



NSW Law Reform Commission  
Locked Bag 5000  
Parramatta NSW 2124

## **Anti-Discrimination Act review – Response from Amazon**

Dear Commissioner,

I am writing to request that the NSW Government consider amendments to the NSW Discrimination Act that would allow targeted recruitment or employment initiatives for historically disadvantaged groups without needing to apply for an exemption. We believe that such an amendment would bring the Act into line with all other states and territories and remove a hurdle which is likely to stifle diversity initiatives.

By way of background, Amazon is committed to diversity and inclusion and strives to be a top employer for diverse talent. We are a company of builders who bring varying backgrounds, ideas, and points of view to inventing on behalf of our customers. Our diverse perspectives come from many sources including gender, race, age, national origin, sexual orientation, culture, education, and professional and life experience. We aim to foster diversity and inclusion across our company and look for ways to amplify underrepresented voices and empower diverse communities.

Our operations in NSW currently comprise two fulfilment centres and four delivery stations, along with Amazon Web Services (AWS) local digital cloud infrastructure. Across our workplace we aim to foster a culture of inclusion through various initiatives. For example, in late 2022 we initiated a pilot program in Victoria to hire people with disabilities in our fulfilment centres. We partnered with Disability Employment Service providers to review our sites to advise of accommodations that need to be in place for people with disabilities and provide sensitisation training to site teams. We then opened up job ads specifically for people with disabilities. Through this initiative we were able to hire a small cohort of people with disabilities, and increase their representation in our workforce.

In the federal Sex Discrimination Act 1984, Racial Discrimination Act 1975, Disability Discrimination Act 1992, Age Discrimination Act 2004 and the regulations of other states and territories, a variation of 'positive discrimination', 'special measures' or 'measures intended to achieve equality' provisions are built into the discrimination laws for the purpose of providing benefits to disadvantaged groups to promote measures to secure formal or substantive equality<sup>1</sup>.

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<sup>1</sup> S 8(1) of the federal Racial Discrimination Act 1975, s 7D of the Sex Discrimination Act 1984, s 45 of the Disability Discrimination Act 1992, s 57 of the NT Anti-Discrimination Act 1996, and s 12 of the VIC Equal Opportunity Act provides that 'special measures' will not constitute unlawful discrimination under those acts. Similarly, s 33 of the Age Discrimination Act 2004 permits positive discrimination. s 27 of the ACT Discrimination Act 1991 permits actions for the purpose of ensuring that there are equal opportunities and/or opportunities to meet special needs.



Where a program is being undertaken in accordance with the specific legislative requirements to promote equality for a group with particular attributes as listed in the Act in question, these provisions allow organisations to support inclusivity by for example conducting targeted recruitment without needing to apply for an exemption. Examples of special measures across states and territories can include advertising roles to employ only Indigenous peoples, people with disabilities, or women in industries and sectors with a disparity of people with these particular protected attributes. These intentional employment initiatives play an important role in promoting substantive equality for disadvantaged groups.

However, at present in NSW, if any organisation wishes to conduct targeted recruitment or employment initiatives for a historically disadvantaged group of people to promote substantive equality, they are required to apply for an exemption under section 126 of the Act, to grant them permission to favour a particular group of people for a specific job or program. This introduces a hurdle which is likely to stifle inclusivity initiatives. We note for example that while there are more than 770,000 businesses with NSW as their main state<sup>2</sup>, there are fewer than 180 organisations that are listed as having current exemptions.

Across Australia, Amazon employs more than 7,000 people. The majority of our staff live and work in NSW. We employ people in a variety of roles, from highly-skilled and specialist positions including software developers, engineers and corporate teams, to entry level jobs across our fulfilment centres and logistics sites creating these jobs in local communities across NSW. The process of applying for an exemption can often be resource intensive for businesses, and makes intentionally hiring groups of historically disadvantaged groups challenging in NSW relative to other states and territories. Removing the need to apply for an exemption to conduct hiring for specific cohorts will help us make significant progress on diversity in NSW.

### **The proposed amendment**

We would urge the NSW government to add an amendment to the NSW Discrimination Act to extend section 21 to permit employers to lawfully implement 'special needs programs and activities' in employment initiatives and for a broader range of attributes, so that this is not only limited to a particular race but would also include (at a minimum) special measures to achieve equality for persons of a particular sex and/or disability. This would bring it in line with other

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ss 31, 35K, 35ZD, 51, 66R and 66ZP of the WA Equal Opportunity Act 1984 includes 'measures intended to achieve equality' including for sex, family responsibilities, sexual orientation, race, impairment and age.

s 65 of the SA Equal Opportunity Act 1984 includes 'projects for benefit of persons of a particular race', s 85 includes 'projects for the benefit of persons with a particular disability' and s 85P includes 'projects for the benefit of persons of a particular age group'. S 47 permits measures intended to achieve equality for persons of a particular sex, sexual orientation, gender identity or intersex status.

s 105 of the QLD Anti-Discrimination Act 1991 includes 'equal opportunity measures' and s 104 permits 'welfare measures'.

s 25 and 26 under the TAS Anti-Discrimination Act 1998 includes either schemes for the benefit of disadvantaged groups' or a 'program, plan or arrangement designed to promote equal opportunity'

<sup>2</sup> <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#states-and-territories>



states and territories and remove the need to apply for an exemption for targeted recruitment and development programs.

We would welcome the opportunity to discuss this topic with the Commission, and we look forward to working with your office to incorporate this recommendation in the updated Act.

Kind regards,

Michael Cooley  
Director, Public Policy, Australia and New Zealand  
And Southeast Asia