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NSW Law Reform Commission
Locked Bag 5000,
Parramatta NSW 2124
nsw-lrc@justice.nsw.gov.au

Carers NSW welcomes the opportunity to provide a submission in response to the review of the *Anti-Discrimination Act 1977 (NSW)* (the ADA). The Act currently provides important protections for carers against discrimination in employment settings but remains limited in its protections for carers across other domains. Carers NSW believes that this review provides the opportunity to expand these protections for carers to other areas of public life and to improve the effectiveness of these protections through improved awareness and understanding of the ADA.

Carers NSW is the peak non-government organisation for carers in New South Wales (NSW). A carer is any individual who provides care and support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Carers NSW is part of the National Carer Network and a member of Carers Australia. Our vision is an Australia that values and supports all carers, and our goals are to:

- Be a leading carer organisation in which carers have confidence
- Actively promote carer recognition and support
- Actively support carers to navigate a changing service landscape that will be characterised by ongoing policy reform
- Promote connected community experiences and opportunities for carers that are inclusive of diverse carer groups
- Lead and advocate for carer-specific and carer-inclusive policy making, research and service delivery
- Continue to be a quality-driven, responsive and carer-focused organisation.

Thank you for accepting our submission. For further information, please contact

Yours sincerely,

Elena Katrakis
CEO
Carers NSW

Introduction

There are approximately 854,300 family and friend carers in NSW.¹ While many people choose to provide care, caring can have significant impacts on health, wellbeing and economic outcomes, as well as social and economic participation.

Carers NSW welcomes the opportunity to provide a response to the review of the NSW *Anti-Discrimination Act 1977* (the ADA). The review presents a unique opportunity to highlight the individual rights of family and friend carers in NSW and their need to receive adequate protections through the ADA that promote their recognition, support and inclusion.

The ADA currently provides important protections against discrimination on a number of grounds, including discrimination on the grounds of carer responsibilities. However, protections for carers within the ADA are limited to the workplace only and do not extend to other areas of public life, such as education, accommodation or in the provision of goods and services. Despite the limitations of the ADA, Carers NSW commends the ongoing work of Anti-Discrimination NSW (formally known as the Anti-Discrimination Board of NSW) to improve information and awareness of the existing protections for carers. Carers NSW believes that in addition to this work, this review provides an opportunity to strengthen and expand on protections for carers in NSW across other areas of public life.

Strengthening and expanding protections for carers within the ADA

The introduction of the *Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000* following the 1999 review of the ADA, introduced protections against discrimination for carers in relation to their caring role within workplaces and employment contexts. Since this time, there has been significant progress in relation to recognising carers in NSW and addressing the significant impacts of caring on the health, wellbeing and social and economic participation of carers. The introduction of the NSW *Carers (Recognition) Act 2010* established the definition of a carer, the *NSW Carers Charter* and obligations for public service agencies and human services agencies in relation to carers. The ongoing commitment of the NSW Government to the development and implementation of consecutive NSW Carers Strategies has demonstrated the need for targeted policy and programs aimed at addressing the disadvantage experienced by carers, increasing equity and improving carer outcomes.

While the NSW *Carers (Recognition) Act 2010* was an important step in improving recognition and support for carers, current state and federal carer recognition legislation do not create legally enforceable protections for the rights of carers. Furthermore, while carers may also be extended protections under other acts such as the *Disability Discrimination Act 1992*, as associates of the person they are caring for, these protections may be limited to only some cohorts of carers and may also not establish protections for carers in their own right where the requirements of their caring role itself may be the grounds for discrimination, independent of the person they care for.

Carers NSW therefore believes that carers should remain a protected group within the ADA, however the definition of carer and scope of protections should be harmonised with the NSW *Carers (Recognition) Act 2010* to ensure consistency with other policy and legislation within NSW. The review of the ADA provides an opportunity to establish greater legally enforceable protections for carers across a broader range of areas of public life.

¹ Australian Bureau of Statistics (2019) 2018 Survey of Disability, Ageing and Carers, available online at www.abs.gov.au.

Consistent use of ‘carer’ in the context of discrimination

Carers NSW supports the inclusion of protections for carers within the ADA. However, Carers NSW believes that in order to ensure that protections for carers are reflective of their experiences, the term carer must be used consistently with NSW carer recognition legislation.

Clarification of the term carer within the ADA may help to clarify other settings in which protections for carers may be needed. For example, where there is conflation between parents and carers, it may seem unnecessary to establish protections for carers in primary school or secondary school settings. However, young carers, as defined by the NSW *Carers (Recognition) Act 2010*, may require protection against discrimination within these education settings to ensure that they are not directly or indirectly discriminated against and do not experience any impacts of this discrimination on their education or long-term outcomes.

Carers NSW acknowledges that in the context of employment legislation, such as the *National Employment Standards*, the term carer can be inclusive of parents, especially in the context of paid and unpaid leave entitlements such as sick and carer leave. However, Carers NSW believes that a broader approach to protections for carers within the ADA requires that the definition of carer within the ADA is consistent with current carer recognition legislation. In relation to discrimination against parents and guardians in areas of public life, the development of new protections for parents on the grounds of their parental responsibilities will likely enable more nuanced protections that more accurately reflect their experiences and needs.

Expanding protections against discrimination for carers

As previously mentioned, the ADA was amended in 2000 to include protections for carers against discrimination in the workplace following the findings of the 1999 review of the ADA.² The review stated that while there was a clear case for the introduction of protections for carers in relation to workplaces, there did not appear to be evidence of a broader social problem that would require the implementation of additional protections for carers:

“The concept of “family and carer responsibility” does not seem directly relevant in other areas. In particular, the examples which have been provided to the Commission do not illustrate a problem beyond the work area...

