

Preliminary submission regarding issues relevant to the Terms of Reference for the review of the *Anti-Discrimination Act 1977* (NSW)

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NSW Law Reform Commission

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The NSW Young Lawyers Human Rights Sub-Committee (the **Sub-Committee**) makes the following preliminary submission regarding issues relevant to the Terms of Reference for the review of the *Anti-Discrimination Act 1977* (NSW) (the **ADA**) by the NSW Law Reform Commission (the **Review**).

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its 15 sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

NSW Young Lawyers Human Rights Sub-Committee

The NSW Young Lawyers Human Rights Sub-Committee comprises a group of all those interested in human rights law, including lawyers working in academia, for government, private and the NGO sectors and other areas of practice that intersect with human rights law. The objectives of the Sub-Committee are to raise awareness about human rights issues and provide education to the legal profession and wider community about human rights and their application under both domestic and international law. The Sub-Committee shares a commitment to effectively promoting and protecting human rights and to examining legal avenues for doing so. The Sub-Committee takes a keen interest in providing comment and feedback on legal and policy issues that relate to human rights law and its development and support.

Summary of Recommendations

Having regard to the Terms of Reference for the Review, the Sub-Committee recommends that:

1. The ADA be reformed to include a number of previously omitted categories to ensure that all persons in New South Wales are protected from discrimination based on a wider range of protected attributes (Term of Reference Number 2). The Sub-Committee recommends that, in considering these reforms, the ADA be revised to ensure that it reflects modern understandings of discrimination. One form of modernisation could be to accommodate intersectionality by recognising that discrimination may occur based on multiple protected attributes. Another could be that the term 'sexual orientation' be used to replace 'homosexuality' throughout the ADA. The Sub-Committee recommends that, in considering these reforms, the ADA be revised to ensure that the language is modern, simple and clear so that people in New South Wales understand how their rights are protected (Term of Reference Numbers 1 and 4);
2. The ADA be expanded to include positive obligations on those who are currently subject to prohibitions on discrimination under the ADA to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life. The Sub-Committee specifically recommends drawing on wording from the recently passed *Discrimination Amendment Act 2023* (ACT) in making these amendments to the ADA (Term of Reference Number 7); and
3. In relation to Term of Reference Number 6, the ADA be reformed to expand the protections against sexual harassment to cover sex-based harassment, by rendering s 22A of the ADA consistent with sexual harassment provisions under the *Sex Discrimination Act 1984* (Cth) (the **SDA**). Further, in relation to Term of References Numbers 6 and 3, one potential reform option that the NSW Law Reform Commission could consider in relation to areas where sexual harassment is prohibited would be to follow the state-based *Anti-Discrimination Act 1991* (Qld) which prohibits sexual harassment in all areas of public life. Alternatively, Part 2A of the ADA, which deals with sexual harassment, could be amended to extend its coverage to fill existing gaps on a more targeted basis.

In making these recommendations, the Sub-Committee has considered the protections that exist in other anti-discrimination and human rights laws, and the interaction between the ADA and Commonwealth anti-discrimination laws (Terms of Reference Numbers 11 and 12).

Background to the *Anti-Discrimination Act 1977 (NSW)*

The *Anti-Discrimination Act 1977 (NSW)* (**ADA**) is a vital piece of legislation aimed at promoting equality and preventing discrimination within New South Wales. Since its inception, the ADA has played a pivotal role in protecting against various forms of discrimination; including discrimination on the grounds of race, sex, age, disability, and other protected attributes. However, as society evolves, so too must anti-discrimination legislation in order to accommodate the ever-changing nuances and challenges of discrimination in a contemporary society. While the ADA has undoubtedly made significant strides in promoting equality and combating discrimination since 1977, it is no longer fit for purpose in the 21st century, owing to the limited scope of protected attributes, its utilisation of outdated language and ineffectiveness in enforcing the prohibition on discrimination. Addressing these challenges will ensure that the ADA remains relevant and effective in safeguarding the rights and dignity of all individuals in New South Wales, regardless of their background or characteristics.

