

# Review of the Anti-Discrimination Act 1977 (NSW)

MENTAL HEALTH COORDINATING COUNCIL

**Submission to the NSW Law Reform Commission**

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15 August 2025



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

## Introduction

Mental Health Coordinating Council (MHCC) is the peak body principally for community-managed mental health organisations (CMOs) in New South Wales (NSW). It is also a Registered Training Organisation (RTO) delivering accredited and non-accredited programs. We mostly represent community-based, not-for-profit/non-government organisations that support people living with mental health challenges. MHCC's 150 members assist people to live well in the community by delivering mental health and psychosocial supports including social inclusion, rehabilitation, and clinical services. Our purpose is to promote a strong and sustainable community-managed mental health sector with the investment, resources, and workforce it needs to provide effective psychosocial, health and wellbeing programs and services to the people of NSW.

MHCC provides policy leadership, promotes legislative reform and systemic change, and develops resources to assist community-based organisations build their capacity to deliver quality services informed by a human rights-based, trauma-informed, recovery-oriented practice approach. MHCC works closely with Mental Health Australia on matters of national interest to the sector, including cross-governmental collaboration, bilateral agreements, and the NDIS. We also collaborate with other peak bodies across a diversity of human service contexts, and are members of the Mental Health Alliance, a partnership of state-based peak bodies and professional associations, on matters of mutual interest in NSW.

MHCC and its members strongly support the need for the NSW Law Reform Commission's [Interim Review of the Anti-Discrimination Act 1977](#). We welcome this opportunity to contribute to discussions about reforms that would modernise the Act's language and broaden its scope to reflect contemporary community expectations. Strengthening the Act is essential to ensuring it provides effective, inclusive, and enforceable protections - particularly for people with lived experience of mental health challenges, psychosocial disability and co-existing conditions as well as other vulnerable or marginalised communities across New South Wales (NSW).

People living with mental health and psychosocial challenges characteristically experience stigma and discrimination in every aspect of their lives. We are keen to see discrimination considered from a perspective that highlights the social determinants of health; and the dynamic social and political environment in which the Act operates. It should address the increasing complex needs of a diverse population, who rightly should expect to be treated with dignity and respect whatever their circumstances. This review is also important because of its interest in its interface across multiple state and Commonwealth instruments.

Our society has changed a great deal since 1977 and we thank the Chair, the Hon Tom Bathurst AC KC, and Commissioners the Hon Justice Anna Mitchelmore and Ms Kate Eastman AM SC for the opportunity to provide commentary on this legislation requiring urgent reform.

We anticipate that the actions resulting from this review will lead to meaningful improvements for people living with psychosocial disability and co-existing conditions, including enhancing equity and access to health and other human services, in regulatory, workplace and in social contexts and in engaging with the law on equal terms with others in the community.

We express our willingness to be consulted on matters related to this review as the Commission's work progresses. For further information about this submission, please contact Corinne Henderson, Director Policy & Systems Reform, at

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15 August 2025

## Submission to the NSW Law Reform Commission: Review of the Anti-Discrimination Act 1977 (NSW)

MHCC address its comments to the Law Reform Commission based on the matters listed under consideration in the Terms of Reference. We have provided explanation in certain contexts to assist a better understanding of the points we make for the benefit of our members and stakeholders reading this submission, with a full appreciation that the Law Reform Commissioners are experts in the legislative details but ask for the Commissioners' indulgence in this regard.

1. Could the Act be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards?

### The experiences of people with lived experience of mental health and psychosocial challenges

Simon Rice, Professor of Law; Director of Professional and Community Engagement, University of Sydney wrote in his article: *NSW's anti-discrimination law is confusing and outdated. Why is it lagging behind the country on reform?* (2021)<sup>1</sup>. From the perspective of people with mental health conditions, several key criticisms have been raised about the *Anti-Discrimination Act 1977 (ADA)*. These concerns are shared by broader disability advocacy groups including individuals living with psychosocial disabilities and certainly align with what we hear from our members and people using mental health and human services across service systems, and in attempting to secure access to specific services or funding.

Some of the issues MHCC agree are of concern are:

1. **Outdated and inaccessible language** - the Act is considered cumbersome, wordy, and confusing, making it difficult for individuals - especially those experiencing mental health challenges - to understand and navigate. This complexity can be a barrier to asserting rights or seeking justice.
2. **Lack of positive duties** - unlike more modern anti-discrimination frameworks (e.g., in Victoria or the UK), the NSW Act does not impose positive duties on employers or service providers to prevent discrimination or make reasonable adjustments proactively. This reactive model places the burden on individuals to prove discrimination, which can be especially challenging for people with mental health and co-existing conditions.
3. **Limited scope and coverage** - the Act does not adequately address intersectional discrimination—where mental health challenges intersect with other identities like race, gender, or sexuality. This can result in fragmented or insufficient protection for people facing complex forms of discrimination.
4. **Barriers to accessing justice** - people with lived experience of mental health challenges often face systemic barriers in accessing legal remedies, including:
  - Lack of support services to help navigate complaints
  - Limited capacity within Anti-Discrimination NSW (ADNSW) to handle cases effectively

- No provision for decision support services, which are crucial for individuals with psychosocial disabilities.

