Council for
Intellectual Disability

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NSW Council for Intellectual Disability Submission to the NSW Law Reform Committee on the Reform of the Anti-Discrimination Act

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Who we are:

The Council for Intellectual Disability (CID) is a disability rights organisation based in New South Wales. People with intellectual disability are at the front and centre of everything we do – they are our decision-makers, staff members, board members and spokespeople. Through our systemic advocacy, we campaign on issues that are important to people with intellectual disability, such as health, NDIS, jobs, inclusive education, transport and safety. For more information, see our website: https://www.cid.org.au/

People with Intellectual Disability in NSW:

There are approximately 145,000 people in NSW with an intellectual disability. People with intellectual disability represent a diverse community with unique strengths, experiences and support needs. However, they remain among some of the most excluded and marginalised groups in Australian society.

Inclusion and full participation are fundamental human rights. They are also essential to wellbeing, belonging, and independence. The Council for Intellectual Disability believes inclusion means more than being present in society, it requires being valued, heard and supported to participate fully in education, employment, services and community life. Achieving this requires systems and laws that recognise and respond to discrimination, including social, economic and attitudinal barriers that people with intellectual disability face daily.

While the disability policy environment in NSW has seen changes in recent years, including the introduction of the NDIS and the enactment of the *Disability Inclusion Act 2014*, these reforms have often failed to meet the needs of people with intellectual disability. Despite commitments to dignity, participation and autonomy, many people face barriers to participation, lack of support for capability building and decision making and too often experience discrimination.

This evolving policy landscape creates an important context for the reform of the Anti-Discrimination Act (ADA). The ADA can help shape the broader landscape by protecting people with intellectual disability from discrimination and promoting their right to live independently and freely in the community. The ADA should reflect the values of autonomy and inclusion and support the realisation of rights through protections that reinforce the importance of support and adjustments.

At the same time, NSW and Australia have committed to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which requires governments to promote full and equal enjoyment of all human rights by people with disability. This includes dismantling barriers and creating systems that support access, participation and dignity.

The discrimination experienced by people with intellectual disability locks them out of full inclusion and denies them the support required to be active, valued citizens in our communities. People with intellectual disability understand that narrow and prescriptive laws can be used against them, and can inhibit their human rights and pathway to a good quality of life. The people who administer the law need more direction on how to enable equity, so the playing field is fairer. Our broader community also needs more direction on how to ensure they are enabling inclusion.

This report has been compiled around the stories that the CID Advocacy Group has shared about their experiences of discrimination, people with intellectual disability who work at CID and many other members and allies that have reached out to us to tell their experiences and ideas for a better piece of legislation that helps them be more than just seen.

How PWID can be enabled to experience full inclusion:

In this report, we share the stories of our community experiencing discrimination in many situations and settings. As a society who prides itself on a 'fair go' for all, there are some key structural changes to laws, policies and practices that will promote inclusion and reduce the incidence of discrimination. As this Act is reviewed, we request that the ADA be constructed to play a preventative role and be applied in a proactive way to stop discrimination before it happens. In order for it to promote inclusion, it should:

- Address ableist attitudes across our whole community in all settings
- Promote equal recognition before the law and presume 'capacity' & capability
- Recognise adjustments & supports that enable equity & enshrine supports as a right
- Promote capacity building in decision-making grounded in self-determination
- Safeguards that build on strengths of the person and provide proportionate safety
- Insist that the social, emotional, wellbeing approach be applied for First Nations people and that their historical disadvantage impacting their social determinants be accommodated to close the gap around inequity

> ***"I want to be a part of the community - not just walk through it"***
> \- **Michael Sullivan (AM)**

What we want to see happen:

1. The Act must be modernised and simplified to better promote the equal enjoyment of rights and reflect current community standards. It must be underpinned by a human rights model of disability and recognise that people with intellectual disability are a diverse group who experience intersectionality that impacts their ability to be included and meaningfully participate in all settings.

2. The Act should ensure adjustments and supports for decision making, capability building and equal recognition before the law are provided to people with disabilities to promote full and equal participation in all areas of their life. The Act should include positive obligations to prevent harassment, discrimination and vilification in all public and private settings.

How People with Intellectual Disability Experience Discrimination

People with intellectual disability experience discrimination in many forms. It can be overt, such as exclusion from public spaces, or subtle, such as a lack of adjustments in essential services or the workplace. It often reflects unconscious bias, ableist attitudes and assumptions about people capabilities, value and rights.

