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NSW Law Reform Commission  
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### **Review of the *Anti-Discrimination Act 1977 (NSW)***

Carers NSW welcomes the opportunity to provide a response to the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977 (NSW)* (the ADA). While the ADA currently provides essential protections for family and friend carers experiencing discrimination in the workplace, Carers NSW believes that this review provides an important opportunity to engage carers feedback and better understand ongoing discrimination experiences for carers within and beyond employment settings. This submission draws on ongoing consultation with carers and previous Carers NSW submissions, highlighting the importance of expanding protections for carers beyond employment settings and increasing awareness and understanding of the ADA<sup>1</sup>. In this submission, Carers NSW recommends broadening protections and covering other areas of public life, particularly where carer discrimination intersects with issues of gender, race, and disability.

Carers NSW is the peak non-government organisation for carers in New South Wales. A carer is any individual who provides care and support to a family member or friend who lives with 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.

Yours sincerely,

Elena Katrakis  
CEO  
Carers NSW

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<sup>1</sup> Carers NSW (2024), *Carers NSW Response to the review of the NSW Anti-Discrimination Act*

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## Introduction

Carers NSW would firstly like to commend the ongoing work of the NSW Law Reform Commission (NSWLRC) and welcomes the opportunity to provide additional feedback on the review of the NSW *Anti-Discrimination Act 1977* (the ADA). This review presents a critical opportunity to strengthen recognition, support, and inclusion of family and friend carers in NSW, address contemporary instances of discrimination, and ensure adequate protections under the ADA. Carers NSW also wishes to acknowledge the efforts of Anti-Discrimination NSW (ADNSW) in raising awareness of existing protections.

In NSW, there are over 985,500 family and friend carers, representing diverse communities, age groups, and cultural backgrounds.<sup>2</sup> For many carers, caring is a 24-hour role which often entails significant emotional, physical, and financial costs. Caring responsibilities also regularly restrict carers' participation in employment, education, and social activities.

While the ADA includes important protections against discrimination on the basis of carer responsibilities, these protections currently apply only in employment settings. This narrow scope does not reflect the many ways discrimination can occur due to a limited understanding of the caring role. As a result, carers remain vulnerable to discrimination not only in the workplace, but also in other areas of life such as public spaces, education, housing, and access to services.

In our 2024 submission to the ADA review, Carers NSW recommended that discrimination protections for carers be extended beyond the workplace. Since then, we have undertaken targeted consultations with carers and Carers NSW Carer Representatives who have experienced discrimination, engaged in complaint processes, and contributed ideas for improving the ADA. This submission builds on those insights, combining qualitative feedback from consultations with quantitative data from the 2024 National Carer Survey and additional research, to identify ongoing gaps in protection and show the extent of carer discrimination in NSW.

This response focuses on carer-related questions raised in the Consultation Paper's key areas of inquiry. It addresses the definition of 'carer', recognition of caring responsibilities, inconsistencies in discrimination tests, grounds for reasonable adjustment, barriers to protections and complaint pathways, intersectionality, and the need to extend provisions to a broader range of public settings.

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<sup>2</sup> NSW Department of Communities and Justice (2024), *About carers*, available online at: <https://dcj.nsw.gov.au/community-inclusion/carers/about-carers.html>, viewed 08 July 2025.

## Part I - Review of Current ADA Protections for Carers

The *Anti-Discrimination (Carers' Responsibilities) Act 2000*, established the unlawfulness of discriminating against another person on the grounds of their responsibilities as a carer for an identified family member in need of care or support.<sup>3</sup> In an in-depth analysis of the first decade following this Act, Rivlin (2014) highlighted two significant limitations: the restrictive nature of the amendment's definition of caring responsibilities, confined to a prescribed list of family members, and the absence of an express duty to provide reasonable accommodation.<sup>4</sup>

Carers NSW supports Rivlin's analysis, which aligns closely with reported experiences of carers highlighting that their responsibilities are 'invisible', 'ignored' or 'dismissed on account of cultural difference'.<sup>5</sup> As a result, the currently limited protected attribute of "responsibilities as a carer" invites instances of workplace discrimination for carers whose responsibilities are inadequately acknowledged. Addressing these limitations will better align legal protections with the lived experiences and needs of carers in NSW.

Building on the recommendations in last year's Carers NSW submission to the ADA review, which called for broader and stronger protections for carers, this submission focuses on current experiences of discrimination. While consultations revealed concerns about discrimination in a variety of settings, the majority of carers pointed to inconsistencies in workplace protections and repeated instances of discrimination that went unaddressed.

Key issues identified include inconsistencies in how existing protections are applied, ongoing cases of direct and indirect discrimination in workplaces, and difficulties experienced with current complaint processes. These findings are based on the firsthand insights and informed feedback shared by carers during recent consultations with Carers NSW.

### Definitions and Carer Responsibilities

#### Defining carers

The *Anti-Discrimination Amendment (Carers' Responsibilities) Bill 2000*, introduced after the 1999 review of the ADA, established protections for carers specifically in workplace and employment settings. Since then, there has been significant progress in recognising carers in NSW and their importance to the person they care for as well as their community at large. A key milestone was the introduction of the *NSW Carers (Recognition) Act 2010*, which provided a clear statutory definition of a carer, introduced the NSW Carers Charter, and outlined obligations for public service agencies to recognise and support carers. Consecutive NSW Carers Strategies have also continued to demonstrate the NSW Government's commitment to increased recognition and support for carers in NSW.

