



19 August 2025

**NSW Law Reform Commission**

Locked Bag 5000  
Parramatta NSW 2124

To the NSW Law Reform Commission,

**Re: Anti-Discrimination Act Review**

On behalf of the NSW Greens I write to make a further submission to the NSW Law Reform Commission's independent review ('the review') of the *Anti Discrimination Act 1977* (NSW) ('the Act'). This submission has been prepared by the office of Jenny Leong MP, NSW Greens spokesperson on Anti-Discrimination and Human Rights, in consultation with NSW Greens Disability and LGBTIQ+ spokespeople and follows a preliminary submission to the consultation process that was made in October 2023.<sup>1</sup>

We acknowledge that this review is taking place on First Nations land, and recognise the ongoing discrimination faced by First Nations people as a result of colonisation and ongoing systemic racism. Given this, we urge the review to ensure that any recommendations made that seek to directly address discrimination towards First Nations people are co-designed with First Nations communities in NSW.

The Greens remain committed to seeing an anti-discrimination act that does not entrench discrimination and which responds to the significant social and cultural shifts that have occurred since the Act's introduction more than forty years ago. We reiterate our disappointment that over thirty years since the last comprehensive review of the Act was undertaken by the NSW Law Reform Commission, the majority of recommendations from that review have still not been implemented.

Like the Justice and Equity Centre, who in their preliminary submission to the Review argued that the entire Act should be repealed and replaced, it is our strong view that the Act requires overhaul to ensure it is fit for purpose. We echo concerns from the Justice and Equity Centre

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<sup>1</sup> [https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary\\_submissions/PAD85.pdf](https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD85.pdf)

and legal experts that the convoluted structure of the Act is a barrier to many community members understanding the protections to which they are entitled, let alone how to seek remedy.

In this submission, we affirm the Greens' position on key elements of the Act including expanding and updating protected attributes, ensuring that our discrimination laws cover all aspects of public life, and removing blanket exceptions so that the law designed to prevent discrimination does not further entrench it.

### **Expanding and Updating Protected Attributes**

The Greens support the inclusion of all attributes on the basis of which discrimination is currently outlawed by the Act. That said, we share concerns expressed by the Justice and Equity Centre and others that the specific nomenclature of some protected attributes has an exclusionary impact.

For example, the Act protects people from discrimination and vilification on the basis of "homosexuality", making NSW the only Australian jurisdiction in which bisexual people have no protections in this regard. This could be simply resolved by replacing references to "homosexuality" throughout the Act with "sexual orientation".

Similarly, references to "transgender" could be replaced with "gender identity and expression" to ensure that protections are expanded to nonbinary and gender diverse people, who are currently not protected under the Act. We support the recommendations made by ACON, Equality Australia (EA), and Intersex Human Rights Australia (now called Interaction) in their preliminary submissions to update the language around sexuality, gender identity and expression, and sex characteristics.

The Act also describes certain attributes in ways that are offensive and outdated, such as "disability" which is defined in section 49B as "a malfunction, malformation, or disfigurement". It is clear that close examination of the language used throughout the Act must be undertaken to identify all instances of outdated, offensive or exclusionary terminology and update these accordingly. This aligns with comments made in the preliminary submission from People with Disability Australia (PWDA) that the current language in the Act to do with people with a disability is not consistent with human rights language.

Some attributes are not currently considered protected attributes in the Act, such as sex workers. The ways in which sex workers are discriminated against are broad and include employment, education, accommodation, and finance.

As such, the Greens support the inclusion of 'sex work activity' as a protected attribute following Queensland incorporating this into their updated *Anti-Discrimination Act 1991* (Queensland) in 2024. Both Scarlet Alliance and Respect Inc advocated for this change, and we support the recommendation from Scarlet Alliance and Sex Work Outreach Project (SWOP) to include this attribute in the NSW Act. We also support the recommendation that sex work activity be a protected attribute and not fall under broader terminology such as 'lawful sexual activity' or 'occupation'.

Beyond this, the Greens are strongly supportive of additional protections within the Act against discrimination on the basis of:

- Bisexuality
- Non-binary identification
- Sex work activity
- Innate variations in sex characteristics
- Employment status
- Accommodation status (e.g. renting, homeless, sub-tenant)
- Irrelevant criminal record
- Immigration status

It is essential that substantive consultation with relevant community groups be undertaken when drafting the updated or additional protected attributes to be included in the Act.

### **Anti-Discrimination Protections in All Aspects of Public Life**

The Greens strongly support an expansion of the current scope of the Act to include all aspects of public life. We agree that discrimination should be prohibited in every context currently prescribed within the Act, but are concerned that coverage is non-exhaustive and leaves substantial gaps or areas of uncertainty. We remain concerned, for example, that there is insufficient clarity about whether people engaging in unpaid work or who are self-employed are protected under provisions pertaining to discrimination "at work" as they are neither employees nor contract workers.

Beyond this, we are concerned that discrimination can occur in other relationships and public places that are beyond the Act's coverage. We are aware of many examples in which a tenant in an apartment complex is subject to recurrent behaviour from another resident in the same building that may constitute discrimination, but no protections or avenues of recourse are available under the Act. Similarly, we are aware of people who use a wheelchair who are unable to use certain sidewalks in narrow city streets as they are not wide enough to accommodate a wheelchair.

It is crucial that the Act is able to address issues of discrimination like this, which is why it is essential that the scope of the Act be expanded to capture all aspects of public life.

### **An Intersectional Understanding of Discrimination**

The Greens endorse the approach to understanding discrimination outlined by the Justice and Equity Centre in their preliminary submission, which advocates for the removal of arbitrary distinctions between "direct" and "indirect" discrimination. We share their view that an approach similar to that contained in the *Discrimination Act 1991* (ACT), under which these two types of discrimination are treated in the same way, should be considered in NSW.