> ***"When I go to the doctor, they talk to my support worker, not me. I want them to ask me questions first. I can answer for myself."*** **-**
> **- CID Member with an Intellectual Disability**

Discrimination can occur in daily interactions, in education and employment, accessing public transport, or when seeking housing and healthcare. Some CID members spoke of being told outright that a school or workplace was "not the right place" for them without any discussion of what adjustments could be made. Others reported being treated as if they were incapable of making choices or excluded from decision making altogether. Presuming that a person cannot make a decision and not providing adequate supports to do so is in breach of our obligations to the United Nations Convention on the Rights of People with Disability.

> ***"If you make decisions for yourself, that's it, you're free."***
> ***- Len Robinson CID Advocate and Project Worker***

Discrimination against people with intellectual disability is often amplified when their disability is not visible. People are judged based on how they appear or speak, and are denied respect, assistance or safety. One member recalled experiencing a medical episode on public transport that was mistaken for intoxication. Instead of support, he was confronted by police and staff treating him as a nuisance rather than a person in need of medical care. These incidents are not just upsetting, but traumatising.

> ***"When I've had medical episodes on public transport, they think that I'm drunk. A lot of the time, they think I'm purposely causing trouble… Often, if someone's having a medical emergency or just needs a little bit of extra help, they can put quite extreme measures in place. I've had times when I've had medical emergencies and they decided to call eight police officers — because I fainted on a train."*** **- CID Member with an Intellectual Disability**

Other CID members described the judgment they face based on how they look.

> ***"I look neuro-typical, I feel like people treat me like I'm stupid or dumb and they don't treat me like a person"*** **- CID Member with an Intellectual Disability**

> ***"There was this one time where I was [trying to use] public transport … getting my card, and the guy at the counter said "Oh, are you stupid or something, cause, you don't understand this!?"*** **- CID Member with an Intellectual Disability**

These experiences caused shame, exclusion and even posed serious safety risks. They reduce people's confidence to participate in community life, limiting their opportunities and impacting their health and wellbeing.

Unconscious bias can prevent people with intellectual disability from being heard, believed and supported. Addressing this requires the ADA to set clear expectations for proactive, respectful engagement and the removal of attitudinal barriers across all settings. There must be clear recognition of all forms of discrimination against people with intellectual disability in the ADA, along with strong protections and proactive duties to prevent it.

Discrimination of People with Intellectual Disability in Services and Health

People with Intellectual Disability die 27 years earlier than the general population. 3.8 out of every 10 experience potentially avoidable deaths, (compared to 1.7 in the general population). They experience 4 times the rate of preventable hospitalisations. They have a lower use of preventative health care services and experience significant barriers to care in general practice. Feeling unsafe and having low confidence in our health care systems for fear of experiencing discrimination has significant quality of life impacts on the intellectual disability community.

> ***"When I go to the doctor, they talk to my support worker, not me. I want them to ask me questions first. I can answer for myself. It's my health, and I should be part of the conversation."*** **- CID member with Intellectual Disability**

> ***"When the doctor didn't diagnose me properly, I had all this pain, and he didn't listen to me. He just gave me antibiotics, he reckoned I was stupid and didn't check it. Then I went into emergency and they didn't do anything either. Then I had a fit and after that they found out I had bowel cancer."* - CID Project Worker with Intellectual Disability**

In healthcare people with intellectual disability are often spoken over or ignored. This undermines their autonomy and can lead to poorer health outcomes. Our members have shared experiences of critical health information being directed solely to carers, leaving them out of decisions about their own care.

The ADA already covers discrimination in healthcare settings because health is included under the definition of "services". This means it is unlawful for health service providers to discriminate against someone because of their disability. However, the lived experiences of our members show that in practice, discrimination in health settings is common and often unchallenged.

The reform of the ADA should strengthen these protections by clarifying the obligations of health providers to make adjustments, including communicating directly with the person with disability, providing accessible information and allowing enough time to explain information so people can provide their own consent to medication and treatment. This will help ensure the right to safe, respectful and equitable healthcare. It will also assist in building a person's decision-making capability and recognise a person's decision-making autonomy and authority. Such adjustments may lead to a reduction in the removal of peoples decision making rights via instruments such as legal guardianship.

> ***"I know that having a child with a disability, I'm privy to witnessing unconscious bias, labelling, diagnostic overshadowing… in statements, in comments by all clinical staff, even up until the very end when it was recognised how acutely unwell my son was, there were still excuses made as to why he was behaving like that or why he was exhibiting these signs and symptoms, and this, unfortunately, impacted what care and treatment he was going to get on that day… I think that there was time lost, there were moments lost, there was the ability for just one person to realise how sick he was and try and advocate for us to get him the help he needed, and it did not happen"***
> ***- Rachel Browne (mother of Finlay Browne). Coroners Report (2024)***

Unconscious bias and diagnostic overshadowing can be fatal for people with intellectual disability in healthcare. Assumptions about a person's behaviour or capacity and a lack of recognition and respect for the views of their support network can lead to delayed diagnosis, reduced quality of care, and have life threatening consequences. Addressing this requires the ADA to set clear expectations for proactive, respectful engagement and the removal of attitudinal barriers.