Carers NSW supports the continued recognition of carers as a distinct protected group within the ADA. Aligning the ADA's definition of a carer, and the scope of associated protections, with the *NSW Carers (Recognition) Act 2010* would promote greater consistency across legislation and carer-focused protections and responsibilities in NSW. While this alignment would broaden recognition of diverse caring circumstances, it is important that the rights of carers are not diluted by merging them with closely related groups, such as parents. Although carers and parents may experience similar

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<sup>3</sup> *Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000 No 24 (2000)*, Section 49S, New South Wales.

<sup>4</sup> Rivlin, L (2014), *Carers' Responsibility Discrimination Protections under the Anti-Discrimination Act 1977 (NSW): An Evaluation of the First Decade 2001-2011*, University of Sydney, Sydney.

<sup>5</sup> Carers NSW Anti-Discrimination Act Review Carer Focus Group Consultation, 2 July 2025.

forms of discrimination, a distinct definition of carers within the ADA is essential to address their specific and nuanced experiences, and to ensure protections remain adequate.

Parental status encompasses a range of relationships, including biological, step, foster, adoptive, and guardian arrangements, all primarily oriented toward safeguarding a child's rights until maturity.<sup>6</sup> By contrast, a carer is defined as an individual providing ongoing personal care, support and assistance to any other individual that needs it because that individual is a person with disability, has a medical condition, has a mental illness or who is frail and aged.<sup>7</sup> While some parents or those with parental responsibilities such as guardians, foster carers or kinship carers may qualify as carers, it is highlighted in the *NSW Carers (Recognition) Act 2010* that not all parents are automatically carers. Additionally, not all carers are parents. As such, it is essential that protections for carers be independently reviewed and strengthened, recognising carers' specific experiences and ensuring these experiences are protected under the Act.

### Carers' Responsibilities

Carers NSW acknowledges and supports existing protections against discrimination for employees who provide care for or support their child or immediate family member.<sup>8</sup> To build on this, and in line with the definition of a carer in the *NSW Carers (Recognition) Act 2010*, Carers NSW believes that protections for carers should be extended to recognise and include the broad range of relationships in which caring responsibilities may arise.

The ADA currently protects caring responsibilities for carers of a child or stepchild, or for an immediate family member, defined as a spouse, former spouse, parent, grandparent, child, grandchild, or sibling (including step-relatives and those of current or former spouses).<sup>9</sup> It also recognises caring responsibilities where the carer is (i) the guardian, (ii) has parental responsibility, or (iii) is authorised within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.<sup>10</sup> While these provisions are important, Carers NSW recommends broadening the definition in Section 49 of the ADA to include carers of non-relatives, carers outside legally defined relationships, culturally diverse caring arrangements, and instances where there may be multiple carers for one person.

*"If government and non-government agencies understand the complexity of our role and the challenges, we experience there will be adequate support for discrimination. Without knowing - the situations lend themselves to discrimination. There are many overlooked examples that support our viewpoint"*

- Carers NSW carer consultation, July 2025.

Aboriginal and Torres Strait Islander women with caring responsibilities have been recognised as Australia's most vulnerable social group in the workplace, often encountering culturally unsafe and unsupportive environments whilst bearing greater caring responsibilities.<sup>11</sup> As such, Carers NSW believes that those protected under the ADA in relation to their caring responsibilities must be broadened to recognise and reflect culturally specific relationships, which often extend beyond the traditional western norms of dominant family structures. This includes caring responsibilities

<sup>6</sup> NSW Department of Communities and Justice (2024), *Your duties and rights as a parent*, available online at: <https://dcj.nsw.gov.au/children-and-families/parenting/responsibility-and-rights/your-duties-and-rights-as-a-parent.html> viewed 14 July 2025.

<sup>7</sup> NSW Carers (Recognition) Act 2010.

<sup>8</sup> Anti-Discrimination Act 1977 (NSW) s 49S(1), s 49S(3)–(4).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Evans, O (2021), *Gari Yala (Speak the Truth): gendered insights*, WGEA Commissioned Research Report in partnership with the Jumbunna Institute of Education and Research and Diversity Council Australia, Sydney, Australia.

associated with kinship and cultural responsibilities within culturally diverse and Aboriginal and Torres Strait Islander communities.

### Recommendations - Definitions and Carer Responsibilities

Carers NSW Recommends that the NSW Law Reform Commission:

- 1.1 Maintain carers' responsibilities as a distinct protected attribute under the ADA.
- 1.2 Align the ADA definition of a carer with the NSW *Carers (Recognition) Act 2010*, including recognising kinship and culturally specific caring relationships that extend beyond immediate family members or legally recognised relationships.
- 1.3 Expressly recognise the responsibilities of non-primary carers where there may be multiple carers providing support to the same person.

### Tests for Discrimination

To assess the adequacy of current protections for carers, Carers NSW encourages the NSWLRC to consider the discrepancies identified through consultations with carers. Many of the issues raised stem from the ADA's legislative frameworks and the tests used to determine instances of discrimination, which do not fully reflect the realities of caring responsibilities. These challenges are compounded by inconsistencies with the *Fair Work Act 2009* (FWA), which can arise when carers raise concerns about workplace discrimination.

