



Submission to the Review of the Anti-Discrimination Act 1977 (NSW)

Submission by:

Older Women's Network NSW

8-10 Victoria Street,
Newtown NSW 2042, Australia

+61 – 2 – 9519 8044

Email: info@ownnsw.org.au



Acknowledgement

This submission was written in Dharug land, and we would like to acknowledge the indigenous peoples, elders past and present who are the traditional custodians of the land where we live and work. We fully support the Uluru Statement of the Heart.

Always was, always will be.

1. Background

The Older Women's Network NSW (OWN) has been a vital, strong and consistent voice for older women in NSW for more than 38 years. It has been at the forefront of progressive change, activism and advocacy since a grassroots community group of women gathered in 1985 to voice their interests and concerns.

We have gone from strength to strength as a dynamic members-led organisation expanding throughout NSW. Over the years, OWN has developed services and resources for older women and written and contributed to numerous influential reports on key issues for older women. This includes income security, homelessness, ageism, wellbeing, abuse of older people and domestic violence. We have played our part in putting these issues at the forefront of public policy debates as well as providing practical support in fund raising for housing, technology access, employment, information services and other activities that support social cohesion and wellbeing for older women.

In addition to providing older women with an opportunity for social connection and wellbeing, OWN currently runs two valuable services – (i) the Homes for Older Women (HOW) project in the Blue Mountains which connects older women who are homeless with compassionate homeowners (ii) Employment Pathways program for women over 50 looking to return to the workplace where free assistance is provided in resume writing, interview coaching, job strategy identification, etc.

OWN is now in the process of finalising a suite of training resources for frontline workers on how to respond effectively to disclosures of sexual assault by older women.

2. Introduction

Older women have endured a lifetime of inconsistent, incomplete, and often tokenistic protection under anti-discrimination law. For much of their lives, protections either did not exist, were extremely limited, or were undermined by sweeping exemptions. Many entered the workforce at a time when discriminatory practices were lawful, such as the mandatory resignation of women upon marriage in the public service. They spent decades without legal protection against age discrimination or discrimination based on their role as carers. As a result, generations of older women were more likely to be excluded from the workforce, to have careers interrupted by unpaid caring responsibilities, and to accumulate significant superannuation and income gaps that now leave them financially vulnerable in later life. These cumulative disadvantages are visible today in the disproportionate rates of poverty, housing insecurity, and limited access to justice experienced by older women.

Reforming the Act to address these entrenched inequities is critical to ensuring that older women — who make up a significant and growing proportion of the NSW population — are finally afforded comprehensive and enforceable rights. **Anti-discrimination law is not a 'nice-to-have'; it is an essential safeguard for life, dignity, and equality.** Discrimination, vilification, and harassment are not merely social inconveniences — they can be life-threatening. There is growing evidence, including research by Negar and Harnett, that the cumulative effect of multiple forms of discrimination can shorten life expectancy. The harm

is not only from direct exclusion from essential services, but also from the cognitive load created by discrimination. Chronic stress caused by constant vigilance against potential discrimination, and the rumination over past incidents, accelerates biological ageing.

This is borne out in our joint research with Health Consumers NSW, *What Can You Expect At Your Age*, which documents how health professionals' dismissal of health concerns on the basis of age can result in untreated or poorly managed conditions.¹ This in turn increases the risk of premature decline, early loss of independence, and shortened life expectancy. In our direct service experience, the circumstances that bring older women to OWN are rarely the result of a single event — rather, they are the end-point of a lifetime of barriers to education, employment, housing, and financial services, compounded in later life by systemic ageism.

While Commonwealth and State laws have, over time, removed some barriers, discrimination is far from a relic of the past. Persistent gender pay gaps, the alarming rise in homelessness among older women, inadequate superannuation balances, and the continuing rates of violence — including the murder of women — are stark reminders of the work yet to be done. For First Nations women, these outcomes are even more severe, reflecting the compounded impact of racism, sexism, and ageism.