Discrimination against People with Intellectual Disability in Education Systems

During our consultation, members and their supporters reported instances of students with intellectual disability being denied the opportunity to do subjects of their choice in NSW schools.

> ***"When I wanted to do music and performances and I was in a mainstream class, my teacher said no to me doing the theory. I get it because I can't do theory, but I kept on asking her and asking her and asking her for the school to be able to do things. And she always said no."*** **– CID Member with an Intellectual Disability**
>
> ***"I want all school staff and teachers to be educated about intellectual disability and trained properly. Kids with disabilities are being traumatised by the school system."***

Barriers to inclusive education for students with intellectual disability take many forms. Commons issues reported to CID include

- Teachers **lacking the training** and effective teaching methods to meet the needs of students with intellectual disability.
- Inflexibility in curriculum content, delivery, and assessment requirements.
- An **unwillingness** to modify a subject's curriculum to meet a child's needs, or a lack of resources and training to do so.
- **Presumed incompetence –** the assumption that because a student cannot complete one task, they will not be able to engage in other aspects of learning and school life.
- Long term exclusionary or punitive measures for a one-off behavioural incident, without making efforts to implement accommodations.

By clarifying the responsibility of the Department of Education to address these forms of discrimination, the ADA can remove reliance on the highly subjective 'unjustifiable hardship' defence often used to refuse to accommodate students.

This experience is echoed by many of our members, who have been turned away from schools without a conversation about their rights or reasonable adjustments. One member said:

> ***"I was told I couldn't go to a mainstream high school because I had a disability. They said it wouldn't be a good fit. They didn't even meet with me or my family to talk about what support I might need. I felt like they decided I didn't belong before even meeting me."*** **– CID member with an Intellectual Disability**

People with intellectual disability should be given the same opportunity as everyone else in their community to have choice around educational settings. This includes local options, where they can be embedded in their community and build local relationships. This ultimately contributes to enhanced autonomy, a better quality of life and contributes to informal safeguarding.

Discrimination against People with Intellectual Disability in Employment Settings

Many members have reported being overlooked for jobs, not because of their skills, but because of assumptions made about their abilities. Employers often do not explore job customisation or supports before deciding someone is "not suitable".

> ***"I've applied for a lot of jobs, they won't be considerate of my needs as a person with disabilities. I just want to be treated like a normal person and have a job."***
> **-CID member with an Intellectual Disability**
>
> ***"I worked in a sheltered workshop for a number of years. I left because of the behaviour of the staff. They were following me into the toilet, banging on the door to hurry up. It got really really bad to the point where it became harassment. … They were just on my back the whole time, they said 'Oh, you're not fast enough'. I said, 'I'm doing the best I can.' They said, 'No no no, you gotta do a lot more faster than this, and just saying how slow I was, and I'm thinking, 'This is a sheltered workshop'….. And that was the worst experience I've had." - CID member*** **with an Intellectual Disability**

These stories highlight systemic failings in current employment protections. The ADA must ensure that employers, including Australian Disability Enterprises, are held to clear, enforceable obligations to provide safe, respectful and supportive work environments. It is crucial workplace settings are free from harassment and discrimination.

Protections must also extend to all stages of applying for employment. This includes the recruitment stage, preventing assumptions about capacity or ability that exclude candidates before they are given a fair opportunity. Adjustments must be carefully considered and made to recruitment processes so that people with intellectual disability experience a level playing field when they are applying for roles. Particularly roles that are targeted. People must be given the supports and adjustments needed to maintain their jobs and they should be fairly paid for the roles they are employed to do. This includes for 'lived experience' advice which should ideally be embedded in a Co-Design process rather than a one off or limited application.

People with intellectual disability have strengths and capabilities that remain hidden as they are locked out of various systems. This inequity is an injustice to them and a disadvantage to the rest of the community who fail to benefit and gain enrichment from their deep wisdom, expertise and insights. People with intellectual disability will continue to experience discrimination and fall between the gaps of our systems, particularly at times of transition, if we do compel people and businesses in both public and private settings to recognise and provide appropriate supports and adjustment to enhance inclusion. Until full inclusion occurs, there must be regular, easily accessible and broad cross system education on ableism and unconscious bias.   Compelling systems to do this via legislation that acts in a proactive way may be possible through the new ADA.

