurred rather than the existence of a suitable comparison.

The reasonable person test could be modified to be a reasonable person who shares the attribute of the complainant. This modification would take into account the unique perspectives and experiences of individuals with specific attributes.

Discrimination may occur when individuals are subjected to unfavourable treatment due to the intersection of multiple protected attributes, which is not currently accounted for by the Act. It is imperative to consider these intersecting attributes when investigating and addressing instances of discrimination to ensure comprehensive protection of individuals' rights and dignity. This can be achieved by amending the Act to allow complaints of discrimination on the basis of multiple protected attributes.

4. Discrimination: protected attributes

5. Discrimination: potential new protected attributes

The Act should uphold the principles of equality and non-discrimination across all protected attributes. The range of attributes protected against discrimination should be expanded to align with contemporary norms and standards.

There should not be a hierarchy of protected attributes. Discrimination and unequal treatment can occur across various characteristics, and all individuals should be equally protected under the law.

Exemptions or exceptions based on certain attributes can undermine the Act's core objective of promoting equality.

To ensure that the Act remains adaptable and responsive to evolving social norms, the Act should contain a non-exhaustive list of protected attributes. This approach allows flexibility to extend protections to particular groups as needed, reflecting the changing nature of discrimination and inequality in our society.

Exemptions should be narrowly tailored and based on clear and compelling reasons. Any exemptions that perpetuate discrimination or unequal treatment should be removed.

Sex workers must be protected not only in the course of performing sex work but also in all other aspects of their lives. This recognition is essential to address the unique and often severe forms of discrimination and violence that sex workers face.

The Act should explicitly include provisions preventing discrimination on the basis sexual orientation, gender identity and expression, and sex characteristics or variations of sex characteristics.

The Act should also include specific protections for older people to address issues related to age discrimination. As the population ages, it becomes increasingly important to safeguard the rights and dignity of older Australians.

The following attributes are protected in other jurisdictions in Australia and should be included in NSW legislation:

- victim-survivors of family and domestic violence;
- victim-survivors of gendered-based violence;
- immigration status;
- political conviction/opinion;
- industrial/trade union activity;
- profession, trade or occupation (including sex work and sex workers);
- irrelevant criminal record;
- lawful sexual activity;
- accommodation status;
- genetic information;
- medical record; and
- physical appearance.

Protection should extend to a person associated or in relation to a person who has any of the above attributes.

Further, the Commission should give consideration to how locational bias in policy-making and persistent locational disadvantage give rise to structural discrimination in access to services, employment, care, justice and necessities of life such as fresh food, clean water, adequate communications infrastructure and acceptable dwelling quality; and disproportionate exposure to economic exclusion, punitive social policy and carceral justice policy.

6. Discrimination: Areas of public life

The ADA should adopt the SDA's broader approach to capturing harassment at work. Protection from discrimination should be enjoyed by everyone participating in a workplace, including paid and unpaid workers. Whether or not a worker is compensated for their labour should not be the test of whether that worker is entitled to respect and dignity in public life. Members of local government should also be protected from age discrimination while performing their duties. Public service as an elected official is work.

Exemptions for religious bodies and private educational institutions that allow discrimination against LGBTIQ+ people as a condition of employment, education or the general provision of goods, services and accommodation should be removed.

8. Civil protections against vilification

Civil protections against vilification are insufficient under the Act and should be updated to be consistent with broader protection in other areas of law. Protections against vilification should be harmonised with Section 93Z of the Crimes Act.

Vilification, particularly when it incites hatred or violence against certain groups or individuals based on attributes such as race, sexual orientation, gender identity, intersex status, religious belief or affiliation, and/or HIV/AIDS status, can have severe societal consequences. Aligning civil protections against vilification with criminal law could provide a more unified and robust response to hate speech and conduct.

A dual approach should be taken to the test for vilification, enabling a 'harm-based' test in addition to the separate 'incitement-based' test as adopted in Victoria.

9. Harassment

The Act is currently inadequate in respect of workplace sexual harassment, and does not offer sufficient safeguards against sexual harassment. It should be amended to reflect changes to the Sex Discrimination Act 1984 (Cth) particularly in regard to:

- the positive duty for Persons Conducting a Business or Undertaking (PCBUs) which requires organisations to take proactive steps to prevent and address sexual harassment within their premises;
- the introduction of the offence of subjecting someone to hostile workplace on the basis of sex; and
- the offence of harassment on the basis of sex.

10. Other unlawful acts and liability

The 'unauthorised acts' exception should be abolished, by removing the following words from subsection 53(1) of the Act: *unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.*

Subsection 53(3) reflects the obligations imposed on employers (liable unless it took all reasonable steps to prevent the act), and the test for vicarious liability, in other discrimination legislation, including the Sex Discrimination Act 1984 (Cth) and is acceptable. However, the Act should be updated to include obligations on franchisors to ensure franchisees comply with the Act. The Act should be updated to include a mechanism to make franchisors vicariously liable for the actions of its franchisees (in addition to the existing accessory provisions).

11. Promoting substantive equality

Positive obligations

The Act should include positive obligations to prevent harassment, discrimination, and vilification, as well as provisions for making reasonable adjustments to promote full and equal participation in public life. The inclusion of such positive obligations would represent a significant step toward creating a more inclusive and equitable society.

Positive obligations within the Act would establish a proactive framework for preventing harassment, discrimination, and vilification. These obligations would require individuals, organisations, and institutions to take active measures to foster a culture of respect and inclusivity, reducing the incidence of harmful behaviours.

The Act should also include provisions for making reasonable adjustments to ensure that all individuals have the opportunity to participate fully and equally in public life. This includes access to education, employment, public services, and other facets of society. Reasonable adjustments are essential for removing barriers that may disproportionately affect people with disability and others who are experiencing deep and persistent disadvantage or dislocation.

These positive obligations are in line with international human rights standards, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

These obligations make it clear that proactive measures must be taken to create inclusive and respectful environments.

Special measures

Special measures are essential to address historical and systemic disadvantages faced by marginalised groups. These measures should align with international law and should be compensatory and timebound. Special measures are not about creating new hierarchies but are intended to rectify existing inequalities and promote substantive equality. They should be based on clear criteria and periodically reviewed to ensure their ongoing relevance.

Any exemptions, special measures, or must be clearly defined within the Act, and the processes for applying them transparent. This transparency helps ensure that the Act is applied consistently and fairly.