



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

August 2025

About Pride in Protest

Pride in Protest is a community collective of queer people and others that support queer justice, which predominantly works on Gadigal Country. We do grassroots organising around issues that impact the lives of queer and trans people, and other related social and economic justice issues.

Introduction

Anti-discrimination legislation must ensure all people who experience marginalisation are properly protected. This includes those currently listed as protected groups under the Anti-Discrimination Act (ADA) whose protection needs aren't fully met by the legislation as it stands, and additional groups not yet protected by the ADA.

Full protection requires:

- Clarifying definitions for some groups
- Expanding the list of protected groups
- Removing exemptions for discrimination
- Improving accessibility of legal mechanisms for people impacted by discrimination.

This submission addresses these four issues, and in doing so makes comment on a number of the questions in the Consultation Paper. It also notes the limitations of anti-discrimination legislation, and the need for broader structural transformation to reduce the power dynamics that drive discrimination.

In writing this submission, Pride in Protest has drawn on the knowledge and experience of a diverse collective of members of the queer community, including community workers, health workers, educators, policy & advocacy workers, academics, sex workers and more.

Recommendations

Recommendation 1:

Modernise the language used to describe discrimination on the basis of gender and sexuality to ensure as little ambiguity as possible that discrimination against any person on the basis of their queer identity is unlawful.

Recommendation 2:

Add the following as groups protected by the ADA:

- Sex workers, or people who have done sex work in the past
- People with an irrelevant criminal record
- Survivors of domestic, sexual or family violence
- People who are or have been homeless
- People who are or have been unemployed
- People from minority religions
- People who are pregnant
- People who have had or are planning to have an abortion
- People with cultural obligations
- People who are discriminated against on the basis of genetic characteristics, like intersex people.

Recommendation 3:

Remove the exceptions that allow small businesses, faith-based organisations, and private schools to discriminate in the hiring and firing of employees and provision of services

Recommendation 4:

Remove the exceptions that allow superannuation funds to treat trans people as their 'birth sex'.

Recommendation 5:

Remove the exceptions that allow sporting clubs to discriminate against people on the basis of being transgender.

Recommendation 6:

Introduce definitions of 'reasonable adjustments' and 'inherent requirements' that are more socially just for disabled people.

Recommendation 7:

Extend coverage of the act to clearly cover areas of policing and tenancy.

Recommendation 8:

Replace the comparator test and allow for intersectionality in complaints.

Recommendation 9:

Allow the IRC to hear discrimination cases.

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Introduce positive obligations for anti-discrimination.

Recommendation 11:

Incorporate into the ADA and expand upon recent amendments to the Industrial Relations Act to ensure pay equity.

Full protection requires clear definitions

Language in the ADA is outdated. Many LGBTIQ+ (queer) people that should be protected by the ADA are excluded because the definitions used to describe identities are outdated, making coverage unclear.

For example:

- The ADA definition of a transgender person in section 38A refers to living as the 'opposite sex'. This doesn't represent the experience of many trans people, including non-binary people.
- The way the ADA refers to 'discrimination on the ground of homosexuality' provides coverage for a person 'being thought to be homosexual', but this is inadequate and



doesn't reflect the reality of the discrimination experienced by bisexual, pansexual and asexual people.

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Additional groups in need of protection

There are several groups of people who experience significant discrimination and should be protected under the ADA, but are currently excluded. Groups that should be added include:

- Sex workers, or people who have done sex work in the past
- People with an irrelevant criminal record
- Survivors of domestic, sexual or family violence
- People who are or have been homeless
- People who are or have been unemployed
- People from minority religions
- People who are pregnant
- People who have had or are planning to have an abortion
- People with cultural obligations, such as cultural protocols and needs for Aboriginal peoples
- People who are discriminated against on the basis of genetic characteristics, like intersex people

Providing protection to these groups is important in its own right. It's also important because not including these groups enables discrimination by stealth against people who are members of groups who are already listed in the ADA.

Forms of discrimination that may be classed as 'indirect' are often a result of rules that prevent a person from discriminating against another person on the grounds of a protected attribute, and so discrimination on a different, connected, unprotected, ground is used instead.

Right now, an employer can deny a queer person employment if that queer person has a history of sex work. Queer people are overrepresented in sex work because of the discrimination queer people have long experienced in formal employment, so the fact that it's legal to discriminate against someone for their history of sex work lets employers discriminate against queer people.

Employment discrimination is a significant issue for formerly incarcerated people. The refusal to hire a potential employee on the basis of a criminal record that is irrelevant to the work they would be performing disproportionately impacts people who are subjected to targeted overpolicing and harsher sentencing, for example, First Nations people. Aboriginal and Torres Strait Islander peoples are massively overrepresented in prisons because of past and present violent overpolicing and racism spanning all parts of the criminal legal system. The failure of the ADA to protect against discrimination on the basis of irrelevant criminal record enables racist discrimination against Aboriginal and Torres Strait Islander people.

While it's important to recognise that discrimination manifests in various ways, the ADA should make clear that indirect discrimination is not a lesser form of discrimination than direct discrimination. The prohibition on indirect discrimination should extend to characteristics that people with protected attributes either generally have or are assumed to have.