... If further evidence of a broader social problem comes to light, this conclusion may need to be revisited. However, the Commission is conscious of the need to avoid extending the ADA unnecessarily, particularly in circumstances which are not well documented and analysed.”³

Carers NSW believes that since this time, clear evidence of the need to extend protections to carers more broadly has emerged. In addition to the introduction of state and federal carer recognition legislation, increased evidence and awareness of the impacts and experiences of caring and the ongoing development and implementation of targeted policies and programs aimed at improving outcomes for carers illustrate a need for more comprehensive protections for carers.

The Australian Human Rights Commission has previously recommended the extension of protections for carers to a greater range of domains.⁴ In 2012, in response to the *Exposure Draft Human Rights and Anti-Discrimination Bill 2012*, the Australian Human Rights Commission noted that anti-discrimination

² NSW Law Reform Commission (1999) Report 92 – Review of the Anti-Discrimination Act 1977 (NSW), available online at: <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-92.pdf>.

³ Ibid.

⁴ Australian Human Rights Commission (2013) *Investing in care: Recognising and valuing those who care; Volume 1: Research Report*, available online at: https://www.humanrights.gov.au/sites/default/files/UnpaidCaringVolume1_2013.pdf?_ga=2.138121264.1279386254.1696285559-627739855.1695877734.

protections for carers could be enhanced and extended to better protect carers, recommending that protections for carers be extended to all areas of public life the basis of greater equity and enhanced protection from discrimination:

“Anti-discrimination legislation currently offers carers varying degrees of protection and could be enhanced to meet the highest existing standard. The Commission has recommended that the Human Rights and Anti-Discrimination Bill cover discrimination on the basis of family responsibilities in all areas of public life and that discrimination on the basis of carer responsibilities be expressly covered... The benefit to society is greater gender equality, greater equity for unpaid carers and enhanced protection from discrimination.”⁵

Legislation introduced in Victoria since the introduction and review of the Act has also created broader protections against discrimination for carers. In acknowledgment of the direct and indirect discrimination experienced by carers, the *Victorian Equal Opportunity Act 2010* prohibits discrimination on the grounds of caring responsibilities across a broader range of areas of public life including⁶:

- work
- school, TAFE or university
- a club or sporting organisation
- shops and restaurants
- aged care, hotels or rental properties.

A review of complaints to the Victorian Equal Opportunity and Human Rights Commission, who handle complaints regarding this legislation, in 2020-21⁷ found that while 80% of carer discrimination complaints related to the workplace, 1 in 5 were not in relation to the workplace, suggesting that a number of carers experienced discrimination across other areas of public life.⁸

Additionally, in 2009, the House of Representatives Family, Community, Housing and Youth Committee found in their inquiry into better support for carers that – concerns around negative attitudes towards caring itself including stigma and discrimination were reasons that some carers prefer not to disclose their role. Carers NSW has heard anecdotally from carers who are concerned about disclosing their caring role due to fear of discrimination, even where identification as a carer may enable improved support. This is especially the case for young carers who may fear discrimination within education settings, where protections against discrimination for carers do not currently exist. Carers NSW believes that broadening protections for carers against discrimination across different settings is likely to support increased identification of carers and access to support as carers will feel more confident that they will be protected against discrimination if it occurs.

Carers NSW believes that ultimately, regardless of which areas of public life are ultimately covered within the ADA, protections for carers should be extended to all areas of public life, as recommended by the

⁵ AHRC (2013) (page 7).

⁶ Victoria Equal Opportunity and Human Rights Commission (VEOHRC) (2023) *Parent and Carer Status*, online at: <https://www.humanrights.vic.gov.au/for-individuals/parent-and-carer-status/>, viewed 03 October 2023.

⁷ VEOHRC (2021) *Victorian Equal Opportunity and Human Rights Commission Annual Report 2020–21 – Dec 2021*, available online at: https://www.humanrights.vic.gov.au/static/17e7f07a6011ef9bf0002454f5a65611/Resource_Annual_Report-2020-21.pdf.

⁸ House of Representatives Standing Committee on Family, Community, Housing and Youth (2009) *Who Cares...?: Report on the inquiry into Better Support for Carers* (page 22), available online at: https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=fchy/carers/report/fullreport.pdf.

Australian Human Rights Commission, to ensure greater equity and enhanced protections against discrimination.

Improving awareness of the ADA and complaints mechanisms

Carers NSW has observed in interactions with carers through our delivery of education and training, as well as in the provision of policy information and consultations with carers, that there remains low awareness of protections available to carers under the Act and subsequent redress mechanisms available to carers who experience discrimination. While protections and redress mechanisms may be clearly established within the ADA, ongoing work to raise awareness of complaints procedures and remedies is key to ensuring the effectiveness of the Act in relation to carers.

Carers NSW commends the ongoing work of Anti-Discrimination NSW in improving information on carer discrimination available on their website and their ongoing participation in Carers NSW carer rights education activities under the NSW Carers Strategy. However, Carers NSW believes that ongoing investment is needed to continue to build awareness and understanding of complaints procedures and remedies for carers who experience discrimination in NSW.

Conclusion

Carers NSW thanks the NSW Law Commission for the opportunity to respond to the review of the *Anti-Discrimination Act 1977* (the ADA) and commends their commitment to ensuring all people in NSW are free from discrimination. This important review presents a timely opportunity to highlight the unique experiences of family and friend carers and to ensure their rights are adequately recognised and protected.