Recommendation Detail – What We Want to See Happen

Recommendation 1

1. **The Act must be modernised and simplified to better promote the equal enjoyment of rights and reflect current community standards. It must be underpinned by a human rights model of disability and recognise that PWID are a diverse group who experience intersectionality.**

Modernise the Act and Embed a Human Rights Model of Disability

The Anti-Discrimination Act (ADA) must be updated to reflect a human rights-based and social model of disability. The new definition should be accessible for people with intellectual disability to understand and relate to and should remove outdated language. We support aligning and building on the definition of 'disability' from the United Nations Convention on the Rights of Person's with Disability and the preliminary proposed definition:

"Disability is any impairment, including a physical, mental, intellectual, cognitive, neurological, learning, communication, or sensory impairment, or a functional limitation whether permanent, temporary, or episodic in nature, whether evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society."

We support this change as it shifts focus from a medicalised view of disability to that of a social one, where the barriers in society are recognised as creating exclusion and therefore discrimination. This is essential for creating inclusive communities and reflects the lived experience of people with intellectual disability.

The Act must play a role not just in defining rights, but in shaping social attitudes. It should signal to the community that people with disability have the right to participate fully and equally, and that exclusion is a failure of design not ability.

Human Rights Context

As NSW does not have a Human Rights Act, it must be guided by the international instruments that we have ratified and agreed to implement. The UN Committee on the Rights of Persons with Disabilities links a human rights model with intersectionality, recognising that disability is only one of several layers that make up a person's identity. As noted in General Comment No. 6 (2018) on Equality and Non-Discrimination:

"...disability is a social construct, and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several

layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account."

The 2014 NSW Disability Inclusion Act's twelve general principles, acknowledge that people with disability have an inherent right to respect, to experience dignity, and to access information in a way that is appropriate for their disability and cultural background. This promotes inclusion by enabling them to make informed choices. The ADA reform should be consistent with these principles and ensure that all discrimination protections in NSW reflect a human rights model, intersectional awareness, and practical accessibility with a focus on good support and consideration of a persons context.

Intersectionality

> ***"When I get discriminated against it might be about my disability and my background for being in jail and that I am an Aboriginal man. It all needs to be looked at together."***
>
> **- CID Member and Project Worker with Intellectual Disability**

The Act must recognise the intersectional nature of discrimination. People with intellectual disability may also face discrimination based on gender, race, culture, sexuality and other characteristics that can make their experiences of exclusion more complex or challenging. For example, a young Aboriginal woman with intellectual disability, addiction and psychosocial issues may encounter multiple barriers in health, education and the justice systems that are not addressed by protections limited to single attributes. These barriers may include discrimination from service providers, assumptions about capacity and a failure to recognise cultural needs and context. Protections that only focus on one aspect of a person's identity, are not enough to fully address the discrimination faced in different contexts. The law must see a person in a holistic way and take all parts of a person's identity and context into account when considering whether they have been treated fairly. This supports a trauma informed approach that must be embedded in the ADA.

An intersectional and trauma informed approach means recognising that discrimination is not experienced in isolation. People are not inherently vulnerable, but systems, attitudes and law can make people vulnerable, particularly in periods of transition and if their attributes are only considered in isolation. A holistic approach is required when working to minimise discrimination and providing adjustments and supports for people with intellectual disability. This is particularly so for Aboriginal and Torres Strait Islander people and for those with psychosocial disability and fluctuating mental health.

The ADA should be amended to recognise intersectionality as a core concept of the Act. It should require decision makers to consider a person's context and the combined impact of multiple attributes when assessing whether discrimination has occurred.

Tests for Discrimination and Legal Protections

For the ADA to genuinely protect people with intellectual disability, the legal tests for discrimination must be reformed. The current test, known as the 'comparator test', requires a person to show that they were treated less favourably than someone without the protected attribute in the same or similar circumstances. For people with intellectual disability, identifying a suitable comparator is often impossible. The requirement is overly complex and fails to account for the real ways people experience discrimination.

We support the proposed shift to the 'unfavourable treatment' test which allows the consequences or effects of treatment to be considered, without requiring a comparison. This test better reflects the experiences of people with disability, particularly those facing intersectional discrimination.

The Act must also address how 'causation' is proven. Requiring complainants to demonstrate that the treatment happened *because* of their disability can be extremely difficult. This is particularly difficult when unconscious bias is involved. Many people with intellectual disability experience discrimination because of assumptions about their abilities or needs, not because of deliberate or conscious actions. Victoria's legislation already acknowledges that intent or awareness is not necessary, we believe NSW should follow this example.