Additional protected attributes, including at least those listed above, are important to ensuring more comprehensive protection of marginalised people, including protection for those already supposedly protected by the ADA from indirect discrimination.

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Full protection requires removing exemptions and loopholes that allow for discrimination

Small business

Gaps in protection persist in areas that are otherwise covered in the act due to exemptions. Small business makes up a huge chunk of the labour market in NSW, but is able to discriminate freely.

Religious organisations

Similarly, independent educational institutions and religious-backed charities have a right to discriminate on an implied right to religious freedom, which belies the public nature of their service. Teachers, cleaners, janitors, school support officers, and other roles should be compliant with the expectations of the curriculum and child protection, not 'doctrine'. There should be no exemptions to anti-discrimination law to allow for discrimination outside of extracurricular religious roles like priests, whether it is in hiring, firing, or enrolment.

Employer mistreatment of disabled people

Gaps also exist for disabled people in how 'inherent requirements' and 'reasonable adjustments' are typically understood. This essentially allows for discrimination against people so long as it is 'too hard' for an employer to accommodate an employee or prospective employee, which is often a decision made arbitrarily and not based in the true requirements of the job or the capabilities of the company. A business should not run if discrimination is required for its function. A right to equality should not have a price tag attached.

Superannuation

Superannuation funds are also entitled to discriminate against transgender individuals. There is no clear rationale for this exception to anti-discrimination law, and its purpose simply allows what is functionally an essential service to discriminate. If a superannuation fund is dependent upon discrimination against transgender people in order to function, then it is likely not fit to function. This exception should be abolished.

Sport

Sporting teams also enjoy exceptions from the provisions of the ADA, but much of this is based on archaic and outdated presumptions about women's roles in society and sporting needs a broader review.

Sports typically segregate women in separate competitive leagues to men even where there is minimal or no appreciable difference in performance, including shooting and endurance swimming¹. The pay gap for these segregated leagues is sufficiently stark that women athletes were recorded in [2017 as earning 1% of what men in competitive sports earn](#).

This makes it challenging to defend the exclusion of trans people from these competitive spheres. The notion that trans inclusion leads to loss of economic opportunities for women athletes seems to be a baseless claim when loss of economic opportunity is embedded in the current league structure that divides women into unfunded leagues even when they are competitive with men.

The rationale for allowing the exclusion of trans people in community sports is even more indefensible, and leads to social exclusion with no actual benefit to the teams in question. We question the need generally for separate gendered sports leagues, when weight classes would be more appropriate to address performance gaps in sports like boxing where upper body strength is a significant factor. But while the current structure exists, there is no reason for trans people to be excluded from sport.

We would also advocate for sport to be subject to pay equity considerations either under the Anti-Discrimination Act, or the Industrial Relations Act.

Police and landlords

The act currently is limited in its scope as the NSW Police Force is not a 'good or service'. A stronger act would be limited in the redress it could offer if it did not allow marginalised groups to bring strong claims against the police who harass and over-police them. The prison system currently is disproportionately filled with Aboriginal people and disabled people, which strongly suggests that they are either directly or indirectly discriminated against in the process of interacting with the justice system. High profile examples in the media, including of two officers assaulting a disabled woman, demonstrate that this discriminatory interaction with the justice system often begins at the hands of police.

This is an issue for people of immigrant backgrounds as well. There is no specific statistic relating to detainees' cultural background in the NSW prison system, but first generation migrants are recorded due to reference of place of birth. This suggests that a minority of the prison population would be typically classed as white.

Harassment by police is also a clear issue for other minorities, both historically and today. Migrant sex workers and street based sex workers face constant difficulties in Victoria presently, where decriminalisation has not included these categories of sex work, and these routines of harassment need to end as further reforms continue in this sector.

Similar issues exist with the scope of the act not clearly extending to tenancy issues. Landlords, and the real estate agents that they collaborate with, have an immense ability to impact the lives

¹ The average range of difference in performance between men and women's competitive sections is 8 - 12% as per [Sex Differences in World Record Performance](#) but the pay gap



of their tenants. But disabled people and sex workers are examples of people who can experience sharp discrimination as tenants, with disabled people relying on support animals often being unable to occupy places that don't want pets and sex workers having been evicted for doing their job.

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Improving accessibility of legal mechanisms for people impacted by discrimination.

The functioning of the ADA needs to change to include intersectionality, do away with the 'comparator test,' and extend the jurisdiction to the Industrial Relations Commission (IRC) so that workers can seek relief through this mechanism to expedite hearing of cases.



There should also be positive obligations surrounding anti-discrimination. It is not appropriate for anti-discrimination clauses to only come into play when a worker takes the leap of making a complaint which may or may not get resolved months after. Obligations to take positive steps need to be imposed so that workplaces, services, and other spaces are safer to engage in from the beginning.

We would also draw attention to the importance of enforceable employment targets and reporting progress on these and on pay discrepancies between groups to the government. These kinds of reforms, and building the power of the IRC to issue pay orders for feminised and racialised labour areas federally, as has occurred federally in the area of early learning would allow for the Anti-Discrimination Act and Industrial Relations Act to work in partnership to provide relief to structural discrimination.

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