Protected Attributes – protecting more of the NSW community (Term of Reference Number 2) and modernising the ADA (Term of Reference Numbers 1 and 4)

The protected attributes contained in the ADA are the narrowest of Australia’s anti-discrimination laws. The only attributes protected by the ADA are race,¹ sex² (including pregnancy³ and breastfeeding⁴), transgender gender identity,⁵ marital or domestic status⁶, disability,⁷ a person’s responsibilities as a carer,⁸ homosexuality⁹ and age.¹⁰ The ADA’s scope falls short of addressing the full spectrum of diversity within, and discrimination faced by, the New South Wales community, leaving a substantial portion of individuals vulnerable to discrimination without legal recourse or protection at the state level.

Unlike other jurisdictions, the ADA offers limited protection to the diverse spectrum of the LGBTIQA+ community. The ADA exclusively uses the term ‘homosexual’ to represent this community, overlooking and

¹ *Anti-Discrimination Act 1977 (NSW)* pt 2 s 7 (*‘ADA’*).

² *Ibid* pt 3 s 24.

³ *Ibid* pt 3 s 24(1B).

⁴ *Ibid* pt 3 s 24(1C).

⁵ *Ibid* pt 3A s 38B.

⁶ *Ibid* pt 4 s 39.

⁷ *Ibid* pt 4A s 49B.

⁸ *Ibid* pt 4B s 49T.

⁹ *Ibid* pt 4C s 49ZG.

¹⁰ *Ibid* pt 4G s 49ZYA.

excluding people of other sexualities (such as bisexual and pansexual) from protection. To ensure comprehensive protection for all LGBTIQ+ persons, we recommend that the term 'sexual orientation' be used to replace 'homosexuality' throughout the ADA. This proposed amendment aligns New South Wales' stance more closely with that of the SDA which adopts a broader and more inclusive approach to protecting the rights of individuals against discrimination on the basis of their sexual orientation.

The Sub-Committee also recommends that, to be reflective of modern understandings of discrimination, the ADA be amended to accommodate intersectionality by recognising that discrimination may occur based on multiple protected attributes, as suggested in a 2021 Public Interest Advocacy Centre Report *Leader to Laggard: The Case for Modernising the NSW Anti-Discrimination Act (PIAC Report)*.¹¹

The definition of 'disability' under the ADA is also in need of review. Aside from the use of medical terminology such as "malfunction", "malformation", "disfigurement" and "disorder",¹² which does not align with contemporary 'social' or 'human rights' models of disability,¹³ this definition also fails to account for temporal diversity within certain disabilities. For example, the definition of 'disability' under the *Disability Discrimination Act 1992* (Cth) (the **DDA**) specifies that 'disability' includes:

"a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person."¹⁴

Aligning the definition for disability with the DDA provides Australians with more certainty that their rights are protected under both Commonwealth and New South Wales law, and facilitates an easier understanding of those rights. The inclusion of temporary disabilities acknowledges the evolving nature of disability and provides protection against discrimination in various circumstances. While the ADA's current definition of 'disability' can

¹¹ Public Interest Advocacy Centre, *Leader to Laggard: The Case for Modernising the NSW Anti-Discrimination Act*, (Report, 2021) 5 ('*PIAC Report*').

¹² *Anti-Discrimination Act 1977* (NSW) s 4.

¹³ The 'social' model of disability views disability as the product of societal barriers to a person with disability's participation in society, rather than as an inherent difference, malfunction, or inability of that person. The 'human rights' model of disability recognises that disability is a natural part of human diversity that must be respected and supported in all its forms, that people with disability have the same rights as everyone else in society, and that impairment must not be used as an excuse to deny or restrict people's rights.

¹⁴ *Disability Discrimination Act 1992* (Cth) s 4.

be interpreted to cover temporary, future, or imputed disabilities, it may benefit from greater clarity in this regard. Explicitly mentioning these categories in the definition can provide greater legal certainty for people with disabilities and anti-discrimination practitioners alike.