Relatedly, we note that the *Discrimination Act 1991* (ACT) definition of "indirect discrimination" at section 8(3) adopts an intersectional approach that recognises that discrimination can result in disadvantage on the basis of "1 or more protected attributes" and strongly support the inclusion of similar language in the NSW Act.

### **No Exceptions to Discriminate**

The Greens are opposed to the provision of any exceptions to the blanket obligation not to discriminate or vilify. We do not believe that piecemeal exceptions should be carved out of the Act to allow institutions or individuals to discriminate. This approach enables the granting of exceptions particularly to those with the wherewithal and means to lobby lawmakers and other stakeholders to allow them to 'legally' discriminate.

The Greens support the exclusion of any exceptions from the Act, and instead support a requirement for all individuals, groups, or institutions wishing to gain an exemption from the Act, on whatever basis, to apply to Anti-Discrimination NSW ('ADNSW'). Taking this approach will

make it clear that the ADA exists first and foremost to protect people from discrimination. We recognise that there may be some legitimate reasons for exemptions, but do not support blanket exceptions that allow whole sectors or types of organisations to discriminate against whole sections of the population.

Such an exemptions process should not allow for an exemption to be sought as a right to discriminate, such as the use of current exemptions by religious organisations to legally discriminate against LGBTQIA+ people. When groups are required to appear before a tribunal to make their case, there is precedent that groups who seek an exception to be able to discriminate have been rightfully rejected. For example, the anti-trans Lesbian Action Group's request for the right to exclude transgender women was rejected by the Australian Human Rights Commission in 2023.

Further to this, we do not believe that entities that receive any form of public funding should be able to apply for an exemption. This is irrespective of the nature or quantity of public funding and would, for example, include private schools that receive public funding, charities that access public subsidies, or other community organisations that access funding through the NSW Government's Community Building Partnerships program.

### **A More Consistent Approach to Vilification Protections**

The manner in which vilification protections have been embedded into the Act has been ad hoc and reactionary, resulting in inconsistent protections and some community groups being protected against discrimination but not vilification on the same grounds.

The Greens reiterate our strong opposition to the protections against religious vilification in section 49ZD that were introduced in August 2023, both in their substance and the manner in which they were introduced. At the time, we cautioned against this ad hoc approach to reform and the message it sent to communities that the rights and interests of some community groups - namely people of faith - were considered more worthy of protection than others. In particular, we expressed concern about the lack of protections for several subsets of the LGBTQIA+ community, as outlined in Section 2 of our preliminary submission.

In addition to serious concerns about the protections contained in section 49ZD of the Act extending beyond natural persons and including unlawful religious activity, we remain disappointed by the ambiguous definition of “religious belief” that has been adopted in this part of the Act.

In 2021, The Greens supported an earlier iteration of the Bill, brought by then-Shadow Attorney-General Paul Lynch (‘the Lynch Bill’), that clearly defined “religious belief and affiliation”. In the Lynch Bill, this term was defined in the same manner as in s 93Z of the *Crimes Act 1900* (NSW): as “holding or not holding a religious belief or view”. Disappointingly, this definition was absent from the Bill that passed NSW Parliament in August 2023.

Furthermore, it is our view that a specific description of vilification should be adopted that requires vilification to be made against a person or group of persons belonging to a group that has not achieved substantive equality. This would mitigate against protections from vilification being weaponised, for example by “men’s rights activists” claiming that criticism of gendered violence is vilification against people who identify as male.

### **Modernising Protections Against Harassment**

One of the most significant shortcomings of the Act is its outdated approach to sexual harassment. Part 2A of the Act, which prohibits sexual harassment, was introduced in 1997 and since this time has not undergone any amendments despite the significant shifts within workplaces and broader NSW society. As such, the Act adopts a definition of sexual harassment that is restricted to conduct “of a sexual nature”<sup>2</sup> and does not recognise the full spectrum of behaviour that should be prohibited.

Similar to our earlier comments about when discrimination should be against the law, we are concerned by the limitations on protections, which seem fairly arbitrary and confine protection to transactional situations. There is no basis for prohibiting sexual harassment in the context of employment but not between neighbours, for example, or between spectators and players at a sporting match - wherever it occurs there is scope to cause real harm.

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<sup>2</sup> See s 22A(b) of the Act

In its 2020 Respect@Work Inquiry, the Australian Human Rights Commission recommended reform<sup>3</sup> of the Commonwealth provisions in Part 1, Division 3 to expressly prohibit:

- Sex-based harassment; and
- Creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex.

While The Greens do not offer precise wording for similar reforms to the Act, we strongly support the definition of “sexual harassment” being broadened to recognise the spectrum of harmful behaviour in this regard.

The Greens are also deeply concerned by the Act’s failure to prohibit sexual harassment in all areas of public life. Unlike counterpart anti-discrimination legislation in Queensland, the Act leaves numerous gaps in which it is unclear whether someone has a course of action against sexual harassment; for example in registered clubs, situations of unpaid work, or self-employment. We believe that coverage of the Act needs to be extended to fill each of these gaps as a matter of priority, so everyone is protected from sexual harassment in every public arena.

Our office would welcome the opportunity to discuss any part of this submission as part of this Review and can be contacted for this purpose via email to [newtown@parliament.nsw.gov.au](mailto:newtown@parliament.nsw.gov.au) or phone on (02) 9517 2800.

Yours sincerely,

**Jenny Leong MP**  
Member for Newtown

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<sup>3</sup> Australian Human Rights Commission, Respect @Work: Sexual Harassment National Inquiry Report (2020), 29 January 2020, p43, available at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>