

2025



Submission

NSW Law Reform Commission
Review of the Anti-Discrimination Act 1977 (NSW)

August 2025

BEING – Mental Health Consumers

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Acknowledgement of Country

BEING – Mental Health Consumers acknowledges the traditional custodians of various countries across New South Wales. We pay our respects to Elders past, present and emerging. We acknowledge land was never ceded, and was, is, and always will be Aboriginal land. We value your holistic management of country over the millennia and realise that Indigenous knowledge systems have much to teach us about how we thrive as a society.

Recognition of Lived Experience

BEING – Mental Health Consumers values all people with lived experience of mental health challenges, especially those from intersectional backgrounds whose experiences remind us that we need a mental health system for all. We stand alongside you, in your strength and courage, as driving forces in the work we do. Your voice will always matter.

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About BEING – Mental Health Consumers

BEING – Mental Health Consumers is the independent, NSW peak organisation by and for people with lived/living experience of mental health challenges. 100% of BEING's staff and board are mental health consumers.

Our mission is to represent people with mental health issues to ensure that lived experience is heard and reflected in decision making, service provision and our communities. Our vision is for all mental health decisions in NSW to be decided in active partnership with people who have lived experience.

BEING is committed to human rights principles of diversity, inclusion, and equity, and believes that recovery is possible for all people who live with mental health challenges.

BEING is also a foundational member of the [National Mental Health Consumer Alliance](#) (the Alliance), the national peak body representing mental health consumers.

Introduction

BEING welcomes the opportunity to make this submission to the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977* (NSW). BEING supports the Law Reform Commission's [Interim Review](#) of the *Anti-Discrimination Act 1977* and recognises the need for anti-discrimination legislation in NSW to better reflect community needs today.

As the peak body in NSW representing mental health consumers, to better reflect the needs of mental health consumers, BEING believes the review of the *Anti-Discrimination Act 1977* (hereafter the "ADA") needs to focus on four key areas:

1. Embedding the human rights of mental health consumers
2. Improving the substantive equality of mental health consumers
3. Improving legal protections for more mental health consumers, and
4. Promoting a more right-based culture.

Embedding human rights

Australia's human rights framework has developed significantly since the ADA was legislated. As the peak body for mental health consumers in NSW whose work is grounded in human rights, our primary goal in this submission is to advocate for anti-discrimination laws that promote and protect the human rights of mental health consumers.

A key human rights instrument that needs to be better reflected in NSW's anti-discrimination laws is the *Convention on the Rights of Persons with Disabilities* (CRPD).ⁱ As a signatory to the convention, Australian governments overall need to better align laws to ensure progress is made in implementing the CRPD. In NSW, while key legislative frameworks such as the *Disability Inclusion Act 2014 No. 41* (NSW) promote the principles and purposes of the CRPD, there is still need for greater alignment.

Formal and substantive equality

The ADA was leading at the time of its introduction with its formal equality approach. However, nearly fifty years later there is a much greater need for anti-discrimination laws to promote a shift away from formal equality to improving the substantive equality of all mental health consumers.

Mental health consumers who are young, LGBTIQ+, are First Nations, come from a racially and culturally marginalised background, and/or live in remote or rural locations experience varied life outcomes because of their marginalisation.

Therefore, BEING believes that a key focus of the reform process should be NSW's anti-discrimination laws to ensure that all people with mental health challenges and psychosocial disability have the same opportunities as those without. Shifting the focus to substantive equality to ensure the equality of outcome is key and requires positive obligations to achieve this.

Legal protections for more people

Over time the protected attributes have increasingly ceased to reflect modern society. BEING believes that the scope of legal protections provided by the ADA currently are too limited, and in this submission, we are advocating for greater protections. We believe that the current Act does not fully reflect more contemporary societal acceptance and understanding of diverse sexualities and genders, and the ways they intersect with each other and other protected attributes.

A more rights-based culture

BEING believes that better integration of the core principles of the CRPD into the ADA and other legislation can also support a more diverse and extensive integration of disability rights into legislative and policy making processes across government and more generally across society as a whole.

Terms of reference and BEING's recommendations

The NSW Law Reform Commission's [terms of reference](#) for the review stipulates a range of matters the Commission is reviewing. This submission will focus on the following matters and BEING provide the following recommendations in response.