5. **Stigma and lack of representation** - there is a perceived lack of meaningful involvement of people with lived experience in shaping the law and its implementation. Advocacy groups argue that reforms must be co-designed with affected communities to ensure relevance and effectiveness.

## 2. Are there attributes protected against discrimination which require reform?

### Intersectional Discrimination

There is an urgent need for a revised ADA to recognise and address intersectional discrimination as experienced by people living with mental health conditions, psychosocial disabilities, and coexisting conditions, particularly when these intersect with other identities such as race, gender, class, disability, diagnoses or cultural background.

Intersectionality matters because people with mental health and psychosocial disability often experience multiple, overlapping forms of discrimination. For example:

- An Aboriginal woman with schizophrenia may face racism, sexism, and ableism in healthcare and housing
- A refugee with PTSD may be denied adequate support due to language barriers, stigma, and systemic neglect
- A young person with ADHD and autism may be excluded from education due to a lack of staff skills to support neurodiversity and behavioural assumptions
- An older person and/or person with dementia may not secure access to the mental health care and supports they need because of a lack of knowledge and poor availability of specialist care required for these individuals
- A man diagnosed with HIV/AIDS may experience barriers to accessing necessary social and structural supports, which can intensify their experiences of social exclusion.

People with coexisting mental health conditions often are:

- Misdiagnosed or dismissed in healthcare settings because of age, traumatic lived and living experience which result in symptoms and what are perceived as 'difficult' behaviours
- Faced with housing discrimination due to a lack of understanding of domestic and family violence issues
- Over-policed or criminalised instead of supported.

These outcomes are not just unjust but are preventable with the appropriate legal and policy frameworks.

An Aboriginal person may face:

- Racial discrimination (e.g., stereotypes about Indigenous people)
- Gender discrimination (e.g., being overlooked for leadership roles if female)
- Cultural bias (e.g., lack of respect for cultural obligations or community ties).

These layers can interact to create unique barriers less experienced by non-Indigenous women or men.

LGBTQ+ people with disabilities might:

- Be excluded from LGBTQ+ spaces due to ableism
- Face homophobia or transphobia in disability support services
- And struggle with accessibility in both communities.

This can lead to social isolation and difficulty accessing inclusive services.

A woman from a non-English-speaking background experiencing domestic violence may:

- Face gender-based violence
- Be unable to access support due to language barriers
- And fear immigration consequences if she reports abuse.

Her experiences are likely shaped by gender, race, immigration status, and language, making her situation more complex than that of a woman from a dominant culture.

A trans woman of colour in healthcare may:

- Be misgendered or denied care due to transphobia
- Experience racial bias from healthcare providers
- And face economic barriers due to systemic inequality.

Such factors can result in poorer health outcomes and reduced access to affirming care <sup>2</sup>. These experiences are not isolated—they are compounded, and the current legal framework inadequately reflects and responds to the complexity <sup>3</sup>.

Key Recommendations in this context are to <sup>4</sup>:

a. Recognise Intersectional Discrimination in Law

- Amend the Act to allow complaints based on multiple grounds of discrimination
- Include psychosocial disability as a clearly defined protected attribute.

b. Promote Substantive Equality

- Move beyond formal equality to address systemic disadvantage
- Introduce positive duties for public and private bodies to prevent discrimination proactively.

c. Improve Accessibility of Complaints Processes

- Ensure the process is trauma-informed, culturally safe, and accessible to people with cognitive or psychosocial impairments
- Provide advocacy and legal support for people navigating complex complaints.

d. Expand Education and Training

1. Mandate intersectionality and mental health awareness training for employers, educators, and frontline service providers
2. Fund community-led initiatives to raise awareness of rights and supports.

## Racial bias in Policing

The ADA must better address issues that affect for example:

- An Aboriginal young person living with mental health challenges are more likely to be subjected to excessive force or over-policing due to racial bias and misunderstanding of disability-related behaviours
- A Muslim woman of colour may experience both racial profiling and gendered scrutiny, especially when wearing religious attire, leading to fear and mistrust of law enforcement.