This review offers a rare opportunity to move away from decades of incremental, piecemeal reform and toward systemic, structural change that creates a level playing field for women today and for future generations. In 1987, marking the tenth anniversary of the NSW Anti-Discrimination Act, the Anti-Discrimination Board described the legislation as an “unfinished agenda,” noting that “amendments to the law that found acceptance in other states need to be added to the NSW law.” Nearly four decades later, in 2025, that assessment still holds true. The failure to implement long-recognised reforms has left NSW lagging behind other jurisdictions. Drawing from best practice across Australia would be an immediate first step to harmonise and simplify what has become an overly complicated, inconsistently applied piece of legislation.

This submission focuses on five areas of legislative reform that OWN believes should have priority. The issues highlighted are not specific to age and sex, but would improve access and protection for everyone with a protected attribute. Women, regardless of age are going to fall in one of these attributes. OWN believes legislative reform to improve outcomes for women should focus on:

- Creating legislation that is easy to understand and processes that are accessible and protect the claimant from further risk
- Recognises intersectoral discrimination
- Delivers vilification protection for everyone with a protected attribute and expands the concept of public life to include virtual or online vilification
- Sexual harassment changes to one that defines gender based abuse - it does not have to be sexual, nor does it need to result in discrimination

¹ Older Women's Network NSW and Health Consumers NSW. *What Can You Expect at Your Age? Older Women's Experience of Ageism in Health Care in NSW*. Sydney: Older Women's Network NSW, 2022.

- Narrowing the use of exceptions and exemptions so that everyone in the community is protected regardless of who provides their accommodation or education.

3. Confidentiality

OWN gives permission for the Law Reform Commission to publish or refer to, this response.

4. Creating functional legislation

Positive obligations, complaint processes, and redress

The failure of the NSW Anti-discrimination Act is most apparent when reviewing its record on age discrimination complaints. In Blackham's 2020 study of age discrimination in employment comparing Australian jurisdictions (including NSW), she concluded: 'Based on this sample, it is nearly impossible to establish a claim of age discrimination in court.' And in relation to the very few cases brought by women, she speculated that as women in Australia have experienced discrimination across their working lives, 'they are less likely to complain about old age discrimination should they encounter it.'²

Since the publication of her article, there has been the first and only successful case in the Federal Court, (*Gutierrez V MUR Shipping Pty Ltd*), where damages were awarded. In this case, it took five years and had the appeal been unsuccessful, it would have left the complainant and his family in a worse position. While not within the NSW jurisdiction, the barriers she describes are inherent in all jurisdictions when encountering age discrimination, including NSW.

The volume and outcomes of complaints in NSW and other jurisdictions do not reflect the true extent of discrimination in employment, services, and the broader community. For the system to be effective, the regulatory framework must be overhauled, making it easier to navigate, reducing the personal cost and risk of lodging a complaint, and ensuring that successful complainants achieve meaningful remedies.

On July 21, 2025, a joint survey by the Australian Human Rights Commission and the Australian HR Institute revealed that almost a quarter of HR professionals now classify workers aged 51–55 as "older", a sharp increase from just 10 percent in 2023.³ Such consistent findings across employer surveys point to entrenched ageist attitudes towards older adults. Moreover, laws that completely exempt organisations operating residential

² Why Do Employment Age Discrimination Cases Fail? An Analysis of Australian Case Law, Alysia Blackham [Vol. 42 No. 1: March 2020](#) Sydney Law Review, University of Sydney

³ Australian Human Rights Commission and Australian HR Institute. *Employer Biases Against Older and Younger Generations Hindering Workforce Participation*. Media release, July 21, 2025. <https://humanrights.gov.au/about/news/media-releases/employer-biases-against-older-and-younger-generations-hindering>

aged-care services (and the faith-based institutions that deliver a large share of them) from age discrimination provisions only serve to reinforce this systemic lack of respect.

Blackham, along with many other legal and policy analysts, has repeatedly stressed the need for systemic reform—specifically, measures that influence employers, businesses, and service providers to change entrenched mindsets. This requires embedding mandatory obligations into law to prevent discrimination and to impose a duty to make reasonable adjustments, rather than relying on voluntary codes that have consistently failed to deliver meaningful change.