Indirect discrimination and the 'burden of proof'

Indirect discrimination is also a major concern. This occurs when a rule or condition that applies to everyone disproportionately affects people with a protected attribute. Current tests, such as he 'disproportionate impact; and 'inability to comply' standards, require a level of evidence that is difficult for many people with intellectual disability to provide.
The law should not require complainants to prove they are unable to comply with a rule, as this shifts the burden unfairly. Instead, it should focus on whether the rule has the effect of excluding or disadvantaging people with disability, and whether it was reasonable in the circumstances.

The 'reasonableness' standard also currently places the burden on the complainant to show that the requirement or condition was not reasonable. This is difficult without access to legal advice or support. We believe that in these situations, the burden should shift to the respondent to demonstrate that their rule or decision was reasonable and justified.
These legal tests are not just technical details, they shape whether people with intellectual disability can use the law at all. We must build a system that is simple, fair and focused on outcomes.

Clear Pathways for Complaints

> ***"Sometimes it's hard to make a complaint. I get mentally exhausted doing everything. People don't get back to you promptly, and I get frustrated."-*** **CID Member with an Intellectual Disability**
>
> ***"Lots of people are not being given a choice about where they live and just being put into Group Homes which are just like the old institutions. They don't know who to complain to about this or what to do about it if they are not happy"*** - **CID Advocacy Group Member with an intellectual Disability**

Legal rights mean very little if people cannot use them. The ADA must include clear and supported pathways for people with intellectual disability to raise concerns and make complaints. This includes

- Information and complaints processed provided in Easy Read formats.
- Access to supports or advocates to help understand rights and guide through the process.
- Alternative ways to give evidence and supported storytelling.

Without these supports people with intellectual disability will continue to be excluded from justice. We risk repeating mistakes of the past, laid out for us all to consider and act on through the Disability Royal Commission, and risk leaving people in situations where they may experience abuse, neglect, violence or exploitation. We believe the introduction of independent advocacy pathways or court support style programs for complaints could be a valuable solution. It is important, moving forward, that people with disability are consulted in the design of these pathways to ensure they are truly accessible.

Recommendation 2

2. **The Act should ensure adjustments and supports for decision making, capability building and equal recognition before the law are provided to people with disabilities to promote full and equal participation in all areas of their life. The Act should include positive obligations to prevent harassment, discrimination and vilification in all public and private settings.**

Recognition of Support for Decision Making

People with intellectual disability should be recognised as legally capable decision makers and get the support and adjustments they need to assist them to make their own decisions. The ADA must recognise the presumption of decision-making capability of the individual coupled with their supporters and any adjustments they need that considers their context.

> **Decision making capability = the individual person + supporters + adjustments**
>
> - CID Position on Supported Decision Making

People with intellectual disability need more than just legal protection, they need practical supports to fully take part in their community. This includes support with communication, making decisions, understanding their rights, and navigating services. Systems are built without consideration for people with intellectual disability, and without a legal duty to make adjustments, people are left out.

CID believes that the ADA must embed the requirement and recognition of and for supports for supported decision making. This is a critical component of people being able to access justice and services with the adjustments needed to recognise and build legal capability and agency. This recognition and requirement to provide supports should be for both formal and informal supports. What is ‘reasonable’ should be determined by the person within their context. Assessments that are used to determine if a person is capable of making a decision, should consider the supports the person needs to build their capability, be required to consider the context at the time of the assessment and only relate to specific decisions. Decision making ability is time and decision specific. The use of outdated reports to determine that a person is not capable, can significantly impact on their decision-making rights.

The ADA must create positive duties for schools, employers, in service provider and justice settings to anticipate and remove barriers before discrimination occurs. This includes being required to provide adjustments and supports across different settings with the aim of building autonomy, capability and skills of for self-determination where people can be the causal agents in their own lives.

Supports and Adjustments in Justice:

PWID are overrepresented in the Criminal Justice System. Police, court systems and services are often not aware of a persons intellectual disability. We have been told that assessments to determine if a person has a disability are not routinely offered, and when conducted, are often not done in a culturally safe way. The supports a person needs to understand their court notices, bail conditions and options is often not accessible to a person who needs supports and adjustments to build their capability. The lack of these adjustments sets people up to fail.