Carers NSW is also concerned that carers are frequently directed to rely on the FWA for protections. This is a concern as the FWA does not provide a sufficient substitute for anti-discrimination protections, which can leave carers without an effective remedy where state protections do not apply. Additionally, in some instances, such as unfair dismissal, NSW public sector and local government employees are also not protected under the FWA.<sup>12</sup>

*"It is too easy for employers to rely on burden of proof. I was discouraged from applying for training opportunities that required travel. My friend who is a carer was denied a promotion because her manager believed her 'home responsibilities' would interfere with leadership duties, she was told 'you're always running off to deal with your grandparents, maybe this job isn't right for you.'"*

- Carers NSW Discrimination Consultation, July 2025.

While Carers NSW acknowledges that general recognition and protections for carers in the workplace have improved, inconsistencies with other legislation and complex testing requirements continue to limit carers' ability to access protections against both direct and indirect discrimination, in the workplace and beyond.

### Legislative Gaps

The interaction between the FWA and the ADA creates significant legal gaps that act as barriers to carers accessing protections in NSW. A particular concern is section 351(2)(a) of the FWA, which prohibits adverse action in employment on the grounds of carer responsibilities but removes this

<sup>12</sup> NSW Government (2025) Unfair dismissal, available online at: <https://www.nsw.gov.au/employment/if-you-lose-your-job/understand-your-rights/unfair-dismissal>.

protection if the conduct is not unlawful under relevant anti-discrimination law.<sup>13</sup> This gap is especially significant for carers in NSW, compared to other jurisdictions noted in the NSWLRC’s Consultation Paper, where broader attributes are protected at the state level. Carers NSW considers this a key factor discouraging employees from pursuing claims. This highlights the need for the ADA to offer clear, enforceable, and broader protections for carers, so employees are not forced to rely solely on the more limited provisions of the FWA.

### The burden of proof

Another inconsistency between the FWA and the ADA is how the burden of proof is allocated. Under the FWA’s general protections, a “reverse onus” applies whereby once an employee alleges adverse action for a prohibited reason, the employer must show that the action was not taken for that reason (as outlined in the Fair Work Commission’s General Protections Benchbook).<sup>14</sup> By contrast, under the ADA, the complainant generally bears the burden of proof.<sup>15</sup> In our consultations, carers consistently raised concerns about this. When the burden sits with the complainant, carers often lack the time, resources, and flexibility to gather evidence without significant cost or loss of work. As a result, many are discouraged from pursuing discrimination claims.

Through consultations, carers reported the particular hardship endured when required to show that a practice is “unreasonable” for the purposes of indirect discrimination. The challenge is greater when key evidence sits with the employer, such as worker policy documents, rosters or decision-making processes, especially when caring responsibilities are not fully recognised. The burden of proof also places carers in a difficult position where many carers with limited employment options must consider damaging workplace relationships by pursuing a claim, which further discourages complaints.

Current evidentiary requirements place most of the proof burden on the person bringing the complaint.<sup>16</sup> Therefore, carers must show that they were treated less favourably because of a protected attribute or that a requirement was unreasonable in its impact. Without a broadened understanding of carer responsibilities, decision-makers are limited in their ability to draw conclusions of discrimination without clear evidence. For carers, who rarely control the relevant information, this creates an unfavourable situation.

*“Unable to work full hours due to caring responsibilities, I was constantly overlooked for promotions due to my caring journey as I was told the team’s hourly requirements couldn’t be fulfilled. Despite the fact that I was the most experienced on the team, I was told that due to my inability to fulfill certain hours, others at work, who were less experienced will be receiving promotions ahead of me.”*

- Carers NSW Discrimination Consultation, July 2025.

### Adjustments and Accommodation

Further gaps in protections arise with broader industrial rights and protections under the FWA particularly regarding carer employee requests for flexible working arrangements and reasonable adjustments in the workplace. While the FWA provides employees with the formal right to request

<sup>13</sup> Fair Work Act 2009 – Sect 351 Discrimination

<sup>14</sup> Australian Government Fair Work Ombudsman (2012), *FWO Discrimination Policy*, available at: <https://www.fairwork.gov.au/sites/default/files/migration/725/GN-6-FWO-Discrimination-Policy.rtf?Embed=Y>

<sup>15</sup> Anti-Discrimination Act 1992 – Sect 91 Burden and standard of proof

<sup>16</sup> Allen, D (2009), *Reducing the Burden of Proving Discrimination in Australia*, Sydney Law Review 579, 31(4), available at: <http://www.austlii.edu.au/au/journals/SydLawRw/2009/24.html>

flexible working arrangements,<sup>17</sup> carers frequently report encountering significant practical barriers and workplace limitations that either directly prevent them from making requests or result in discriminatory outcomes when such requests are made.

In practice, the FWA's 'right to request' has limited enforceability. Employers must give reasonable consideration to a request but are not required to implement adjustments. This is challenging for carers, who usually seek changes only when urgently needed to fulfil caring responsibilities. Carers NSW consultations revealed that some employers responded to requests with scepticism or hesitation rather than recognising caring responsibilities as legitimate needs.

Given the additional costs many carers face and the limited time to balance care and work, it is concerning that requests for flexible arrangements are sometimes met with discriminatory language and unfavourable decisions. Although this is not new, it suggests that legislative gaps and inconsistent enforcement can allow both direct and indirect discrimination to persist in workplaces.