1. Modernisation of the Act (Item 1)

Recommendation 1 – That the NSW Law Reform Commission recommend the creation of a positive obligation on public and private bodies to provide support decision-making supports.

Recommendation 2 – That the NSW Law Reform Commission recommend recognising discrimination on the basis of one or more protected attributes as intersectional discrimination, and to allow intersectional discrimination complaints.

2. Range of protected attributes (Item 2)

Recommendation 3 – That the NSW Law Reform Commission recommend including psychosocial disability as a protected attribute.

Recommendation 4 – That NSW Law Reform Commission consider more inclusive language that reflects the social and human rights models of disability when describing people with mental health challenges and psychosocial disability.

3. Tests for discrimination (Item 4)

Recommendation 5 – That the NSW Law Reform Commission recommend the removal of the comparator test.

Recommendation 6 – That the NSW Law Reform Commission recommend ‘intended future conduct’ be included in the definition of discrimination.

4. Adequacy of protections against vilification (Item 5)

Recommendation 7 – That the NSW Law Reform Commission recommends the expansion of vilification protections to cover those with disability, including psychosocial disability and disabling mental health challenges.

5. Positive obligations (Item 7)

Recommendation 8 – That the NSW Law Reform Commission recommends the creation of a positive obligation on all duty holders to provide reasonable adjustments for people with disability, including those with psychosocial disability and mental health challenges.

Recommendation 9 – That the NSW Law Reform Commission recommends the creation of a positive obligation on all duty holders to prevent discrimination.

6. Interaction between the Act and Commonwealth anti-discrimination laws (Item 12)

Recommendation 10 – That the NSW Law Reform Commission must be informed by, and grounds its review in, a human rights model of disability, that recognises the inherent dignity and worth of all people as the foundation for accessing and protecting human rights.

Modernisation of the Act

Anti-discrimination laws and supported decision-making

One of the key areas in which reform is required is ensuring alignment between NSW laws and policy and the commitments made under the *Convention on the Rights of Persons with Disabilities* (CRPD), especially regarding substitute and supported decision-making.ⁱⁱ

BEING believes that not providing people with mental health challenges with appropriate supported decision-making supports limits realising other human rights,

and so ensuring the availability and accessibility of supported decision-making supports is integral.

The CRPD requires and the recent Disability Royal Commissionⁱⁱⁱ has recommended that Australia implement better supported decision-making supports. While we note that Australia has an interpretative declaration on Article 12 of the CRPD, underpinning substitute decision-making regimes in NSW laws and policies, such as the use of Community Treatment Orders, there has been insufficient effort to ensure supported decision-making supports are available to those seeking mental health care.

Therefore, reformed anti-discrimination laws should include a positive obligation on public and private bodies to ensure that supported decision-making is made available to all those who access mental health care. We fail to respect the inherent dignity of others^{iv} when we fail to provide every opportunity to them to make decisions about their own lives and treatment.

Recommendation 1 – That the NSW Law Reform Commission recommend the creation of a positive obligation on public and private bodies to provide support decision-making supports.

Intersectionality and anti-discrimination laws

The consultation paper notes that the ADA currently tests for discrimination against individual protected attributes, and not discrimination that is intersectional in nature.^v

BEING believes that in situations where an individual has been discriminated against, vilified, or harassed based on more than one protected attribute, then that should be understood as intersectional discrimination.

Discrimination based on intersecting protected attributes can be the source of and drive mental health challenges, for example being discriminated against as a gender diverse person with disability with mental health challenges, or for being a female First Nations mental health consumer. The combined effect of such discrimination is often worse than the effect of being discriminated against for any single protected attribute.

Recommendation 2 – That the NSW Law Reform Commission recommend recognising discrimination on the basis of one or more protected attributes as intersectional discrimination, and to allow intersectional discrimination complaints.

Range of protected attributes

‘Disability’ as a protected attribute also fails to make explicit the complexity inherent in the group of people that the term identifies. BEING believes that minimally there should be a distinction made between psychosocial and non-psychosocial disability.

We note that during the development of the CRPD there was an awareness that the term disability refers to a group of conditions which resemble each other in some ways, but not in others.^{vi}

Recommendation 3 – That the NSW Law Reform Commission recommend including psychosocial disability as a protected attribute.

Language

Further, as noted in the consultation paper, the deficit-based language around definitions of disability, including psychosocial disability, is outdated and reflects a medical model of disability.