> ***"We need more court diversion programs – it needs to be statewide" –***
> **Justen Thomas, Proud Dharawal Man, CID Advocacy Team Project Worker**

PWID cannot have equitable access to justice if they are not provided with the support and adjustments they need to fully participate in the judicial process. This includes support to raise concerns or make complaints about how they have been treated. The Intellectual Disability Rights Service Court Diversion Program and Justice Advocacy Service provides the support and adjustments that people need to understand their rights, responsibilities and be diverted away from punitive measures that place them at significant risk of harm in the justice system. The JAS service is currently not adequately resourced to meet demand and the Court Diversion Program only runs in 6 out of the 150 NSW courts.

Many people with intellectual disability have a criminal record that inhibits them from employment and other opportunities. The record is often irrelevant to the situation and limits their ability to improve their quality of life. This type of discrimination needs to be addressed to recognise that our community has historically been hindered rather than helped when their intellectual disability has not been identified or supported correctly.

Supports and Adjustments in the Education System

Case Study (parent of a child with intellectual disability):

My son started kindy at the support unit at our local school. When we enrolled, they promised that he would be regularly integrated into mainstream classes and activities. He was nonverbal, and I noticed that as the years progressed he was becoming sadder and sadder. I would walk past the school at lunchtime and see him fenced into the support unit, trapped behind their spike-tipped gate, and often holding onto the bars of the fence to watch kids playing. I asked the Assistant Principal (AP) many times to integrate him into the mainstream classes. Her response was that in kindergarten they had "tried" to take him to sport with his mainstream peers, but he had urinated on a tree once during that sports class. As a result, the AP reasoned that it was better for him to not go into the mainstream classes, because she said that the other kids would make fun of him. I kept asking, but it was clear that they had put him into the too-hard basket.

This happened with his education as well. In lockdown I saw his home learning and realised that he was "stuck" with kindergarten-level literacy resources. These 'one size fits all' printed sheets were visually cluttered, and not suitable. He couldn't do them. They had been putting these kindy worksheets in front of him instead of altering their pedagogical methods and making him resources that would allow them to learn to read and write. In lockdown, away from the school, he got happier. When he returned to school, I asked the AP how we could make things better for him, and she suggested we send him to a fully segregated school because "that's where he'll go to high school anyway".

The local school discriminated against him by neglecting to accommodate his needs because it was too hard for them. They were under skilled and under resourced, and there was nothing I could do to get them to accommodate his needs.

We ended up moving him to a segregated school half an hour away from our community. While it has been devastating to remove him from our community, he is happier at a school where the teachers are better trained and resourced. But he shouldn't have to leave his local friends just because the school failed to accommodate his disability.

The Department needs to take responsibility for this so that individual schools can't get away with neglecting the education and psychological wellbeing of kids like my son anymore."

People with intellectual disability are frequently excluded from education because of perceived capacity, a lack of reasonable adjustments or simply the outright refusal in enrol. CID is concerned about the current provision that allows private education providers to lawfully discriminate on the basis of disability. This is unacceptable. All education providers, whether public or private, should be required to create inclusive learning environments and offer reasonable adjustments to support students with intellectual disability.

The Act allows educational authorities to avoid making adjustments where doing so would cause 'unjustifiable hardship'. It is not reasonable to deny a child with disability access to a quality, inclusive education. Schools must be required to demonstrate that all reasonable options were explored in collaboration with the family.

Supports and Adjustments for Employment

People with intellectual disability continue to face high levels of unemployment and underemployment. Even when people want to work, the barriers they come up against mean they are unable to get a foot in the door. Employers do not take the steps to explore how a role could be adjusted, or whether any support could make the job accessible. We are concerned that the concept of 'reasonable adjustments' is not being applied properly. Instead, employers are using 'unjustifiable hardship' to justify not hiring or interviewing people with intellectual disability.

To address this the ADA must include clear and enforceable obligations on employers to actively consider and document what adjustments were explored before deciding not to hire someone with a disability. Employers should not be able to dismiss applicants with intellectual disability without showing that they seriously considered their application and whether they could support them in the role. Without this accountability employers will continue to avoid responsibility.

Reasonable adjustments must go beyond physical accessibility. They should include job customisation to match the skills and interests of the person, provide Easy Read information, support at interviews and the option of having a support person present. Inclusion in the workplace must be a right, not a favour.

Supports and Adjustments in Services

Positive obligations under the ADA must extend to all services and areas of community life. This means public transport systems, community facilities and government services must not only be physically accessible but also remove communication and attitudinal barriers. Public transportation should provide adjustments such as visual and audio journey information, training for staff members on working for people with intellectual disabilities and helping them to understand that passengers with intellectual disability need more time or assistance. Currently, there is no mandatory training, and it is left in the hands of the people working for these systems to decide if and how they respond to the needs of passengers with intellectual disability. This creates inconsistency, with some staff offering adequate support while others lack the knowledge, skills or willingness to assist. This leads to exclusion and discrimination in a service that should be equally available to all.