### **Instances of Direct Discrimination**

Direct discrimination occurs when carers are treated unfairly because of their caring responsibilities. Whilst protections are in place for the prevention of direct discrimination, the Mental Health Commission of NSW found that 48% of carers still avoid telling others about their caring roles in fear of being judged.<sup>18</sup> Instances raised in Carers NSW consultations include the denial of promotions, being overlooked for professional development opportunities, and exclusion from workplace benefits explicitly because of carer status. Additionally, carers have provided accounts of employers issuing verbal warnings that career advancement opportunities or in some cases employment entirely, will no longer be available if flexible working arrangements are pursued to support caring responsibilities.

Such discriminatory practices disproportionately affect specific groups of carers, including male carers whose responsibilities are not taken seriously,<sup>19</sup> carers from Aboriginal and Torres Strait Islander communities who already face employment barriers, and carers from culturally and linguistically diverse (CALD) backgrounds, who face heightened discrimination based on cultural expectations and biases.

### **Instances of Indirect Discrimination**

Indirect discrimination arises when seemingly neutral workplace policies disproportionately impact carers, despite the presence of formal policies outlining workplace flexibility. Carers have indicated that workplace practices consistently restrict flexibility, rendering workplace policies meaningless. Common examples provided by carers include employers strictly enforcing standard 38-hour weekly work requirements or inflexible return-to-work requirements after periods of carer leave, which indirectly disadvantage employees with caring responsibilities.

Carers NSW calls for the explicit incorporation of adjustments, exceptions, and flexibility into considerations for assessing the reasonableness of workplace conditions under the ADA. This would reduce ambiguity and limit employers' scope for subjective interpretation of flexible arrangements. Additionally, Carers NSW is supportive of a separate, enforceable duty for employers to provide

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<sup>17</sup> Fair Work Ombudsman (2024), *Requests for flexible working arrangements*, available online at: <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/requests-for-flexible-working-arrangements>, viewed 16 July 2025

<sup>18</sup> Mental Health Commission of New South Wales (2023), *Support person's experiences of stigma and discrimination*, available online at: <https://www.nswmentalhealthcommission.com.au/measuring-change-indicator/support-persons-carers-experiences-stigma-and-discrimination> viewed 29 July 2025.

<sup>19</sup> Workplace Gender Equality Agency (WGEA), *Gender equality and caring*, available online at: <https://www.wgea.gov.au/gender-equality-and-caring>, viewed 13 August 2025.

reasonable adjustments specifically for carers, provided such adjustments do not impose unjustifiable hardship on the employer.

Carers have shared accounts of their employers responding negatively to requests for flexible arrangements, including threats of contract termination, sudden unexplained redundancies, or passive-aggressive statements discouraging carers from accessing workplace accommodations. These forms of indirect discrimination significantly impact carers' abilities to balance work and caring responsibilities, reducing their workplace security and overall wellbeing.

Carers NSW believes the review of the ADA also presents an opportunity for employers to adopt a proactive role, enabling carers to perform effectively at work through practical, inclusive adjustments. This belief stems from Rivlin's (2014), reference to Rees, Rice, and Allen's (2018) analysis of Australian discrimination laws, identifying a contemporary shift in discrimination frameworks from regularly prohibiting negative discrimination toward actively promoting equality through positive duties<sup>20</sup>. In alignment with the ADA consultation's consideration of positive duties, Carers NSW strongly advocates that a clearly defined duty for employers to reasonably accommodate carers' responsibilities be formally recognised within the ADA.

### **Recommendations - Tests for Discrimination**

Carers NSW Recommends that the NSW Law Reform Commission:

- 2.1** Harmonise the ADA with the Fair Work Act 2009 (Cth) to address gaps in protections for carers.
- 2.2** Introduce a reverse onus of proof for discrimination claims under the ADA.
- 2.3** Revise the reasonableness standard in testing for indirect discrimination to strengthen protections.
- 2.4** Introduce a duty to provide reasonable adjustments for carers, where the adjustment entails no unjustifiable hardship for the employer.
- 2.5** Recognise applicable discriminatory refusals of flexibility as genuine grounds for complaint.
- 2.6** Establish protections for unreasonable retaliation to workplace flexibility and accommodation requests.
- 2.7** Introduce a positive duty to prevent unlawful conduct.

## **Improving protections and awareness of complaint mechanisms**

Within the first decade after carers were recognised under the ADA, approximately 550 complaints were lodged with ADNSW, yet only 12 proceeded to a formal hearing<sup>21</sup>. Feedback from our consultations indicates that carers routinely face legal and administrative barriers, which are often

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<sup>20</sup> Rivlin, L (2014), *Carers' Responsibility Discrimination Protections under the Anti-Discrimination Act 1977 (NSW): An Evaluation of the First Decade 2001-2011*, University of Sydney, Sydney

<sup>21</sup> Ibid.

worsened for carers from culturally and linguistically diverse backgrounds or those experiencing intersecting challenges.

While these experiences are not unique to carer discrimination, caring responsibilities can intensify the difficulty of accessing protections in the workplace. Many carers report limited flexibility to engage with lengthy processes, increased costs alongside constrained incomes, and little time outside work and care. In this context, complex complaint pathways can deter engagement and limit awareness and use of available protections.

Carers NSW greatly appreciates our partnered work with Anti-Discrimination NSW (ADNSW) to improve awareness and understanding of reporting pathways, participate in the Carer Rights and Complaint Network and to establish a Carers' Discrimination page on the ADNSW website. These initiatives represent important foundations for increased awareness of carer discrimination protections within the community. However, despite these actions, general awareness among carers of these protections remains low, especially for carers at the early stages of an issue, carers with limited time, CALD carers, and those in regional areas. This suggests a need for continued, targeted outreach and guidance to build understanding of and confidence in accessing protections for carers.