Because of this deficit-based language, mental health consumers and those with psychosocial disability are some of the most stigmatised and vilified people in society. Language matters and so having the language around protected attributes reflect more contemporary social and human rights models of disability is important to addressing the stigmatisation and discrimination experienced by mental health consumers.

Recommendation 4 – That NSW Law Reform Commission consider more inclusive language that reflects the social and human rights models of disability when describing people with mental health challenges and psychosocial disability.

Tests for discrimination

In line with our recommendation for the recognition of intersectional discrimination, the test for discrimination needs to be reconsidered as part of this review, so that a person who experiences discrimination based on more than one protected attribute has sufficient legal recourse.

BEING supports the removal of the current comparator test. In the context of psychosocial disability and mental health challenges, having to establish discrimination by comparing the treatment to someone who doesn't have the same mental health condition is highly subjective, given the experience of any given mental health condition is highly individual and mediated by several factors.

Further, the ADA currently does not include intended future discrimination within the definition of discrimination. In the context of psychosocial disability and mental health challenges, this means harmful discriminatory conduct must occur first, even when a duty holder has indicated they will act discriminatorily, therefore precluding any intervention to prevent the discrimination occurring.

This often exacerbates the experience of mental health challenges, further disabling the person. For example, an employee has successfully claimed psychological injury under NSW workers compensation laws and has a diagnosis of Post Traumatic

Stress Disorder (PTSD) as a result of workplace bullying. The employee's line manager does not believe the workplace caused the injury because they think PTSD does not exist and so has indicated they intend on not following the employee's Return to Work plan. The employee can't prevent discriminatory treatment which exacerbates the employee's PTSD symptoms, resulting in reduced capacity to work.

Recommendation 5 – That the NSW Law Reform Commission recommend the removal of the comparator test.

Recommendation 6 – That the NSW Law Reform Commission recommend 'intended future conduct' be included in the definition of discrimination.

Vilification of people with psychosocial disability

We note that currently the ADA only protects against vilification on the grounds of race (section 20C), transgender status (section 38S), homosexuality (section 49ZT) and HIV/Aids status (section 49ZXB). This limits access to civil remedies under the ADA outside the narrow scope provided for currently.

However, people with mental health challenges and those with psychosocial disability are routinely portrayed in negative and stigmatising ways. For example, those with schizophrenia are often identified as far more likely to commit violent crimes than others and/or portrayed as violent because of their schizophrenia – as was the case following the highly publicised Bondi Junction stabbings in 2024.

Therefore, new anti-discrimination laws need to address the unique vilification experienced by people with mental health challenges and psychosocial disability.

Recommendation 7 – That the NSW Law Reform Commission recommends the expansion of vilification protections to cover those with disability, including psychosocial disability and disabling mental health challenges.

Positive obligations

Reasonable adjustments

Currently under the ADA the onus is on an individual to lodge a complaint with Anti-Discrimination NSW if they feel they have been discriminated against. Duty holders such as employers, educators, providers and others currently do not have any positive obligations under the current Act to ensure reasonable accommodations are provided, unlike in other jurisdictions like Victoria.

Mental health consumers and those with psychosocial disability, like other people with disability, are less likely to assert their human rights due to structural barriers, particularly attitudinal barriers. Therefore, there is a role for anti-discrimination laws to play in promoting and protecting the human rights of people with disability, including those with psychosocial disability.

In line with recommendations from the Disability Royal Commission,^{vii} Justice and Equity Centre^{viii} and the Australian Human Rights Commission,^{ix} and others, BEING strongly supports the creation of a positive obligation for duty holders to provide reasonable accommodations.

Recommendation 8 – That the NSW Law Reform Commission recommends the creation of a positive obligation on all duty holders to provide reasonable adjustments for people with disability, including those with psychosocial disability and mental health challenges.

Preventing discrimination

As noted above, mental health consumers and those with psychosocial disability, like other people with disability, are less likely to assert their human rights when discriminated against. This often occurs due to the apprehension of ongoing discrimination and other unlawful conduct, particularly victimisation and vilification.

While we note existing laws in NSW provide obligations, particularly for employers, to prevent unlawful conduct such as discrimination, these laws do not cover the full range of duty holders that have a role in embedding a preventative culture.

Therefore, BEING supports the creation of a positive obligation on all duty holders to prevent discrimination. Other duty holders such as educators, public agencies, and private providers of goods and services must take part in shifting discriminatory attitudes and practices.