The National Justice Project identifies systemic issues in NSW policing that disproportionately affect people with intersecting identities<sup>5</sup>. Multiple layers of identity can intensify vulnerability to state-sanctioned discrimination. The ADA must better address these issues affecting people coming in contact with the police and criminal justice system.

## Neurodiversity and intersectionality

If we consider neurodiversity through an intersectional lens, it becomes evident that neurodivergent individuals are affected not only by their neurological differences, but also by other facets of their identities. Neurodivergence and mental health conditions often overlap but are fundamentally distinct in how they should be understood. Definitions refer to the natural variations in brain function and cognitive processing experienced by people with autism, ADHD, dyslexia, and dyspraxia, which are typically lifelong traits, often present from early childhood. The neurodiversity paradigm views these differences as part of human diversity, not as deficits or disorders to be 'cured' <sup>6</sup>.

For example, an Aboriginal woman who is also autistic might experience discrimination differently than a white autistic woman or an Aboriginal neurotypical woman whose experiences might be shaped by the combined effects of racial prejudice, gender bias, and ableism, creating unique challenges and forms of marginalisation. Intersectionality allows us to see that neurodivergent individuals are not a large group but instead encompass a range of diverse identities. This understanding helps to challenge stereotypes about neurodivergent people, who are often portrayed as having certain "typical" experiences that don't capture the diversity within the community <sup>7</sup>. In our view the ADA must clearly define the complexity of intersectionality.

## Interpersonal discrimination and suicidality

The relationship between interpersonal discrimination and suicidality has received increasing attention in the research literature. However, research has not considered whether this relationship differs between independent forms of discrimination and how exposure to multiple forms may relate to suicidality. Principal findings indicate that weight discrimination has a stronger positive association with suicide ideation than racial/ethnic or sex discrimination, but individuals who experienced all three forms had an especially high risk of suicide ideation.

A study by Graham (2025) underscores how *"the attribution behind discrimination matters to the risk of suicidal thoughts and that exposure to multiple forms increases its likelihood."*<sup>8</sup> This close relationship occurs regarding race, and ethnic discrimination, age (at both ends of the spectrum) as well as sexuality, education and literacy, diagnosis, disability and a history of self-harming behaviours.

### 3. Areas of public life in which discrimination is unlawful should be reformed

*“Whether the areas of public life in which discrimination is unlawful should be reformed”* refers to a legal and policy discussion about updating or changing the laws and regulations that currently prohibit discrimination in public life. These areas typically include employment; education; housing; access to public services; healthcare; law enforcement; and political participation. Other areas to consider are reforms to equality law, include creating a mechanism to enforce equal pay for equal work for example in public and non-government organisations both funded through state or Commonwealth budgets.

Laws and policies should be updated to define where and how discrimination is prohibited in public life, this could mean expanding protections, improving enforcement, or adapting to new challenges like AI or digital platforms.

#### Discriminatory use of AI

An issue for consideration under this category is the inherent biases that may be present in AI recruitment vetting. The approach has been that organisations must ensure that such bias is removed or counteracted within the AI process. Some say that there should be a positive duty to ensure that recruitment processes aided by AI must be free of age and other biases. The AHRC published a valuable paper *Addressing Algorithmic Bias (2020)*<sup>9</sup> which also references other relevant literature.

The AHRC paper writes that: *“Governments are using AI to make decisions in welfare, policing and many other areas. Meanwhile, the private sector has readily adopted AI in its business models. However, using AI carries with it the risk of algorithmic bias. We cannot achieve ethical AI without fully understanding and addressing this risk”*.

Algorithmic bias is a kind of error associated with using AI, often resulting in unfairness. It can arise in many ways - sometimes, the problem is with the design of the AI product itself, and the culture from which it emanates. Other times the problem lies with the data set used to train the AI. It may lead to a person being unfairly treated or experience unlawful discrimination based on, for example: race, age, gender or disability. This problem arises in life-changing decision-making, such as social security, policing and home loans. This can lead to discrimination particularly affecting vulnerable or disadvantaged members of our community.

The AHRC proposes three key goals in that AI should be:

- used in ways that comply with human rights law
- used in ways that minimise harm
- accountable for how it is used.<sup>10</sup>

#### Other areas

According to the NSW Department of Education discrimination can occur when students or staff are treated unfairly due to characteristics such as race, disability, gender identity, or carer status. Characteristically overlapping identities can lead to compounded disadvantage not only in school and educational settings, employment, access to health services, guardianship applications, involuntary treatment orders sought and complaints mechanisms across human services contexts.

This also applies to housing and accommodation issues. Research from AHURI highlights intersectional discrimination in the private rental sector (PRS) which often results in financial, psychological, and physical burdens that accumulate and exacerbate mental health and psychosocial disability over time <sup>11</sup>.