Together, the disparity between complaint numbers and hearings, alongside recent accounts of discouragement from using complaint mechanisms, points to considerable issues in the current approach. Carers NSW recommends a review of complaint pathways to ensure approachable avenues for carers seeking protections in their own right, especially where concerns being raised are distinct from associative protections.

### Legal and Administrative Barriers

Throughout consultations, carers frequently raised concerns about the affordability and complexity of legal processes. Meeting procedural requirements, including carrying the burden of proof, can involve significant cost and time, leaving many feeling powerless and discouraged from exercising their rights. These challenges are often intensified by limited options for replacement care while they attend to legal matters and ongoing financial pressures.

Rivlin (2014), additionally notes that tribunal proceedings under the ADA can be emotionally taxing and may not deliver substantial remedies or drive systemic improvement.<sup>22</sup> For carers, these demands commonly sit alongside high levels of pre-existing stress, fatigue and mental health pressures linked to caring, which may reduce capacity to engage with lengthy or adversarial processes. This was reflected in Carers NSW consultations, where some carers reported postponing or abandoning complaints to protect their own mental health and wellbeing.

Carers, who are often facing limited employment options, may also worry about impacts of pursuing legal proceedings in relation to discrimination on current or future work, further discouraging formal action. This barrier weakens accountability and likely leaves some discriminatory conduct without effective options for redress.

*"The process was long, arduous and on top of dealing with my mother's health issues and advocating on her behalf, stressful. The "compensation" money did not adequately compensate my loss of earnings, the impact on my career, loss of future superannuation, and the toll the processes took on my health and wellbeing."*

- Carers NSW Discrimination Consultation, July 2025.

<sup>22</sup> Rivlin, L (2014), *Carers' Responsibility Discrimination Protections under the Anti-Discrimination Act 1977 (NSW): An Evaluation of the First Decade 2001-2011*, University of Sydney, Sydney

## **Intersectional Barriers and CALD Experiences**

Carer consultations consistently identified cultural barriers, particularly relative to the experiences of CALD carers, where there was an evidently restricted understanding of discrimination complaint processes and avenues through which to engage with them. CALD carers identified significant barriers due to language and communication differences, reporting that accents or linguistic barriers had resulted in exclusion or diminished credibility in medical, legal, and administrative settings.

Particular concerns highlighted in Carers NSW consultations included the frustration many CALD carers face when having limited access to culturally responsive legal services. Carers NSW believes this demonstrates the need for targeted legal support for carers, which would empower carers to surpass feelings of invisibility and powerlessness, and encourage carers to seek redress following instances of discrimination.

Carers NSW has long advocated for the recognition of CALD caring responsibilities and cultural practices, including kinship connections among Aboriginal and Torres Strait Islander communities. These responsibilities often go beyond conventional understandings of care, encompassing tasks such as participation in cultural or ceremonial duties, supporting connection to Country, and maintaining community relationships. Such roles are vital for cultural and community wellbeing but are frequently overlooked in workplaces due to limited awareness and protective legislation.

When family structures and caring expectations are narrowly defined, the distinct nature of cultural responsibilities can be easily dismissed. Clear legal definitions that reflect the breadth of caring tasks, alongside outlined cultural competency guidelines, would help ensure these responsibilities are rightfully recognised and respected.

### **Recommendations - Improving protections and awareness of complaint mechanisms**

Carers NSW Recommends that the NSW Law Reform Commission:

- 3.1** Review the accessibility of the current ADA complaint mechanisms.
- 3.2** Review evidentiary and procedural burdens faced by carers in navigating complaint mechanisms.
- 3.3** Ensure inclusive ADA complaint mechanisms, including tailored legal supports that meet the needs of complainants.
- 3.4** Review complaint pathways to ensure carers are supported to seek protections in their own right, distinct from associative discrimination protections.
- 3.5** Mandate culturally safe workplaces for carers from diverse cultural backgrounds by broadening legal definitions to include cultural care responsibilities.
- 3.6** Embed cultural competency requirements in workplace standards.

## Part II – Extending Protections for Carers

### Protections beyond employment

Through targeted consultations, Carers NSW has recorded a range of experiences of discrimination occurring beyond the workplace, prompting calls to expand existing protections under the ADA, which are currently limited to employment settings. Currently, the ADA provides protections for individuals with a protected attribute across all areas of public life, except for carers. The NSWLRC’s 1999 report initially supported this limitation for carers yet acknowledged that carer discrimination protections should be reviewed if significant evidence of discrimination emerged outside of the workplace.<sup>23</sup>

Consultations with Carers NSW Carer Representatives, along with case studies collected by Carers NSW, show a range of discriminatory experiences outside of employment in areas such as education, healthcare, housing, and access to public services. This review presents an opportunity for the NSWLRC to recommend comprehensive legal protections that extend beyond the workplace, aligning protections for carers with those available to other groups under the ADA. Clear protections in public settings would also promote better workplace practice and increase awareness of caring responsibilities more broadly.