Reforms should deliver:

A) Positive duties

- Introduce mandatory positive duties on all duty holders—employers, educators, providers of goods and services, and others covered by the Act.
- Ensure these duties are proactive, aiming to prevent harassment, discrimination, and vilification in all areas of public life, rather than merely responding after harm occurs.
- Require reasonable adjustments to improve access and participation for people with disability and other protected groups.

B) Costs

- Protect unsuccessful complainants from adverse cost orders, ensuring that people are not deterred from making legitimate complaints by the risk of crippling financial penalties.
- Ensure court costs are calculated transparently, with adverse cost orders only in exceptional circumstances.
- In unsuccessful claims, each party should bear its own costs; in successful claims, the complainant should never be liable for the other party's costs.

C) Representative action

- Allow representative actions to be taken on behalf of a group of claimants by widening the scope of who may have an interest in the complaint
- Allow the regulator to take action on behalf of the complainant
- The Tribunal be able to investigate complaints to address systemic discrimination investigations into breaches of the Act, without requiring an individual complaint.

D) Remedies and penalties

- Include a wider range of regulatory responses that reflect different levels of discrimination outcomes
- Allow civil penalties for failing to undertake positive duties
- Extend all civil vilification protections to all protected attributes currently or in future amendments

- Remove compensation caps
- Increase powers of the Tribunal to enforce obligations for those unwilling to comply
- Extend all civil vilification protections to all protected attributes currently or in future amendments

E) Reporting

Improve the reporting of matters taken to the Tribunal and their outcomes, for example, details on how the complaint was resolved. This is useful for complainants to assess whether they should proceed with their matter.

F) Application process

- Revise the steps needed to make a complaint so that urgent complaints can be assessed and progressed by the President with a range of regulatory options. An immediate response can reduce the long-term harm.
- Remove the two-step process to a complaint, where the President could within limits make awards and compensation without referring the matter.
- Include an appeal or review process if the President rejects an application.
- Allow the Tribunal to make initial conciliation outcomes binding.
- Where conciliation has been attempted before a formal complaint, there needs to be mechanism that recognises this and allow it to proceed through to the Tribunal without delays.

G) Time limit

The time limit for lodging a complaint should be extended to 24 months with the President having discretion on whether to accept the complaint.

5) Attributes and Intersectional discrimination

The Discussion Paper introducing the issues for this review highlights and asks the question: *Should the ADA protect against intersectional discrimination?* Listing this question reflects the frequency of calls to amend the Act for this purpose. The simple answer to this question is 'yes'.

We each hold multiple identities and attributes, such as race, age, and sex; and discrimination can arise from these attributes simultaneously, with one compounding the effects of another. To provide comprehensive protection, the law must recognise intersectionality.

For older women, discrimination is rarely experienced on the basis of a single attribute. Age and gender often intersect with other factors such as disability, race, language, or socioeconomic status, creating compounded disadvantage. In employment, for example, older women are often excluded due to both ageist stereotypes and gendered assumptions about capability, flexibility, or value to an organisation. In health care, ageist

attitudes can combine with gender bias to delay diagnosis or dismiss symptoms. Without explicit recognition of intersectionality in the Act, the law fails to account for how these combined factors operate in real life, leaving many older women without effective remedy.

Direct and indirect discrimination can also occur together, intersecting to create compounded disadvantage. To achieve this, OWN supports legislative change to ensure the objectives of the Act can be met effectively by:

- (i) Recognising and defining intersectional discrimination—where a person experiences discrimination on the basis of more than one protected attribute, with each compounding the impact of the other.
Example: The *Equal Opportunity Act 2010* (Vic) expressly allows claims based on multiple attributes, recognising how these factors intersect in real-life discrimination.
- (ii) Assessing claims by the actual detriment experienced by the complainant, including the cumulative effect of multiple forms of discrimination.
Example: The Canadian Human Rights Commission and several provincial human rights codes assess the total harm caused, rather than artificially separating each ground.
- (iii) Enabling and encouraging single complaints to include multiple grounds, reflecting the reality of how discrimination is experienced.
Example: The Victorian Equal Opportunity and Human Rights Commission and the Canadian Human Rights Tribunal both permit multiple grounds in a single complaint to avoid fragmented and duplicative proceedings.
- (iv) Focusing on the real-world impact on the complainant, rather than relying on a hypothetical comparator.
Example: In Canada, the Supreme Court in *Moore v British Columbia (Education)* [2012] SCC 61 emphasised assessing discrimination based on the actual disadvantage suffered, not comparisons with a hypothetical person.
- (v) Allowing both direct and indirect discrimination to be considered together within a single complaint.
Example: The UK *Equality Act 2010* allows claims to address both direct and indirect discrimination in the same matter when they arise from the same circumstances.

