



NSW Law Reform Commission
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Via email ADAreview@dcj.nsw.gov.au

NSW Aboriginal Land Council Submission to the Review of the *Anti-Discrimination Act 1977 (NSW)*

The NSW Aboriginal Land Council (NSWALC) welcomes the opportunity to provide input into the review of the NSW *Anti-Discrimination Act 1977 (NSW)* (ADA). NSWALC is the peak Aboriginal representative body in NSW and with over 30,000 members, is the largest Aboriginal member-based organisation in Australia. NSWALC is a self-funded statutory organisation under the *Aboriginal Land Rights Act 1983 (NSW)*, and has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples in NSW. This mandate includes the protection of the rights, culture, and heritage of Aboriginal peoples and to advocate for reforms that advance self-determination, equality, and justice.

For Aboriginal people in NSW, discrimination is a persistent and systemic reality, affecting access to housing, employment, education, health care, and public services. A modernised ADA must recognise and address systemic and intersectional discrimination, provide strong, clear, and enforceable protections, apply equally to government functions and private actors and include effective remedies and culturally safe complaint processes.

This submission sets out NSWALC's key recommendations for reform in response to proposals put forward in the NSW Law Reform Commission Discussion Paper.

Tests for Discrimination

The ADA should continue to cover both direct discrimination (overt unequal treatment) and indirect discrimination (neutral policies or practices with unequal impacts). We note that indirect discrimination can be the most pervasive form of discrimination.

Current arrangements place the entire evidentiary burden on complainants, who often cannot access the documents or witnesses necessary to prove their case. In practice, organisations and agencies hold the key evidence. The discussion paper notes examples of models where a shared burden of proof are currently operating in the context of discrimination, including the *Fair Work Act*, in Queensland and in the United Kingdom. These models have also previously been recommended by the Australian Human Rights Commission and would create fairer processes.

Recommendations

- Update definitions of direct and indirect discrimination to explicitly include systemic and institutional practices
- Introduce a shared burden of proof model to improve fairness for complainants.

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Protected Attributes

The discussion paper raises whether the definition of race should specifically recognise Aboriginal and Torres Strait Islander peoples.

Race must remain a central protected attribute and should explicitly recognise Aboriginal people in the Act's definition. The Act should clearly state that race discrimination includes targeting of cultural identity, connection to Country, language, and community recognition.

Discrimination based on age, disability, and sex remains prevalent, often intersecting with race to create compounded disadvantage—for example, the experiences of Aboriginal women or Aboriginal people with disability.

Recommendations

- Explicitly recognise Aboriginal people in the Act's objects and definitions
- Clarify that race discrimination includes cultural identity, language, and community connection.

Potential New Attributes

The discussion paper outlines a number of areas for potential new protected attributed. Protections should be expanded to cover irrelevant criminal record, health status (including mental health and chronic illness), political belief, religious belief, and socio-economic status. These gaps are particularly significant given the overrepresentation of Aboriginal people in the justice system, poorer health outcomes, and entrenched economic disadvantage.

Recommendation

- Expand protected attributes to include irrelevant criminal record, health status, political belief, religious belief, and socio-economic status.

Areas of Public Life

The discussion paper notes that the ADA does not apply to all conduct that occurs “in public”, but that suggestions have been made for additional areas of “public life” to be covered.

The ADA must continue to apply across employment, education, accommodation, goods and services, and membership organisations. These are critical domains where Aboriginal people continue to experience discrimination, for example:

Employment: systemic recruitment barriers, limited promotion opportunities, and culturally unsafe workplaces.

Education: limited expectations of students that directly impacts on their engagement and inclusion in opportunities and the school curriculum, and racism in school and tertiary settings.

Housing: discriminatory refusal of rental applications and stereotyping by real estate agents.

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Services: differential treatment in health settings, child protection services, retail, and public-facing services.

While this discrimination is well documented, and policies such as the National Agreement on Closing the Gap seek to address further work is needed to address and prevent discrimination.

Recommendations

- Retain and strengthen protections across all current domains of public life.
- Require proactive anti-discrimination measures in workplaces, schools, and housing markets.

Exceptions and Intersection Discrimination

The discussion paper notes the ADA currently contains many exceptions. Broad exceptions risk undermining the protections of the ADA. The current scope exceptions for religious bodies, adoption services, private education providers, and sport is too wide and risks enabling unjustified discrimination.

Many Aboriginal people experience discrimination on multiple grounds simultaneously—for example, an Aboriginal woman with disability in the workplace. These experiences are qualitatively different from single-attribute discrimination and require explicit legal recognition.

Recommendations

- Narrow exceptions to ensure they cannot be misused and remove exceptions that allow discrimination in essential services such as education, housing, and health care.
- Provide explicit protection for intersectional discrimination in the ADA and allow single claims to cover multiple attributes where harm is compounded.

Vilification Protections

Vilification remains a significant issue for Aboriginal people, including in online spaces. Current provisions require strengthening to ensure they apply to digital communications, lower the threshold for civil remedies, and impose meaningful penalties.

Recommendations

- Extend vilification protections to online and digital platforms and strengthen penalties and introduce effective civil remedies for serious racial vilification.

Government Obligations

The ADA should explicitly bind all government functions and decision-making. Discriminatory impacts are often produced or reinforced through the way laws and policies are designed, implemented, and enforced by public authorities.

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This is evident in a range of areas including child protection, policing, and land management. In the land management context, Aboriginal communities frequently face systemic barriers when dealing with planning, environmental, and heritage laws that control the use and development of their land. These barriers can include:

- Planning and zoning frameworks that restrict economic use of Aboriginal-owned land.
- Discretionary decision-making by public authorities that results in inconsistent or culturally inappropriate outcomes.
- Complex and costly compliance processes that fail to account for the socio-economic realities of Aboriginal landholders.
- Delays or refusals in recognising or protecting Aboriginal cultural heritage, resulting in loss of culturally significant sites.
- Legislative and administrative processes that do not adequately respect the rights of Aboriginal people to manage land in accordance with cultural values and priorities.

Structural inequities built into government systems further compound these issues. Without explicit application of the ADA to all government functions, Aboriginal people and organisations have limited recourse to challenge discriminatory outcomes.

Embedding clear obligations in the ADA would require decision-makers to actively consider and prevent discrimination in policy development, regulatory processes, and service delivery. This would help to ensure that Aboriginal land rights and cultural values are not undermined by systemic bias in government decision-making.

Recommendations

- Make it explicit that the ADA applies to all government functions and decisions
- Introduce a statutory duty for public authorities to act in compliance with the ADA and to give due regard to the rights of Aboriginal peoples.

The ADA must be modernised to ensure it provides robust, enforceable, and culturally responsive protections. Reform must be informed by the lived experience of Aboriginal peoples and aligned with Australia's human rights obligations, including the United Nations *Declaration on the Rights of Indigenous Peoples*. NSWALC stands ready to work with Government to ensure the ADA meets these objectives.

Sincerely,

Clare McHugh
CEO, NSW Aboriginal Land Council

Date: 20 August 2025

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