Government services should provide Easy Read versions of all forms and correspondence, offer in-person assistance to complete applications, and train staff to allow time to explain processes in plain language. The NSW Government has already made a commitment and is making progress to provide all important and relevant documents in Easy Read. This is not consistently delivered across all government services and there is more work to do around ensuring information that is translated to Easy to Read is also easy to find and use.

A specific barrier for those with Intellectual Disability is the lack of access to important forms. Applications for identity documents are very important for people with intellectual disability, who may not have other legal documents to identify themselves with. These and other legal documents remain inaccessible due the use of legal jargon and the perception that legal information cannot be explained in a simple and Easy Read way. Translation to Easy Read is a time consuming and skilful task that simplifies complex information so that it is understandable to a broad audience. Given legal documents and forms need to be accessed by a wide spectrum of people in our community, including those with intellectual disability, it is an adjustment that is more than reasonable. Without this time and expertise dedicated to translating legal forms, people with intellectual disability will continue to be locked out of arrangements where they are able to engage as a full citizen's with assumed capacity and legal standing.

Strengthening the ADA would help turn this commitment into a legal obligation, ensuring that Easy Read is not optional but a standard requirement for all government services.
The ADA can ensure these changes happen by creating a legal duty for all service providers, whether public or private, to identify and remove barriers to participation for people with intellectual disability. Rather than placing the onus on individuals to request adjustments, the law should require organisation to anticipate and meet these needs as part of their everyday operations. Failure to do so should be considered unlawful discrimination, with clear pathways for people to seek remedies.

Supports and Adjustments in Health care

Without assuming that a person is capable of making their own decisions or being provided with the adjustments and supports required to do so, people with intellectual disability are at risk of being removed from directing their own health care outcomes.

> ***"When the doctor didn't diagnose me properly, I had all this pain, and he didn't listen to me. He just gave me antibiotics, he reckoned I was stupid***

> ***and didn't check it. Then I went into emergency and they didn't do anything either. Then I had a fit and after that they found out I had bowel cancer" –* Len Robinson, CID Project Worker with Intellectual Disability**

> ***"One day this nurse said 'oh you don't need it'. I had to show them my list of medication and show them it was on the list. Then the nurse said "oh it is on there". They don't listen to me and they don't tick it off on the list either. They don't believe me.***
> ***They say the other nurse will do this, the other nurse will do that that. But they never do it. They just don't want to help me. They aren't trained and the doctors aren't trained either"* – Len Robinson, CID Project Worker with Intellectual Disability**

People with intellectual disability face significant barriers in accessing safe, respectful, and equitable health care. This includes being spoken over, having information directed only to carers, and experiencing unconscious bias and diagnostic overshadowing, where symptoms are wrongly attributed to the person's disability rather than investigated properly. People are not offered supports or adjustments, their informal networks are not recognised as important partners in their healthcare and their will and preferences are not paramount in the decision-making process which is often removed from them if 'legal capacity issues' are raised. These issues can lead to missed or delayed diagnoses, reduced quality of care, removal of rights and, in some cases, life-threatening outcomes.

> ***There was therapy and psychologists, they said I didn't have depression because of the epilepsy medication I was on and it would block the depression and it spiralled out of control and that caused many other problems and I went in and out of a dozen psychologists trying to find somebody that actually would listen or had the knowledge to work with somebody like myself with an intellectual disability and had mental health issues at the same time…. It affected not just me but also others, because they had to take the brunt of what was a very confronting time. They didn't know how to deal with what I was going through.***
> ***I am now defensive with doctors because of the trauma I have experienced in the system.* – CID Project Worker with Intellectual Disability**

These barriers are also deeply entrenched in the mental health care system. People with intellectual disability are at higher risk of experiencing mental health issues, yet they frequently encounter services that are not equipped or willing to adapt their practices to meet diverse needs. Mainstream mental health services often lack the training to distinguish between behaviours associated with intellectual disability and those linked to mental health conditions. This can result in people being turned away from services, misdiagnosed, or placed under restrictive interventions rather than being provided with accessible, person-centred support. Inpatient mental health units can be overwhelming and inaccessible environments, leading to increased distress and disengagement from care.

The ADA needs to ensure hospitals and medical policy reflects the diverse needs of people with intellectual disability.