This is not groundbreaking or unknown territory. Many legal commentators⁴ have referred to legislation in other jurisdictions, such as the satisfactory working of the ACT legislation and the *Canadian Human Rights Act*, RSC 1985 that recognise more than one attribute from a complainant.

⁴ The Intersection of Ageism and Ableism in Development and Humanitarian Policy and Practice, Foundation & CBM Australia, 2021

OWN supports submissions calling for the expansion of the Act's protected attributes, such as including mental health conditions and status as a victim-survivor of domestic and family violence. However, in this submission we emphasise that recognising intersectionality must be a priority. Such reform would deliver significant benefits regardless of whether the list of attributes is extended or remains unchanged.

To implement this change effectively, the definition of discrimination should be refined, and the current comparative test replaced with a detriment-based test focused on the real-world impact on the complainant. The current requirement to identify a hypothetical comparator is already difficult; it will be even more problematic when multiple attributes are considered together. Moving to a detriment-based assessment would better reflect the lived experience of discrimination and improve access to justice.

All of these amendments - recognising intersectionality, refining the definition of discrimination, and adopting a detriment-based test - would represent a substantial and positive shift towards a more responsive and equitable anti-discrimination framework.

OWN also supports the inclusion, and consistency of all attributes for each section of the Act, including vilification. And that the place where discrimination occurs – in public life, online, at work, and so on, also be consistent within the Act.

6. Vilification

The eSafety Commissioner reports that one in five Australians has personally experienced online hate speech, with women more likely than men to experience gendered abuse (23% vs 17%).⁵ More than half of those targeted reported negative impacts on their lives, yet only a small proportion took any action. This clearly demonstrates that the current vilification provisions in the Act are failing to prevent or respond effectively to hate speech. The Act is out of step with other jurisdictions, with contemporary communication technologies, and with community expectations. A comprehensive review and update is critical to extend vilification protections to *all* protected attributes, explicitly including women, and to ensure the law is capable of addressing modern forms of online and offline abuse.

OWN refers the Commission to the recently passed Victorian legislation, Justice Legislation Amendment (Anti-vilification and Social Cohesion) Bill 2024 as an example of protections that can be provided in a State jurisdiction. The Victorian Parliament report of 2021 provides a comprehensive background to support the Bill.⁶

OWN supports changes to the Act that result in:

⁵ [https://www.esafety.gov.au/research/encounters-with-online-hate#:~:text=Encounters%20with%20online%20hate%20are,online%20hate%20\(23%25%20vs.>](https://www.esafety.gov.au/research/encounters-with-online-hate#:~:text=Encounters%20with%20online%20hate%20are,online%20hate%20(23%25%20vs.>)

⁶ LEGISLATIVE ASSEMBLY, Legal and Social Issues Committee Parliament of Victoria Inquiry into anti-vilification protections, VICTORIAN GOVERNMENT PRINTER March 2021

- Application of all current and any future protected attributes included in vilification protections, specifically gendered hate speech
- A test for vilification that balances debate in society with protection of groups or individuals
- Removing in the definition of the requirement that vilification ‘incites’ a third party to act. It should be enough that the statement expresses hostility and contempt or insult or humiliates and demonstrates offensive behaviour such as intimidation
- Recognises that vilification can occur due to one or more attribute
- Applies to all areas of public life
- That the definition of offensive behaviour in other legislation such as the Crimes Act in NSW,⁷ is harmonised when it increases access to protection
- A requirement for positive duties measures to reduce and prevent the occurrence of discrimination, harassment and vilification.
- Application for civil remedies
- Has the flexibility to respond to potential demands from the use of AI
- Allows complaints from groups, or classes of complainants experiencing vilification

OWN also supports an examination of the Victorian Act, specifically its ability to investigate complaints of online hate speech by providing additional powers to request information following a vilification complaint from social media companies to identify individuals who make abusive comments.