While the attributes of pregnancy and breastfeeding fall within the protected attribute of 'sex',¹⁵ they are protected as standalone attributes federally and in other States and Territories.¹⁶ Amending the ADA to include pregnancy and breastfeeding as standalone attributes would provide greater clarity as to the extent of the protection against being discriminated on these grounds and result in consistency with other jurisdictions.

There are several attributes of vulnerable people that are protected by various anti-discrimination acts in other States and Territories across Australia, but not in New South Wales. Such attributes include: industrial activity¹⁷; lawful sexual activity¹⁸; physical features¹⁹; political belief or activity²⁰; gender identity²¹; immigration status²²; language (including sign language)²³; accommodation status²⁴; subjection to domestic or family violence²⁵; profession, trade or occupation²⁶; a spent conviction²⁷; genetic information²⁸ and intersex status.²⁹

¹⁵ *Anti-Discrimination Act 1977* (NSW) pt 3 ss 24(1B), 24(1C).

¹⁶ See *Sex Discrimination Act 1984* (Cth) s 7; *Equal Opportunity Act 2010* (VIC) s 6(l); *Discrimination Act 1991* (ACT) s 7(1)(o); *Anti-Discrimination Act 1992* (NT) s 19(1)(f) for 'pregnancy' and *Sex Discrimination Act 1984* (Cth) s 7AA; *Equal Opportunity Act 2010* (VIC) s 6(b); *Discrimination Act 1991* (ACT) s 7(1)(d); *Anti-Discrimination Act 1992* (NT) s 19(1)(h) for 'breastfeeding'.

¹⁷ *Equal Opportunity Act 2010* (VIC) s 6(f); *Discrimination Act 1991* (ACT) s 7(1)(j); *Anti-Discrimination Act 1992* (NT) s 19(1)(k).

¹⁸ *Equal Opportunity Act 2010* (VIC) s 6(g).

¹⁹ *Equal Opportunity Act 2010* (VIC) s 6(j); *Discrimination Act 1991* (ACT) s 7(1)(m). 'Physical features' is defined in these acts to include your height, weight, size or other bodily characteristic/features. 'Bodily characteristic' has been interpreted by VCAT to include hair and facial hair, see *Kuyken v Lay* [2013] VCAT 1972.

²⁰ *Equal Opportunity Act 2010* (VIC) s 6(k); *Discrimination Act 1991* (ACT) s 7(1)(n); *Anti-Discrimination Act 1992* (NT) s 19(1)(k).

²¹ *Sex Discrimination Act 1984* (Cth) s 5B; *Equal Opportunity Act 2010* (VIC) s 6(d); *Discrimination Act 1991* (ACT) s 7(1)(g), *Anti-Discrimination Act 1992* (NT) s 19(1)(ba)

²² *Discrimination Act 1991* (ACT) s 7(1)(i); *Anti-Discrimination Act 1992* (NT) s 19(1)(a).

²³ *Anti-Discrimination Act 1992* (NT) s 19(1)(ab).

²⁴ *Discrimination Act 1991* (ACT) s 7(1)(a); *Anti-Discrimination Act 1992* (NT) s 19(1)(ea).

²⁵ *Discrimination Act 1991* (ACT) s 7(1)(x); *Anti-Discrimination Act 1992* (NT) s 19(1)(jb).

²⁶ *Equal Opportunity Act 2010* (VIC) s 6(la); *Discrimination Act 1991* (ACT) s 7(1)(p); *Anti-Discrimination Act 1992* (NT) s 19(1)(eb) and (k).

²⁷ *Equal Opportunity Act 2010* (VIC) s 6(pb).

²⁸ *Discrimination Act 1991* (ACT) s 7(1)(h).

²⁹ *Sex Discrimination Act 1984* (Cth) s 5C.

Several of the above attributes are also additionally protected by Commonwealth anti-discrimination legislation.³⁰ Ensuring that the ADA aligns with Commonwealth legislation is essential for legal consistency across jurisdictions in Australia. This would simplify legal processes and provide reassurance that an individual's rights are protected uniformly throughout the country. Further, amending the ADA to include some of the abovementioned proposed attributes would bring New South Wales in line with Australia's international obligations to eliminate discrimination and uphold equality.³¹ The Sub-Committee would welcome the opportunity to comment in further detail as to which particular attributes it recommends should be included as part of the next stage of the NSW Law Reform Commission's Review. Such an expansion of the ADA would represent a significant step toward a more inclusive and equitable society for all residents of New South Wales, and would contribute to fostering a culture of respect for all residents regardless of their background, characteristics, or life circumstances.

To advance equity, it is imperative that the terminology used to define discrimination in the ADA is modernised, making the legislation simple and clear, and ensuring that people have a comprehensive understanding of how their rights are protected. Further, the ADA must be sufficiently clear to enable people to understand what they need to do to avoid infringing on the rights of others, and to ensure that existing tests for discrimination are clear, inclusive and reflect modern understandings of discrimination.

In relation to Terms of Reference Numbers 1, 2 and 4, the Sub-Committee recommends the ADA:

- Adopt the term 'sexuality' in place of the term 'homosexual' in line with the proposed *Equality Legislation Amendment (LGBTIQA+)* Bill 2023 to ensure all sexual identities are classed as protected attributes;
- Be amended to accommodate intersectionality by recognising that discrimination may occur based on multiple protected attributes;
- Alter the definition of 'disability' to include temporary, future, and imputed disabilities to ensure that persons with a temporary disability are classed as a protected attribute;
- Treat 'pregnancy' and 'breastfeeding' as separate protected attributes; and
- Adopt a wider range of protected attributes to ensure protection of vulnerable peoples from discrimination.

³⁰ These attributes include, but are not limited to, gender identity, intersex status, pregnancy, breastfeeding and sexual orientation.

³¹ For example, see Article 26 of the International Covenant on Civil and Political Rights (1976), Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1976), Articles 1 and 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (1981) and Articles 1 and 2 of the Convention on the Elimination of All Forms of Racial Discrimination (1969).

The Sub-Committee recommends the terminology used in the ADA be revised to ensure that the ADA is modern, simple, and clear, and so that people in New South Wales understand how their rights are protected.

The Adequacy of Protections Against Sexual Harassment (Term of Reference Numbers 6 and 3)

The definition of sexual harassment adopted in section 22A of the ADA reads:

For the purposes of this Part, a person sexually harasses another person if—

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or

(b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

This definition, as noted in the PIAC Report, ‘...focuses on conduct “of a sexual nature”, and does not adequately capture the various types and forms of “sex-based harassment.”³² This passive prohibition also fails to ensure that workplaces and other areas of public life are safe, particularly for women.³³ This particular failing of the ADA was raised in the Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, 2020*,³⁴ which recommended, inter alia, that the ADA be reformed to render s 22A consistent with sexual harassment provisions under the SDA, ensuring that:

1. sex-based harassment is expressly prohibited; and

³² *PIAC Report* (n 11) 9. Examples of sex-based harassment include asking intrusive personal questions or making inappropriate comments or jokes to a person based on their sex. A definition and further examples can be found on the Respect@Work website, see ‘Defining workplace sexual harassment’ *Understanding workplace sexual harassment* (Web Page) <<https://www.respectatwork.gov.au/individual/understanding-workplace-sexual-harassment/defining-workplace-sexual-harassment>>.

³³ *PIAC Report* (n 11) 9.

³⁴ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020), Recommendation 16 (‘*AHRC Inquiry*’).

2. the creation or facilitation of an intimidating, hostile, humiliating or offensive environment on the basis of sex is rendered unlawful.³⁵

In terms of the areas to which the prohibition applies, one potential reform option which the NSW Law Reform Commission could consider would be to follow the state-based *Anti-Discrimination Act 1991* (Qld) which prohibits sexual harassment in all areas of public life.³⁶ Alternatively, Part 2A of the ADA, which deals with sexual harassment, could be amended to extend its coverage to fill existing gaps on a more targeted basis.³⁷

In relation to Term of Reference Number 6, the Sub-Committee recommends the ADA be reformed to expand the protections against sexual harassment to cover sex-based harassment, by rendering s 22A of the ADA consistent with sexual harassment provisions under the SDA.