Supports and Adjustments in Housing

Currently social housing and group homes are not included as protected areas under the ADA. This is a significant gap in the law and a missed opportunity to acknowledge and protect people with intellectual disability from discriminatory processes that occur within these settings. The reform of the ADA is an opportunity to close this gap and ensure that people with intellectual disability are protected from discrimination when applying for, being allocated or living social housing and group homes.

Consider the experience of a person with intellectual disability who applied for social housing after living in temporary accommodation. The application process was long and complex, with forms that were not available in Easy Read and no offer of in-person support. Without assistance to complete these forms errors were made that delayed the application for weeks. When a property was offered it was in a location far from existing supports, and they were not aware of their right to request a review or a more suitable option. Without a dedicated case worker to check in and ensure the safety of people with intellectual disability, there is an increased risk of returning to unsafe and unstable housing.

> ***"Getting housing has to be easier. People with intellectual disability should be a priority"***
>
> ***Need assistance from someone to help you do the application and help you work through your needs. Bring back case workers and get them allocated to you. They should check in with you frequently – at least once a week to see if everything is alright. If they don't check in with you, you can feel unsafe. They need to ask us if we feel safe.***
>
> ***Housing in QLD you can go into the office and there is always someone to help you. NSW should follow suit". You don't need to make an appointment you can just turn up and they help you".***
>
> **– Justen Thomas, Proud Dharawal Man, CID Advocacy Team Project Worker**

People with intellectual disability experience discrimination across many transitional points in their lives. Housing is foundational to a good quality of life. It can ensure you secure employment, have good health and can access the supports you need to build capability. People with intellectual disability regularly fall between the gaps in systems when they do not have secure housing. They experience discrimination when looking for housing, applying for housing, when offered housing and trying to maintain it. Without the right supports in all of these moments, our systems make people vulnerable.

PWID have specific needs in housing and should be allowed by accommodation providers to make reasonable alterations because of their disability. They are overrepresented in social housing and need supports and adjustments to access and maintain it. Their intellectual disability should be considered and accommodated in all part of the process for social and affordable housing so that they do not fall between the gaps.

The ADA can ensure this happens by making social housing a protected area under the Act, and placing a legal duty on housing providers to anticipate and remove barriers.

Protections Against Vilification and Harassment

PWID are discriminated against because of their disability. The Act does not adequately protect PWID against vilification or harassment and should do so in all public and private settings.

> ***"One of the times where discrimination has happened to me is I've been classed, because of having slow speech and slow eyes, as a drunk, and then refused service. Bars have refused me entry even though I hadn't had a single drop of alcohol. And a few people [including security guards] have gone up against me in their time, being big bullies and stuff. And one of the people was a classic case of not knowing that I had a disability, but it was too late by the time they found out."*** **- CID Member with an Intellectual Disability**

Currently, the ADA does not protect against vilification on the basis of disability. This is a major gap that leaves people with intellectual disability exposed to harmful and degrading treatment in public life. CID strongly believes that the current civil vilification provisions must be expanded to include disability as a protected attribute.

Our members have described instances of being mocked, excluded from venues, harassed in public spaces and targeted online because of their disability. These experiences cause significant harm to mental health. These acts contribute to a culture of exclusion, stigma and fear, and have real consequences for a person's safety and reinforce systemic discrimination by normalising exclusionary attitudes.

We believe that the right of people with intellectual disability to feel safe and protected in their communities must come first. This protection is essential regardless of the mentioned concerns around free speech. Public expression should never be used to justify speech or behaviours that humiliates, degrade or incites hostility towards people with disability.

The ADA should be amended to explicitly include disability amongst the protected attributes under vilification. Ensure these protections should apply across all public spaces, including schools, workplaces, online platform and community venues.

References

Coroners Court of New South Wales (2024, May 10) *Inquest into the death of Finlay James Browne* (Deputy State Coroner Erin Kennedy). Lidcombe, NSW: Coroners Court of New South Wales. https://coroners.nsw.gov.au/documents/findings/2024/Inquest_into_the_death_of_Finlay_Browne_.pdf

Council for Intellectual Disability. (n.d.). *Supported Decision Making*. https://cid.org.au/issues/supported-decision-making/

Shogren, K. A., Wehmeyer, M. L., Palmer, S. B., Rifenbark, G. G., & Little, T. D. (2013). Relationships between self-determination and postschool outcomes for youth with disabilities. *The Journal of Special Education*, *48*(4), 256–267. https://doi.org/10.1177/0022466913489733

United Nations Department of Economic and Social Affairs. (n.d.). *Convention on the Rights of Persons with Disabilities (CRPD). Division for Inclusive Social Development*. https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd