

NSW Law Reform Commission, Department of Communities and Justice

15 August 2025

Dear Secretary

**Review of the *Anti-Discrimination Act 1977 (NSW)*: Unlawful conduct**

Family Advocacy welcomes the opportunity to provide a submission on the Review of the *Anti-Discrimination Act 1977 (NSW)* (ADA) consultation paper.

We are a not for profit disability advocacy organisation that works across New South Wales (NSW) to advance and protect the rights and interests of people with developmental disability. We have been providing individual and systemic advocacy for over 30 years. We regularly field advocacy enquiries from families for, and on behalf of, the person with disability in a broad range of areas that cover the whole of life, for example, education, employment, health, housing and guardianship. Family Advocacy is part of two national alliances, the Australian Coalition for Inclusive Education and the National Alliance of Capacity Building Organisations.

At first instance, Family Advocacy endorses all of the recommendations made by [People with Disability Australia](#) in their submissions to this review.

We also seek to emphasise the following recommendation in particular in relation to education and employment:

**Recommendation: Repeal the current exceptions which allow private educational authorities to discriminate against students with disability (section 49L (3) and workers with disability (section 49D (3)).**

In our view, there is no justification for these exceptions. To be able to discriminate on the grounds of disability is unreasonable and constitutes a direct violation of core human rights principles.

We fully support Recommendation 24 of the recent NSW Parliamentary inquiry on children with disability in educational settings, which stated that removing this exception should be given consideration by the NSW Law Reform Commission as part of its review into the *Anti-Discrimination Act 1977 (NSW)*. We also fully support Recommendation 25 which called for “the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability. [See NSW Legislative Council Portfolio Committee No 3, Children and Young People with Disability in New South Wales Educational Settings, Report 52 (2024).]

**The profoundly negative impact on the student and family due to the current exemptions which allows private educational institutions to discriminate against students with disability**

***“We have a broken child that we are trying to piece back together.... we do not have a roadmap, there is no accountability and it feels like we have just been left on our own to work all of this out and somehow get our boy back.”***

***Parent of a child with disability in Catholic school***

According to the 2024 education survey for [Children and Young People with Disability Australia](#) (CYDA), exclusion and bullying of students with disability is on the rise in Australia with 75% of disabled students bullied last year, while 72% were excluded from school activities or events.

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Similar to the evidence revealed from the Disability Royal Commission, Family Advocacy regularly hear from families that the education system is failing students with disability citing issues such as gatekeeping, forced partial enrolments, a lack of reasonable adjustments, and unfair suspensions/exclusions. Over the last five years, our education related enquiries have doubled. The pattern of enquiries mirrors the broader population distribution across educational sectors, with approximately 60% pertaining to public schools, while the remaining 40% involve non-government schools, including Catholic and independent providers.

We hear how despite good intentions in legislative frameworks, the unwelcoming nature of schools has meant many children and young people continue to “lose out” on the opportunity of gaining a quality education. The impacts on the student and their family can be very damaging. There are many negative consequences such as lack of academic progress due to extended suspensions, expulsion or home schooling often borne out of inequities in the system which comes with poor self-esteem and social stigma.

***“My child with disability was suspended more than 10 times in 3 school terms. It was over the same issue which was a direct result of their disability. Communication was poor and the complaints system was unhelpful. Nothing changed after each suspension and so the cycle continued. This crushed any sense of self confidence, desire to learn and any trust in the school. I would now place him in the school refusal or school can’t category. Without proper communication between home and school, or a genuine attempt to make reasonable adjustments, they didn’t stand a chance!”***

***Parent of a child in a Catholic Independent school***

A heavy onus is placed on the parent to have to advocate for their child on a regular basis which is all encompassing and time consuming. Often this advocacy is around predictable and avoidable scenarios such as support considerations that have been made clear through informal and formal processes. It is not uncommon for parents to have to forgo employment opportunities, to end up on reduced hours or to lose their job altogether due to having to take too much time off work.

***I am a single parent and lost my job after my child (in Year 2!) had three suspensions for extended periods of time. This caused a significant loss of income for me with the flow on effect proving quite detrimental for the whole family unit. Frustratingly, I offered many of the strategies that I knew would supports my child which were not undertaken consistently, and then forgotten. Meetings to resolve this so my child could return to school were not followed through with. This could all have been avoided with good communication, collaboration and a willingness to fail forward, meaning giving things a go and learning from them if they don’t work. Like every child, my child deserves the opportunity to reach their full potential, to be able to learn and play with their neighbourhood peers. Sadly, my child was denied this opportunity.***

***Parent of a child with disability in an Independent school***

For these families, advocating for supports and genuine inclusion is hard and as a parent, the sense that their child is already not wanted plays a heavy toll for loving parents. The other common scenario is that many parents are too scared to raise an issue or make any complaint for fear of retribution upon their child or themselves. We have heard of a number of parents that were banned from entering the school grounds of a private school after making a complaint about their child’s teacher. All educational institutions including private educational authorities need to be held accountable and families require an avenue for remedy where a student with disability has experienced discrimination.

### **The specific needs of children and young people with disability in regional, rural and remote schools, early childhood education services and other educational settings**

Family Advocacy collaborated with Disability Advocacy in the report [‘Falling Behind: A Need For Inclusive Education’](#), which was based on consultations and interviews with people with disability, their parents, teachers and principals in rural, regional and remote areas.

Students with disability in regional, rural and remote areas face similar significant challenges in education settings as we have discussed, but are double disadvantaged, with geographical issues such as thin markets with less options for schooling, social isolation, and inaccessible built

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environments. Not having a recourse for remedy or an independent complaints system in these locations can be particularly problematic as, living in close-knit communities where anonymity is difficult, families may be reluctant to escalate matters for fear of retribution and/or back door communications between local schools which can lead to gatekeeping. This scenario is no different for families in metropolitan areas except that a family in a rural, remote or regional area may have to relocate to a regional/metropolitan area to find another school. Unfortunately, we have seen this occur many times.

For this very reason, it becomes even more imperative to ensure that private educational authorities are not exempt from disability discrimination so children with disability in regional, rural and remote areas can attend their local school and families do not have to travel long distances to out of area special schools or worse, have to relocate their entire family.

### **Systemic inequities in Public v Private schools**

[Children and Young People with Disability](#) and other disability advocates emphasize a structural inequity: private schools, who tend to receive significantly more funding per student, are more likely to close doors and limit access to students with disabilities—citing lack of resources or unwillingness to accommodate their needs—whereas public schools often struggle due to underfunding and insufficient capacity to implement inclusive practices. Public schools, despite being the main provider of compulsory education, are significantly under-resourced and often lack the capacity to deliver adequate support to students with disability.

While the current exemption may be legally permitted, there is no justifiable reason to allow such a disparity in standards between public and private schools. It is fundamentally unfair to uphold different expectations for educational institutions based solely on sector. All schools, regardless of classification, should be held to the same standards—particularly when it comes to ensuring the rights, safety, and inclusion of students with disability. The same ought to apply to employees with disability working for private educational authorities.

We strongly encourage the NSW Law Reform Commission to **adopt our recommendation to repeal the current exceptions which allow private educational authorities to discriminate against students with disability (section 49L (3) and workers with disability (section 49D (3))** so that all children and young people with disability that attend a private or Catholic school have the same protections from discrimination afforded to them as a student with disability in a public school.

Yours Sincerely

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