In relation to Term of References Numbers 6 and 3, two potential options for reform the NSW Law Reform Commission could consider in relation to areas where sexual harassment is prohibited, include;

- 1) following the *Anti-Discrimination Act 1991* (Qld) which prohibits sexual harassment in all areas of public life; or
- 2) amending Part 2A of the ADA to extend its coverage to fill existing gaps on a more targeted basis.

Introducing positive obligations to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life (Term of Reference Number 7)

The Sub-Committee is of the view these positive obligations should be imposed on all those who are currently subject to prohibitions on discrimination under the ADA. The ADA does not contain any positive obligations to prevent harassment, discrimination and vilification, nor does the ADA contain any positive obligations to make reasonable adjustments to promote full and equal participation in public life. For example, as highlighted in the PIAC Report, the ADA does not impose a positive obligation on employers and educational institutions to provide reasonable adjustments for people with disability (unlike the DDA).³⁸ The Sub-Committee agrees with

³⁵ *AHRC Inquiry* (n 34) Recommendation 16.

³⁶ *Anti-Discrimination Act 1991* (Qld) s 118.

³⁷ *PIAC Report* (n 11) 9.

³⁸ *PIAC Report* (n 11) 6.

PIAC that the failure of the ADA to require reasonable adjustments for people with disability is a significant gap in the legislation.³⁹

Be proactive rather than reactive

Historically, this lack of positive duties is not unique to the ADA. As noted by Monash University Associate Professor Dominique Allen, ‘anti-discrimination law [,both federally and at the state and territory level,] generally operates around a negative prohibition that reacts to proscribed behaviour.’⁴⁰

This approach, according to Associate Professor Allen, has two key problems:⁴¹

1. ‘...it relies on the individual to take action to address discrimination, both for themselves and, by extension, for the community’; and
2. ‘...it addresses discrimination after the fact’. As Associate Professor Allen puts it, ‘...what Australian laws lack are back burning methods, which, by reducing the relevant hazards, could prevent the fire being lit in the first place.’

Through its National Inquiry into Sexual Harassment in Australian Workplaces (the **Inquiry**), the Australian Human Rights Commission (the **AHRC**) ‘...heard of the need to shift from the current reactive, complaints based approach, to one which requires positive actions from employers and a focus on prevention.’⁴² Accordingly, the AHRC recommended the SDA be amended to introduce a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible.⁴³

In recent reviews of anti-discrimination legislation in other jurisdictions, the necessity for introducing positive obligations has been seen and recommendations heeded. We provide two recent examples below.

³⁹ *PIAC Report* (n 11) 15.

⁴⁰ Dominique Allen, ‘Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination’ (2020) 26(1) *Australian Journal of Human Rights* 110, 112.

⁴¹ *Ibid* 113.

⁴² *AHRC Inquiry* (n 34) 14.

⁴³ *Ibid* 44.

The Australian Capital Territory (ACT)

The ACT recently passed the *Discrimination Amendment Bill 2022* to amend the *Discrimination Act 1991* (ACT).⁴⁴

The Explanatory Statement and Human Rights Compatibility Statement for the *Discrimination Amendment Bill 2022* (ACT) notes that

‘to address some of the limitations of a reactive complaints-based discrimination framework, the Discrimination Amendment Bill 2022 inserts new Part 9 which provides two positive duties:

- *A duty to make reasonable adjustments to accommodate a person’s particular need arising from a protected attribute (section 74); and*
- *A duty for organisations and businesses and persons with organisational management responsibility within these entities to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification (section 75).*⁴⁵

In discussing the changes to be introduced, the ACT Minister for Human Rights Tara Cheyne noted that

*‘the law reforms introduce a positive duty...to eliminate discrimination, sexual harassment, and unlawful vilification...[which] will encourage a proactive approach to preventing discrimination in [the ACT] community and shift the responsibility away from individuals having to make a complaint.’*⁴⁶

Queensland (QLD)

Similarly, the Queensland Human Rights Commission (the **QHRC**) released a report in 2022 titled “Building Belonging - Review of Queensland’s *Anti-Discrimination Act 1991*.”⁴⁷ In response, the Queensland Government made comments as below which the Sub-Committee views as particularly relevant to Terms of Reference Number 7 of the Review.