7. Harassment

The Anti-Discrimination Act 1977 (NSW) is currently inadequate in safeguarding individuals, groups, and classes of participants or service users from harassment. While other parts of the Act have been amended over recent decades, the provisions dealing with harassment have remained largely unchanged, leaving them out of step with contemporary community expectations and inconsistent with other Australian jurisdictions. For example, Victoria, Queensland, the ACT, and Tasmania have modernised harassment provisions to better reflect lived experience, to remove unnecessary legal hurdles, and to address hostile environments.

Under the current NSW Act, harassment is too often conflated with discrimination, requiring complainants to establish a disadvantage linked to a protected attribute. This narrow approach creates a gap in protection, particularly for people who experience serious abuse but cannot satisfy the “discrimination disadvantage” test. Legal and policy commentators, including the Australian Human Rights Commission, have noted that gender-based violence and harassment in workplaces may not meet the threshold for

⁷ Crimes Act 1900 (NSW).

unlawful discrimination under the current NSW definition, despite causing substantial harm. This is unacceptable.

Older women are also disproportionately affected by harassment that is both gendered and ageist. In workplaces, they may be subject to derogatory comments, exclusion from training or advancement opportunities, or pressure to retire early — behaviours that degrade dignity but may not meet current legal thresholds for discrimination. In residential and community service settings, older women may face infantilisation, verbal abuse, or rough physical handling that is normalised as “just the way things are done.” These behaviours are often underreported due to fear of retaliation or a belief that nothing will change. Unless the Act explicitly recognises and prohibits such harassment, these harmful practices will remain entrenched.

Harassment must be redefined as a distinct and serious form of violence, intimidation, and abuse of power, not merely a subset of discrimination. It should be recognised as conduct that directly undermines safety, dignity, and equality—whether or not it results in a measurable “disadvantage” in the discrimination law sense. The *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (AHRC, 2020) confirms that harassment, particularly gendered harassment, is a form of gender-based violence and should be addressed through proactive legal duties, not solely complaint-based processes.⁸

In practice, harassment can be normalised and embedded in workplace or service cultures. For example, “rough treatment” of women in residential aged care, whether physical mishandling, coercive behaviour, or degrading verbal treatment, can be treated as routine care. Workers who witness or experience such conduct are unlikely to speak out if they face ongoing harassment, victimisation, or retaliation from colleagues or managers. This normalisation of abuse also extends to gendered and racial abuse in workplaces and services, where repeated conduct becomes part of the accepted culture.

To meaningfully reduce harassment, the Act must address both who is covered and how matters are dealt with. It must remove procedural barriers to redress and introduce positive obligations to prevent harassment before it occurs.

OWN supports reforms that:

Acknowledge that gender-based harassment need not be sexual in nature; it includes any conduct that demeans, degrades, or humiliates women, older adults, or other groups with protected attributes.

Retain sexual harassment as a defined and specific part of the Act, but make it more relevant and accessible by:

- (i) Harmonising the NSW Act with the *Sex Discrimination Act 1984 (Cth)* to ensure consistency in definitions, coverage, and protections.

⁸ Australian Human Rights Commission. *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. Sydney: Australian Human Rights Commission, 2020. <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>.