For a preventative culture to be effective, positive obligations have a key role in effecting societal changes in attitudes and practices that cause discrimination in the first place, while improving the impact of discrimination to shift attitudes.

Recommendation 9 – That the NSW Law Reform Commission recommends the creation of a positive obligation on all duty holders to prevent discrimination.

The interaction of the ADA and Commonwealth acts

While we note that the NSW Law Reform Commission's review of the ADA does not include consideration of human rights legislation in NSW, BEING strongly supports

the implementation of a human rights act in NSW. Further, BEING strongly supports the implementation of a Commonwealth human rights act.

BEING views the review of the ADA as a step towards a broader more modern framework of human rights in NSW, and we believe that it can contribute towards to a clearer understanding of what an NSW human rights act should protect as well.

So, while human rights legislation is out of scope of the review, we do stress that the review will have an impact on ongoing reform of Australia's national human rights framework, ^x and that the review is being done at the same time as the review of the Commonwealth *Disability Discrimination Act 1992*.

Therefore, as these processes proceed concurrently, there is a need for the review of the ADA to not be out of step with future developments. BEING believes grounding the reform in the human rights model of disability, is key to this aim.

General Comment 6 of the Committee on the Rights of Persons with Disabilities describes the human rights model as:

“...recognises that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible”.^{xi}

Therefore, central to grounding reform of the ADA in a human rights model of disability is the recognition that all people have inherent disability and worth. This in turn promotes a rights-based culture that values the respect and protection of human rights throughout society. This is an important purpose and benefit that needs to be delivered by the ADA.

Recommendation 10 – That the NSW Law Reform Commission must be informed by, and grounds its review in, a human rights model of disability, that recognises the inherent dignity and worth of all people as the foundation for accessing and protecting human rights.

ⁱ ‘Convention on the Rights of Persons with Disabilities’, UN Treaties Series A/RES/61/106, opened for signature 30 March 2007, entered into force 3 May 2008.

ⁱⁱ ‘Convention on the Rights of Persons with Disabilities’, UN Treaties Series A/RES/61/106, opened for signature 30 March 2007, entered into force 3 May 2008. CRPD 12 (3), Article 12 (3).

ⁱⁱⁱ Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability, ‘Enabling Autonomy and Access’, Recommendations 6.6 – 6.14, Pg. 16 to Pg. 22, Available at:

<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%206%2C%20Enabling%20autonomy%20and%20access.pdf> (Accessed on 15 August 2025)

^{iv} ‘Universal Declaration of Human Rights’, UN Treaties Series, Resolution number (217A (III)), Entered into force December 10, 1948, UDHR Preamble, Paragraph 1.

^v Law Reform Commission, ‘Review of the Anti-Discrimination Act 1977 (NSW)’,Pg 37, Available at: https://lawreform.nsw.gov.au/documents/Current-projects/ada/cp24/ADA_CP24.pdf (Accessed on 15 August 2025)

^{vi} Helen Spandler, Jill Anderson, Bob Sapey, Ed., ‘Madness Distress and the Politics of Disablement’, Policy Press, 2015. See Chapter 12, Pg. 177, where Tina Minkowitz shares her view that disability “...is a heterogeneous concept, one that comprises many distinct realities that do not all share a single common feature...”.

^{vii} Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report (2023) vol 4, “Realising the Human Rights of People with Disability”, 308.

^{viii} Public Interest Advocacy Centre (now the Justice and Equity Centre), ‘Leader to Laggard’, Pg. 6, Available at: <https://jec.org.au/wp-content/uploads/2021/08/PIAC-Leader-to-Laggard-The-case-for-modernising-the-NSW-Anti-Discrimination-Act.pdf> (Accessed on 15 August 2025)

^{ix} Australian Human rights commission, ‘Free and Equal and Reform Agenda for Federal Discrimination Laws’, Pg.70, Available at: [ahrc free equal dec 2021.pdf](https://www.ahrc.gov.au/files/default/free_equal_dec_2021.pdf) (Accessed 15 August 2025)

^x See the May 2024 Report of the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report (accessed 21 August 2025).

^{xi} Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) Equality and non-discrimination CRPD/C/GC/6 (26 April 2018) at [9].



BEING - Mental Health Consumers
Level 6, 201 Kent Street, Sydney, NSW 2000
e: info@being.org.au p:1300 234 640