Carers NSW also acknowledges that the ADA protects people discriminated against because of their association with someone who has a protected attribute, who may be carers. However, Carers NSW believes it is important to explicitly recognise that carers also face discrimination on the grounds of their caring role, in isolation from the person they care for. These incidents stem from assumptions about availability, reliability, and financial security associated with the caring role itself. Extending protections beyond employment and explicitly highlighting carer protections separate from associate protections would provide an important avenue for addressing assumptions about carers and subsequent unfair treatment across various areas of public life.

It is also imperative legislative bodies like the NSWLRC acknowledge that discrimination and relative burdens cannot be addressed without advocacy and awareness of the diversity of caring relationships and the diversity of issues carers face daily. In the midst of contemporary cost of living pressures, housing affordability and the growing pressures on support services in NSW, carers need genuine protections that extend beyond the employment sector. By expanding protections for carers, the ADA would represent a protective Act that promotes the full societal participation of carers without the potential burden of discrimination.

### Education

Carers NSW consultations have identified numerous instances of disheartened carers who have faced discrimination within educational settings, including in primary, secondary and tertiary education. The ADA states that it is unlawful for an “educational authority” to discriminate against current and prospective students, based on all protected attributes other than carers’ responsibilities.<sup>24</sup> Carers NSW believe this exception for carers represents a significant legislative gap disproportionately

*“My teachers at the time never gave me support. No extensions on homework, assignments or other tasks that had a specific due date. Not that I was looking for sympathy or empathy, but there was no emotional support given by the school and that may have been because they weren’t aware of how to handle the situation.”*

- Young carer - National Carer Survey 2024

<sup>23</sup> NSW Law Reform Commission, Review of the Anti-Discrimination Act 1977 (NSW), Report 92 (1999) 5.219–5.220, available online at:

<https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-92.pdf>.

<sup>24</sup> Anti-Discrimination Act 1977 (NSW), Division 3 Discrimination in other areas, s 17.

affecting students with caring responsibilities and does not accurately reflect the diversity of carers, which includes young carers, or, carers 25 years of age and under. In consideration of the range of matters raised by student carers, it is evident that this exception reinforces a barrier to education access and outcomes which impacts career aspirations for young carers who experience lower levels of educational attainment and workforce participation.<sup>25</sup>

Consultations also indicate that many young carers choose not to identify as a carer at school, TAFE or university due to fear of stigma or adverse treatment. This reluctance often limits early support and access to reasonable adjustments. Explicit protections for carers in educational settings would likely alleviate some fears of unfair treatment related to caring responsibilities and encourage young carers to disclose their caring role and to seek support in educational settings.

For carers and young carers who do disclose their caring role, a lack of protections in educational settings can result in significant distress, with carers frequently reporting being denied flexible arrangements or reasonable adjustments necessary for balancing their education and caring responsibilities. Recent, specific examples include student carers who were required to undertake placements as a part of their enrolled course, who were then denied the option to participate on a part-time basis to allow for their caring role. Additionally, instances have been identified where student carers were placed in rural or regional locations despite their essential caring obligations in their metropolitan place of residence. Young carers have also reported feedback suggesting they are unsuitable for tertiary education courses due to an inability to guarantee availability and attendance.

*"I needed extra support with homework extensions in high school which I did not receive. During TAFE I need to leave earlier or come to TAFE later and step outside to make phone calls, and I also need to have my phone on me so I can check messages from my cared persons. I somewhat receive this support; my teacher isn't very supportive or understanding of why I need these accommodations in place."*

- Young carer – Carers NSW National Carer Survey 2024

The effects of care provision on carers ability to fully engage with education is well established. The Carers NSW 2024 National Carer Survey found that while 93.3% of young carers were in school or an apprenticeship, only 17.5% reported receiving extra support in education.<sup>26</sup> Further, over 90% of young carers expressed concern for their future plans, highlighting challenges stemming from an uncertain relationship with the education sector at a young age.<sup>27</sup>

Carers NSW strongly recommends amending the ADA to explicitly include carers' responsibilities as a protected attribute within educational settings. Carers NSW further wishes to draw attention to the flexible and remote learning models that were employed throughout NSW during the COVID-19 pandemic. During this time, educational institutions adopted new methods for the accommodation of diverse student needs, many methods of which shaped a precedent for learning practices that are inclusive of reasonable adjustments today. Carers NSW believes that these adjustments should remain ongoing or be replicated to support students balancing their caring and educational responsibilities.

Clear protections in education under the ADA will ensure carers have equitable access to educational opportunities without discrimination. Protections should allow for flexibility for assignment due dates

<sup>25</sup> Hill, T., Thomson, C. and Cass, B. (2011). *Young carers: Location, education and employment disadvantage*. Australian Journal of Labour Economics, 14(2), 173–198.

<sup>26</sup> 2024 National Carer Survey, available at: <https://www.carersnsw.org.au/about-us/our-research/carers-survey>.

<sup>27</sup> Ibid.

and examinations, and reasonable accommodations in recognition of their unique circumstances and likelihood of restricted availability.

## Services

Consultations have highlighted instances of direct and indirect discrimination when carers are accessing essential services, including welfare, health and banking. A frequent concern is non-primary carers being denied services because eligibility criteria focus solely on a “primary carer.” Carers NSW encourages the NSWLRC to consider that many caring arrangements involve multiple carers with significant responsibilities. Without this recognition, carers in shared care arrangements continue to face exclusion through service rules that do not reflect their circumstances.