- (ii) Making it an offence to subject anyone to a hostile workplace, residential, educational, or service environment on the basis of any protected attribute, with no exemptions or exceptions.
- (iii) Prohibiting harassment in public places—including virtual spaces—and recognising that online abuse can be as harmful as in-person conduct.
- (iv) Recognising sexual harassment as a form of gender-based violence, consistent with the findings of *Respect@Work*.
- (v) Recognising that sexual harassment may be verbal, non-verbal, or physical.
- (vi) Apply protections to individuals, groups, or classes of complainants from residential services, workplaces, or other organisations where a hostile environment exists, even if the conduct is not directed at a single, identifiable individual. The Act should expressly prohibit creating or allowing an intimidating, hostile, or humiliating environment on the basis of a protected attribute.
- (vii) Allow complaints against individuals who commit harassment, regardless of their relationship to the complainant in the workplace, accommodation, service, or education setting.
- (viii) Enable representative complaints on behalf of a group or class of individuals, removing restrictive “interest” tests that currently limit access to the complaint process.
- (ix) Extend coverage to all workers, paid, unpaid, self-employed, contractors, and volunteers, using consistent definitions of “workplace” and “worker” across the Act, including the harassment provisions.
- (x) Redefine ‘workplace’ to go beyond physical boundaries. Harassment protections must apply in online work environments, hybrid settings, and situations where colleagues have never met physically but interact through digital channels. Protections should extend to after-hours conduct, unpaid work, and work performed in private residences or other non-traditional locations.
- (xi) Ensure harassment protections apply to online environments and to all circumstances related to work or service provision, including out-of-hours online contact where personal and work communications are intermingled.

Updating the harassment provisions in these ways would:

- Bring NSW into line with best practice nationally.
- Address clear gaps in protection identified by the *Respect@Work* report and other authoritative reviews.
- Provide stronger, clearer, and more accessible remedies for individuals and groups experiencing harassment.

- Support a shift from reactive complaint handling to proactive prevention of harmful conduct.

8. Exceptions

The Older Women's Network NSW (OWN) acknowledges that targeted measures, such as special measures or positive action, can play a valuable role in supporting people who share a protected attribute, improving their participation in the community, and addressing the effects of historical or systemic discrimination. These provisions can be legitimate where they remove barriers, promote equality, and directly advance the objectives of the *Anti-Discrimination Act 1977 (NSW)*. However, all exemptions and exceptions must be justified, transparent, and proportionate to the aim they serve.

These exemptions have the most profound impact on older women, particularly in aged care, where over 70% of residential services are operated by faith-based providers currently exempt from the Act. This means the majority of aged care residents - who are predominantly older women - have no direct protection under NSW anti-discrimination law from discrimination by the very institutions responsible for their care. At the point in life when they are most dependent on services, older women face systemic exclusion from legal safeguards available to others. Removing or narrowing these exemptions is therefore not only a matter of legal consistency, but of basic human dignity.

OWN recognises that a balance must be struck between protecting individuals from discrimination and allowing employers or service providers to deliver services where a particular cultural, religious, or other characteristic is genuinely central to the role or service. This balance, however, is not being achieved in the current Act.

Overly broad and unjustified exemptions

As it stands, exemptions and exceptions in the NSW Act are too broad, often permanent, and in some cases unrelated to the legitimate delivery of a service. They risk undermining the central objectives of the Act and, in effect, make certain forms of discrimination lawful.

Private educational authorities currently enjoy a *blanket exemption* allowing them to discriminate against students, job applicants, and employees on any protected ground, whether or not the institution is operated by a faith-based organisation. This applies even where religion is not relevant to the role or course of study.

Small businesses with fewer than six employees are exempt from many provisions of the Act, meaning that employees in these workplaces have no protection from discrimination.

Faith-based organisations, religious charities, schools, hospitals, aged care facilities, and accommodation providers are also afforded extensive exemptions that can be applied even when the protected attribute is not essential to the nature of the role or service.

Such provisions are inconsistent with community expectations, create unnecessary legal complexity, and are out of step with modern anti-discrimination frameworks in other Australian jurisdictions, where blanket exemptions have been narrowed or removed (e.g., Victoria's *Equal Opportunity Act 2010* reforms in 2011 and 2021).

OWN supports the existing provisions that allow for an organisation to apply for a specific, time-limited exemption from some parts of the Act where this is demonstrably aimed at increasing representation in education, employment, or community participation for underrepresented groups. However, the process for granting exemptions must be consistent, accountable, and uphold the principles of equality and non-discrimination across *all* protected attributes.