⁴⁴ ACT Government, Tara Cheyne MLA, ‘Protections against discrimination strengthened’ (Media Release, 23 March 2023) (*‘Protections Media Release’*).

⁴⁵ Explanatory Statement and Human Rights Compatibility Statement, *Discrimination Amendment Bill 2022* (ACT) 3.

⁴⁶ *Protections Media Release* (n 44).

⁴⁷ QLD Government, *Final Queensland Government Response to the Queensland Human Rights Commission’s Report, Building Belonging - Review of Queensland’s Anti-Discrimination Act 1991* (Report, 2022-23) (*‘QLD Government Response’*).

In respect of the QHRC recommendation to ‘replace unjustifiable hardship exceptions with a positive, standalone duty to make reasonable accommodations for a person with disability,’⁴⁸ the QLD Government recognised ‘...that reasonable accommodations are critical to avoiding discrimination and achieving substantive equality for people with a disability and their carers.’⁴⁹

In respect of the QHRC recommendation to ‘include a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment, and other prohibited conduct as far possible[,]’⁵⁰ the QLD Government recognised ‘...that creating a positive duty to eliminate discrimination, sexual harassment and other objectionable conduct is an important element of a proactive and preventative anti-discrimination framework.’⁵¹ The QLD Government noted ‘...the introduction of a positive duty would focus on creating cultural change, as well as addressing systemic discrimination issues, rather than relying on individuals to pursue complaints after the fact.’⁵²

New South Wales should not and cannot be different to other Australian jurisdictions, as University of Sydney Professor Simon Rice contends:

‘without a positive duty to both eliminate discrimination and harassment and make reasonable adjustments to address inequality, the [ADA] fails its essential purpose — to help our society towards equality.’⁵³

In relation to Term of Reference Number 7, the Sub-Committee recommends that, consistently with other jurisdictions, New South Wales introduce positive obligations to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life.

The Sub-Committee specifically recommends drawing on wording from the recently passed *Discrimination Amendment Act 2023* (ACT) and amending the ADA to include an appropriate adaptation of the following:⁵⁴

⁴⁸ *QLD Government Response* (n 47) 6-7.

⁴⁹ *Ibid.*

⁵⁰ *QLD Government Response* (n 47) 18.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ 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>>.

⁵⁴ *Discrimination Amendment Act 2023* (ACT) s 30 <https://www.legislation.act.gov.au/b/db_66962/>. It is noted application times may be relevant per ss(4)-(6) of the new s 74. It is also noted consequential amendments may be required as suggested in ss 31-34.

Positive duty to make reasonable adjustments

- (1) A person must make reasonable adjustments to accommodate another person's particular needs arising from a protected attribute if discrimination on the ground of the attribute is unlawful under this Act.
- (2) For subsection (1), an adjustment is not reasonable if it would cause unjustifiable hardship to the person making the adjustment.
- (3) Failure to make reasonable adjustments in accordance with this section is an unlawful act.

Positive duty to eliminate discrimination, sexual harassment and unlawful vilification

- (1) This section applies to an organisation or business, and any individual with organisational management responsibility for an organisation or business, required under this Act not to engage in discrimination, sexual harassment or unlawful vilification in particular circumstances.

Examples—organisation

- educational authority
- sporting club
- church

Examples—individual with organisational management responsibility

- sole trader
 - chancellor or vice-chancellor at a university
 - owner of a small private business
- (2) The organisation, business or individual must take reasonable and proportionate steps to eliminate the discrimination, sexual harassment and unlawful vilification.
 - (3) In deciding whether steps are reasonable and proportionate, all the circumstances must be considered, including the following:
 - (a) the nature and size of the organisation or business;
 - (b) the resources of the organisation, business or individual;
 - (c) the business or operational priorities of the organisation, business or individual;
 - (d) practicability and cost of the steps.

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this preliminary submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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