Indirect discrimination also occurs in health and social service systems that are structured around the rights and needs of people who are receiving care, sometimes overlooking carers’ rights and wellbeing. In our consultations, carers described recurring difficulties in medical settings, including their role being overlooked, verified documentation being dismissed, and regular encounters with unhelpful communication. Some reported these issues even when they held legal decision-making authority, such as Power of Attorney. While Carers NSW recognises and respects the autonomy of people who receive care, Carers NSW believes that there is a need to ensure that the rights of all people within the community are upheld and supported and that carers are not treated unfairly where they are trying to fulfil legally appointed roles or duties.

*“Financial Institutions will make it extremely difficult to make enquiries on behalf of your caree, even when you are trying to pay money on credit cards, despite having POA letters! Even when you explain the person in question cannot get online or on the phone or come into the branch due to their condition.”*

- Carers NSW Discrimination Consultation, July 2025.

Cultural and linguistic discrimination further worsens these barriers. Many CALD carers have reported encountering dismissive or impatient responses from service providers due to language barriers or accents. For some carers, it was a genuine concern that their accent, culture or appearance may cause service providers to unfairly stigmatise or judge a CALD carer who is trying to explain their personal situation or advocate for other carers.

Additionally, First Nations carers continue to face distinct challenges. The 2024 National Carer Survey results found that only 22.9% of First Nations carers felt mainstream services were culturally safe, and just 27.4% felt that health services adequately considered their needs as carers. Compounding these challenges with other existing barriers for carers accessing services, it is clear that the intersectional nature of unprotected instances of carer discrimination in settings beyond the workforce establishes a far-reaching issue that deserves greater recognition and legislative protection.

## Housing

Carers often encounter discrimination in the housing market. Consultations and existing research highlight persistent stigma and practical barriers, especially in rental applications. These issues have been amplified by rising living costs and reduced housing affordability across NSW, underscoring the need to extend the ADA protections to housing

While housing pressures have intensified in recent years, discrimination against carers in this sector is not new. A 2010 study by Browne and Hemsley documented recurring issues, including stigma from rental agents and administrative barriers.<sup>28</sup> Securing a tenancy often requires extensive

<sup>28</sup> Browne, G & Hemsley, M (2010), ‘Housing and living with a mental illness: Exploring carers’ views, *International Journal of Mental Health Nursing*, 19 (1), 22-29.

paperwork and record-keeping, tasks that can be disrupted during periods of acute illness or exacerbations of conditions of the person receiving care. As a result, carers can face rental rejections driven by misunderstandings about caring roles and stigma associated with disability, mental illness, or drug and alcohol dependence.

Despite the challenges often experienced by carers navigating the private rental market, in NSW, priority pathways for public housing typically only prioritise circumstances of the person receiving care, rather than recognising carers as a priority group in their own right. This can leave carers without timely access to appropriate housing. Establishing greater protections and recognition for carers explicitly would help stabilise caring arrangements and prevent housing stress.

An additional issue arises when carers, often living on low incomes in public housing alongside the care recipient, face eviction or housing instability upon the care recipient's death or where they need to move into residential care to meet their care needs. Despite the significant financial impacts of caring which often impact on a carers long term financial security, carers in these circumstances are typically expected to secure alternative accommodation, worsening financial distress and housing insecurity.

Extensive waitlists and limited availability of suitable public housing also discourages carers from seeking this support, especially when they have care recipients requiring high-level or intensive care. Moreover, government housing options often fail to adequately account for carers' essential proximity to healthcare services and social supports necessary to provide effective care. This limited flexibility in housing options further disadvantages carers, significantly restricting their choice of affordable and safe accommodation that appropriately meets both their own needs and the needs of those they care for. Carers NSW believes as such that greater protections are required to ensure that carers are protected from both direct and indirect discrimination in relation to housing and accommodation.

## Vilification & Harassment

Carers NSW consultations have also highlighted instances of vilification and harassment directed towards carers. The ADA currently only prohibits vilification based on race, homosexuality, transgender status, HIV/AIDS status, and religion. Evidence from consultations and existing research reveals carers regularly experience significant stigma, harassment, and vilification, contributing to the social isolation of people with care responsibilities.

Media and public discourse can perpetuate negative stereotypes about carers, including assumptions of welfare dependence and ableist narratives. Carers NSW advocates for greater protections for carers against this discourse, recognising the caring role as distinct from that of the care recipient, avoiding the framing of carers as dependants or welfare recipients. In our consultations, many carers reported discomfort with being presumed to be on government payments or not in paid work while data indicates that only one in five carers aged 15–64 report a Centrelink payment as their main source of income<sup>29</sup>.

Carers NSW have also identified that there is often significant conflation between carers and perpetrators in discourse around the abuse, neglect and exploitation of people living with disability or those who are ageing. Carers often report as a result, being met with suspicion by service providers, health professionals and financial institutions when trying to fulfil their caring responsibilities. Carers

*"I feel politically that carers are polarised against negatively. Despite the very small carers payment, there is an abundance of stigma, despite the fact this is not a supportive income payment."*

- Carers NSW Discrimination Consultation, July 2025

<sup>29</sup> Carers NSW, *Facts about caring*, available online at: <https://www.carersnsw.org.au/about-caring/facts-about-caring> , viewed 31 July 2025.

have reported that where evidence of potential abuse or neglect has been made apparent about them to authorities, they are often assumed guilty and are unable to access advocacy services or supports in their own right to refute the claims.