Reform priorities

To ensure the Act operates fairly and in line with international human rights standards, OWN recommends that:

- Blanket exemptions for private educational institutions, small businesses, religious organisations, religious charities, schools, hospitals, aged care facilities, and accommodation providers should be removed.
- All organisations seeking an exemption must justify their application with clear evidence of a legitimate aim that cannot be achieved by less discriminatory means.
- Exemptions must be narrow, specific, and time-limited.
- Where appropriate, there must be mandatory obligations to remove barriers or allow access (e.g., physical accessibility to premises).
- A proportionality test should be applied to assess whether the exemption is necessary and reasonable to achieve its stated aim.
- Exemptions should be consistent with Australia's obligations under international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR).
- There should be one clear process for applying for exemptions, with consistent criteria and decision-making.
- The process should not restrict access to complaints mechanisms for anyone with a protected attribute.

By narrowing, clarifying, and making exemptions accountable, the NSW Act can both protect legitimate service delivery needs and uphold the fundamental right to live, work, and participate in society free from discrimination.

9. Conclusion

Older women are among the most disenfranchised groups in Australia when it comes to protection from discrimination, and the Anti-Discrimination Act 1977 (NSW) has failed to deliver consistent, meaningful safeguards throughout their lifetime. The patchy and

delayed recognition of rights means that even today, in their later years, older women face systemic gaps in protection with little or no effective remedy.

Consider the experience of a woman who is now 65 years old:

- For the first 17–18 years of her life, she had no legislative protection from discrimination of any kind.
- Certain laws actively enforced discrimination: for example, until the early 1970s, women in the public service could be forced to resign if they married.
- At age 24, she gained protection from discrimination on the ground of pregnancy under Commonwealth law, but in NSW this was not available until she turned 33.
- Until age 33, she also had no protection from age discrimination.
- She was 40 years old before NSW law protected her from discrimination as a carer.

These protections were — and remain — limited to certain circumstances, and vary by attribute.

If she studied or worked in a private educational institution, small business, or faith-based organisation, none of these protections applied to her at all. Many Australians interact with such organisations throughout their lives, in education, health, aged care, childcare, and community services. This means her access to equality rights was effectively non-existent in these settings.

The Act, in its current form, operates far more effectively to protect service providers than it does service users. This discrimination gap persists into old age. Around 70% of residential aged care services are provided by faith-based organisations, which remain exempt from the NSW Act's discrimination provisions. Around 80% of Australians will use an aged care service at some point in their life. People aged 65 and over now make up nearly 20% of the Australian population. This means a significant proportion of the population, especially older women, who make up the majority of aged care residents, have spent most of their lives without the benefit of this Act, and continue to be legally exposed to discrimination in one of the most critical services they will ever need.

In preparing this submission, it is clear that many older women do not understand how the legislation operates, who it covers, and under what circumstances. The complexity of the current system, the inconsistency of coverage between attributes, and the multiple exemptions and carve-outs make the Act inaccessible and, in practice, ineffective for those most in need of its protection.

OWN urges that, at a minimum, this review must result in:

- Uniformity with other jurisdictions' anti-discrimination laws where this increases protection

- Internal consistency within the Act so that it is easier to understand and navigate
- Improved coverage by removing blanket exemptions and narrowing their application to what is strictly necessary and proportionate, and
- A streamlined, accessible complaint process that does not deter individuals from seeking redress.

Without these reforms, older women, who have already endured decades of legal invisibility, will continue to face discrimination at the exact time in life when they are most reliant on fair, respectful, and equal treatment in services.

As NSW undertakes this review, it should do so with an eye to the emerging international human rights framework for older persons. The United Nations is moving toward the adoption of a Convention on the Rights of Older Persons, recognising that existing protections are fragmented, inconsistent, and inadequate to address the realities of ageing in the 21st century. This new Convention will place obligations on signatory states to ensure older people enjoy their rights on an equal basis with others, free from discrimination, neglect, violence, and abuse. By strengthening the Anti-Discrimination Act now - removing blanket exemptions, embedding positive duties, recognising intersectional discrimination, and ensuring comprehensive coverage - NSW can position itself as a leader in implementing the principles of the forthcoming Convention. Doing so will not only meet future international obligations, but will also deliver immediate, tangible benefits to the growing population of older women in the state, ensuring their dignity, safety, and full participation in community life.