

COTA

*for older Australians
New South Wales*



SUBMISSION
LAW REFORM
COMMISSION
REVIEW OF THE
ANTI- DISCRIMINATION
ACT 1977 (NSW)

AUGUST 2025

Acknowledgement of Country

We acknowledge the Traditional Custodians of the land throughout New South Wales and Australia. We pay our respects to Elders past, present and future. We recognise the deep connection that Aboriginal and Torres Strait Islander peoples have to this land, and the vital role of Elders as custodians of culture, knowledge, and tradition.

Their wisdom and guidance are invaluable to their communities and to all Australians. We honour their contributions and the enduring legacy they provide for future generations. As we work towards a more inclusive society, we commit to learning from and respecting the rich cultural heritage of our First Nations peoples, and to recognising the importance of their voices in shaping our shared future.

About COTA

Council on the Ageing (COTA) NSW is the leading not-for-profit organisation representing the rights and interests of people over 50 in NSW. We're an independent, consumer-based, non-government organisation. We are determined to ensure that older people's contributions to society are valued and that they have access to the opportunities other members of the community take for granted. We work with politicians, policymakers, service providers, and the media to ensure that older people's views are heard and acted on.

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

Council on the Ageing (COTA) NSW welcomes the Attorney General's call for a review of the *Anti-Discrimination Act 1977* (NSW) (the Act). We appreciate the opportunity to provide insights into the lived experiences of older people and the application of the Act in practice.

While we acknowledge that the Act plays a critical role in safeguarding individuals from discrimination. Many of the NSW Law Reform Commission's recommendations are timely and appropriate; however, we see an urgent need to broaden protections for older people, especially in areas where they continue to face entrenched discrimination, barriers to participation, and social exclusion.

Our submission draws on COTA NSW's deep expertise in ageing policy, the lived experiences of older people in NSW, and findings from our recent ageism survey data, which highlight both the persistence and impacts of age-based discrimination.

Key recommendations:

1. **Simplify complaints:** Clear, step-by-step guidance and protections.
2. **Ageism Register:** Record and monitor all age-based discrimination.
3. **Positive Duty:** Organisations must actively prevent age discrimination.
4. **Burden of proof:** Shift to respondents once a credible case is made.
5. **Remove financial exceptions:** Ensure equal access to credit and insurance.
6. **Workplace protections:** Broaden coverage, including harassment.
7. **Goods and services:** Protect both terms and delivery of services.
8. **Accommodation:** Limit exceptions to necessary, proportionate measures; remove broad discrimination.

We at COTA NSW strongly believe that adopting these reforms will ensure the Act evolves into a proactive and responsive framework one that not only addresses discrimination after it occurs but actively prevents it, fosters respect across generations, and guarantees that older people can participate fully and equally in all areas of public life.

Ageism and Age Discrimination

Ageism is pervasive and can be an under-recognised form of discrimination. It is not always explicit. It can take the form of exclusion, stereotypes, or dismissive treatment that older people may struggle to name but nonetheless feel acutely. These experiences are not isolated. They form part of a systemic pattern that consistently undermines older people's dignity, confidence, and opportunities to participate fully in society.

COTA NSW's report "*Living in the Background: How Ageism Shapes Lives*" reveals the scale of the problem. **62%** of people aged 50 and over report being treated differently because of their age, and **40%** have been the target of age-related jokes or comments. Age-based bias is normalised, rarely challenged, and embedded in cultural attitudes. As Age Discrimination Commissioner Robert Fitzgerald notes, "*Ageist stereotypes are deeply rooted in cultural values and norms that view ageing and older age as undesirable.*"

Awareness of the law is high, yet protections are not translating into meaningful outcomes. Nearly **89%** of respondents said they had heard of the Act, suggesting the Act has visibility. However, only 25% knew how to make a formal complaint under the Act. Among those who had experienced discrimination, **59%** did not take any action at all. This disconnect exposes a gap between awareness and accessibility: people know the law exists, but perceive it as too complex, burdensome, or ineffective to use.

The survey helps explain why. When asked what would prevent them from making a complaint, **47%** of respondents said they did not believe it would lead to any meaningful change, **40%** felt it required too much effort for too little outcome, and **26%** said they would not know where to start. Confidence in pursuing a complaint was low: fewer than half **47%** said they would feel comfortable making a formal complaint, while **15%** said they would feel uncomfortable doing so. These findings point to systemic barriers, not individual reluctance. Older people are being asked to navigate legal processes that can be difficult and timely.

Participant Voice:

“The NSW Government could provide step-by-step guidelines on how to make a formal complaint and information about possible outcomes. Assurances that your employment position would not be terminated because of a complaint you make.”

Recommendation 1: Simplify the complaints process: Streamline age discrimination complaints with clear step-by-step guidance and information on outcomes.

Recommendation 2: Ageism Register: NSW Government give consideration to funding COTA NSW’s to establish a centralised register to capture and monitor instances of age-based discrimination, including those not formally reported.

The consequences of this legal gap are significant. Ageism already limits workforce participation, reduces access to services, and undermines confidence. For individuals, the cost is diminished dignity and reduced opportunity. For the wider community, it is the loss of skills, knowledge, and contributions that older people bring.

The nature of ageism is that it is subtle and difficult to identify. For example, many older job applicants feel pressured to downplay their experience or conceal their age. Yet proving that such treatment constitutes ageism on the balance of probabilities can be challenging, highlighting how pervasive and understated age-based discrimination can be.