While Carers NSW acknowledges that some carers do perpetrate abuse or neglect, Carers NSW ongoing work with the NSW Ageing and Disability has demonstrated that this often occurs where there is limited understanding of what constitutes abuse or neglect, there is difficulty accessing services or supports that enable carers to take breaks from their caring role, or, where a carer and the person they are caring for are highly isolated with minimal formal or informal supports.<sup>30</sup>

Additionally, carers are also often identified as a protective factor against abuse and neglect by other members of the community. This is due to carers being well positioned to observe and report abuse, neglect or exploitation where they are adequately supported to understand signs and examples of abuse. As such, Carers NSW believes greater protections for carers are needed to limit problematic discourse in the media that perpetuates inaccurate and harmful stereotypes about carers.

Furthermore, in 2023, the Mental Health Commission NSW reported that 48% of carers avoid disclosing their caring role due to fear of judgment, and 37% experienced unfavourable treatment after disclosure.<sup>31</sup> These findings align with our consultations, as carers reported often encountering hostility or dismissive responses in health, financial and social service settings. Many described feeling invisible or less valued than support workers or spouses performing similar tasks. These impacts are heightened for carers from culturally and linguistically diverse backgrounds, who face additional barriers such as accent discrimination and cultural misunderstandings.

*“In regard to my general community, I get suggestions that I am attention seeking when I talk about my caring roles and responsibilities, when I am purely just trying to raise awareness and hopefully make others feel they are not alone if they are in the same situation.”*

- Carers NSW Discrimination Consultation, July 2025

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<sup>30</sup> Broady, T., Thomson, C., Katz, I., & Judd-Lam, S. (2024). Informing strategies to prevent abuse, neglect, and exploitation of adults with disability and older people by carers. Sydney: UNSW Social Policy Research Centre.

<sup>31</sup> Mental Health Commission of New South Wales (2023), *Support person’s (carers) experiences of stigma and discrimination*, available online at: <https://www.nswmentalhealthcommission.com.au/measuring-change-indicator/support-persons-carers-experiences-stigma-and-discrimination>, viewed 31 July 2025.

## **Recommendations - Protections beyond employment**

Carers NSW Recommends that the NSW Law Reform Commission:

- 4.1** Include carer responsibilities as a protected attribute in educational settings.
- 4.2** Extend ADA protections to cover carers in accessing all public areas of life and social services.
- 4.3** Acknowledge and recognise the role and responsibilities of all carers, including those who are not primary carers.
- 4.4** Extend protections for carers to housing and accommodation sectors.
- 4.5** Recommend a review of eligibility and tenancy arrangements for carers accessing public housing.
- 4.6** Recommend a review of tenancy guidelines for housing providers and establish protections that account for carer responsibilities.
- 4.7** Extend ADA vilification protections explicitly to carers by aligning civil vilification protections with existing discrimination protections.

## **Conclusion**

Carers NSW thanks the NSW Law Reform 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.

## Summary of Recommendations

In response to the *Anti-Discrimination Act 1977 (NSW)*, Carers NSW appreciates the opportunity to provide the following recommendations to the NSW Law Reform Commission:

- 1.1** Maintain carers' responsibilities as a distinct protected attribute under the ADA.
- 1.2** Align the ADA definition of a carer with the NSW *Carers (Recognition) Act 2010*, including recognising kinship and culturally specific caring relationships that extend beyond immediate family members or legally recognised relationships.
- 1.3** Expressly recognise the responsibilities of non-primary carers where there may be multiple carers providing support to the same person.
- 2.1** Harmonise the ADA with the Fair Work Act 2009 (Cth) to address gaps in protections for carers.
- 2.2** Introduce a reverse onus of proof for discrimination claims under the ADA.
- 2.3** Revise the reasonableness standard in testing for indirect discrimination to strengthen protections.
- 2.4** Introduce a duty to provide reasonable adjustments for carers, where the adjustment entails no unjustifiable hardship for the employer.
- 2.5** Recognise applicable discriminatory refusals of flexibility as genuine grounds for complaint.
- 2.6** Establish protections for unreasonable retaliation to workplace flexibility and accommodation requests.
- 2.7** Introduce a positive duty to prevent unlawful conduct.
- 3.1** Review the accessibility of the current ADA complaint mechanisms.
- 3.2** Review evidentiary and procedural burdens faced by carers in navigating complain mechanisms.
- 3.3** Ensure inclusive ADA complaint mechanisms, including tailored legal supports that meet the needs of complainants.
- 3.4** Review complaint pathways to ensure carers are supported to seek protections in their own right, distinct from associative discrimination protections.
- 3.5** Mandate culturally safe workplaces for carers from diverse cultural backgrounds by broadening legal definitions to include cultural care responsibilities.
- 3.6** Embed cultural competency requirements in workplace standards.
- 4.1** Include carer responsibilities as a protected attribute in educational settings.
- 4.2** Extend ADA protections to cover carers in accessing all public areas of life and social services.
- 4.3** Acknowledge and recognise the role and responsibilities of all carers, including those who are not primary carers.
- 4.4** Extend protections for carers to housing and accommodation sectors.
- 4.5** Recommend a review of eligibility and tenancy arrangements for carers accessing public housing.
- 4.6** Recommend a review of tenancy guidelines for housing providers and establish protections that account for carer responsibilities.

**4.7** Extend ADA vilification protections explicitly to carers by aligning civil vilification protections with existing discrimination protections.