Participant Voice:

“When applying for jobs I found I didn't get interviews unless I 'hid' my age by removing chunks of my experience from my CV. Then when interviewed, you could see their body language of 'oh, an old one.’”

Legislation can do more. The Act should treat ageism as a systemic issue by embedding both proactive and procedural reforms.

One way is through a positive duty on organisations to actively prevent and eliminate age-based discrimination across all areas and attributes, requiring them to implement and regularly review anti-discrimination and inclusion policies, provide training for staff,

volunteers, and board members, and address systemic barriers in service delivery. This approach shifts the focus from responding to complaints to preventing harm before it occurs and embeds respect and inclusion into organisational practices.

Another is in a shift in the burden of proof so that once a complainant establishes a credible case of discrimination, the respondent must demonstrate that their actions were lawful and non-discriminatory. Proving ageism or age discrimination has occurred is often very difficult. As such, reconsidering the onus of the burden of proof ensures fairness for older people, who often face difficulties accessing evidence, and encourages organisations to maintain transparent and accountable decision-making processes.

Recommendation 3: Introduce a positive duty for all attributes and sectors, framed around reasonable, proportionate measures, supported by clear guidance and sector-specific resources to prevent discrimination against older people and foster inclusive communities.

Recommendation 4: Amend the Act to shift the burden of proof to respondents once a credible case is established, strengthening access to justice and promoting accountability while maintaining protections against misuse.

Without these reforms, older people will continue to encounter barriers that limit their rights and opportunities for full participation in society. Strengthening these measures would ensure legal protections are accessible, practical, and effectively supported, helping the law not only respond to harm but also prevent it, fostering more inclusive, equitable, and respectful environments across workplaces, services, and broader public life.

COTA NSW Response to the Consultation Paper

Question 4.1: Age discrimination

What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “age”?

The Consultation Paper considers the definition of “age” and poses the question of whether changes are needed to the definition.

In COTA NSW’s view the definition is appropriate. This broad definition within the Act ensures that everybody who could be subject to age discrimination is captured. While we understand that it is a broad definition it essentially ensures that all instances of age discrimination can be captured.

Should the Commission decide to review the definition, COTA NSW would appreciate the opportunity to consider any proposed new definition.

What changes, if any, should be made to the age-related exceptions?

The exceptions that permit discrimination against older people in credit and insurance are harmful, causing both financial and emotional impact. COTA NSW consistently hears from older people who are treated unfairly when seeking credit cards and insurance. Older people are frequently denied access to both credit and insurance. Such denial of essential financial services on the basis of age is indefensible and entrenches systemic inequality.

A call from a recent member highlight this. Our member who is a 70-year-old in excellent health, applied for travel insurance for a trip to New Zealand. Despite having no medical conditions, they were refused solely due to their age. This blanket restriction was discriminatory, ignoring their individual circumstances and reinforcing stereotypes that equate age with risk. As a result, they were left without essential coverage, faced emotional stress, and had their independence curtailed.

Recommendation 5: We call on the Commission to remove these exceptions to guarantee that all people, regardless of age, have equal and fair access to financial services.

Question 6.1: Discrimination at work — coverage

Should the ADA adopt a broader approach to discrimination in work, like the way the Sex Discrimination Act 1984 (Cth) approaches harassment? Why or why not?

A broader approach to discrimination in work would be welcomed by COTA NSW. We note that from our report *“Living in the Background: How Ageism Shapes Lives”* 32% of people had faced age discrimination in the workplace and another 34% had experienced age discrimination by an employer or colleague. Expanding protections is particularly important, as access to work underpins essential needs such as housing, food, healthcare, and financial security.

The Commission importantly notes that “Any change to this area needs to be considered carefully, as it could make more people responsible for discrimination”. COTA NSW agrees with this statement and would encourage wide consultation to avoid any misplaced burden.

Recommendation 6: A broader approach to discrimination in the workplace would be welcomed by COTA NSW. Noting that careful consideration be made to avoid unattended consequences of the expansion.

Question 6.4: The provision of goods and services — coverage

What changes, if any, should be made to the definition and coverage of the protected area of “the provision of goods and services”?

We support extending the Act to cover not only the terms on which goods and services are offered, but also the *manner in which* they are provided. This would address situations where older people experience disrespect, abuse, or exclusion during service delivery, such as on public transport or in aged care.

Recommendation 7: COTA NSW recommends extending “goods and services” protections to cover both the terms of provision and the manner in which services are delivered to prevent disrespect, abuse, or exclusion of older people.

Question 6.7: Discrimination in accommodation — coverage

What changes, if any, should be made to the definition and coverage of the protected area of “accommodation”?

Age-targeted housing should be retained only as a clearly defined special measure that is necessary, proportionate, and aimed at achieving substantive equality. This should be supported by clear government guidelines and education for providers. In the context of registered clubs, the definition of “registered club” should reflect a broad range of social, cultural, and recreational associations. Exceptions should only apply where a club’s principal purpose benefits a particular vulnerable group, and the restriction is proportionate and justified.

COTA NSW does not support retaining the broad exception allowing aged care accommodation providers to restrict admission based on sex, marital status, or race. Any differential treatment should occur only under clearly defined special measures that are necessary, proportionate, and consistent with human rights principles, ensuring the needs of older people from diverse backgrounds are met without enabling unjustified exclusion.

Recommendation 8: COTA NSW recommends clarifying “accommodation” protections to allow only necessary, proportionate special measures and remove broad exceptions based on sex, marital status, or race.

**For any questions regarding this submission, please contact:
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