#### 4. Are the existing tests for discrimination clear, inclusive and reflect modern understandings of discrimination?

Whilst the ADA has been amended multiple times to reflect evolving understandings of discrimination, its tests and definitions are not sufficiently clear, inclusive, or contemporary. It defines various forms of discrimination - such as racial, gender, disability, and age discrimination, and outlines unlawful conduct in areas like employment, education, and service provision.

However, as already mentioned earlier the language can be technical and outdated, making it difficult for laypeople to understand. Likewise, the burden of proof often falls heavily on complainants, which represents a barrier to natural justice.

Whilst the ADA covers several protected attributes, there are gaps including more protective and explicit protections in relation to gender identity and sexual orientation which also need to be considered from an intersectional perspective<sup>12</sup>. As mentioned earlier also, intersectional discrimination (where someone faces discrimination on multiple grounds simultaneously) is not clearly addressed.

The ADA has not fully kept pace with contemporary understandings of discrimination, and concepts such as systemic discrimination, unconscious bias, and indirect discrimination are not always clearly defined or actionable.

#### 5. Are protections against vilification adequate including whether these protections should be harmonised with the criminal law?

Protections against vilification under the *Disability Discrimination Act 1992* (DDA)<sup>13</sup> are currently limited. The DDA primarily addresses discrimination in areas such as employment, education, and access to services, but it does not explicitly prohibit vilification - which involves inciting hatred, serious contempt, or ridicule based on disability.

The *Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024*<sup>14</sup>, sought to strengthen protections for people with disabilities, and was informed by findings from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which highlighted widespread and systemic discrimination and vilification. It also aimed to align NSW law more closely with the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which Australia ratified in 2008 but has yet to fully implement. Sadly, this bill remains stalled in the Legislative Council, with the second reading debate adjourned on 25 September 2024, with no further progress recorded since then.

This Bill sought some protections that should be included in the ADA:

### 1. Anti-Vilification Protections

- Makes it unlawful to vilify a person or group on the grounds of disability
- Vilification includes inciting hatred, serious contempt, or severe ridicule.

### 2. Criminal Offences for Inciting Violence

- Amends the *Crimes Act 1900* to create a new offence - threatening or inciting violence against someone because of their disability.

### 3. Offensive Behaviour Provisions

- Expands the ADA to make it unlawful to offend, insult, humiliate, or intimidate someone based on:
  - Disability
  - Race
  - Religion
  - Sexual orientation
  - Gender identity
  - Intersex status
  - HIV/AIDS status

This is the first time NSW has proposed specific anti-vilification protections for disability. It addresses a long-standing gap in legal protections and responds to calls from disability advocates for stronger safeguards against harassment, abuse, and hate speech.

The proposed NSW bill is a clear example of harmonising civil protections with criminal law and aims to ensure that vilification is not only a civil wrong but also a criminal offence when it involves threats or incitement to violence. It aligns disability protections with existing criminal provisions for other forms of vilification (e.g., racial or religious vilification). This harmonisation is a necessary step to fully realise the rights of people with disabilities, especially in light of findings from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which highlighted the prevalence of ableist prejudice and the need for stronger legal safeguards<sup>15</sup>.

However, this Bill does not propose the inclusion of mental health status as a protected ground for vilification in the ADA. MHCC argue that people living with mental health challenges, their families and carers face significant stigma and discrimination, and that legal protections against vilification would help promote dignity and inclusion. We propose that the ADA must add mental health status and psychosocial disability as protected attributes under vilification laws and extend protections to families and carers who may face discrimination by association.

It is vital that the media should be accountable perpetuation of widespread stigma surrounding mental ill health, which leads to misconceptions about the risk posed by individuals experiencing mental health issues. This would be assisted if the ADA were to include mental health as a protected attribute alongside the other recommended anti-vilification protections recommended<sup>16</sup>.

## 6. Does the ADA have adequate protections against sexual harassment and should the Act cover harassment, based on other protected attributes?

While the ADA does prohibit sexual harassment, the definitions and scope may not be as comprehensive or coherent as in the *Sex Discrimination Act 1984* (Cth).

There is limited enforcement power and no positive duty on employers to proactively prevent harassment (unlike in recent federal reforms). Consequently, people exposed to sexual harassment may face barriers to reporting, especially in small workplaces or informal settings and particularly in relation to intersectional aspects, where protections are less than adequate.

The ADA must include clear definitions of harassment across all protected attributes and include a positive duty to prevent all forms of harassment. It covers multiple protected attributes, but harassment protections are not uniformly applied; and the ADA does not align NSW law with national standards and international human rights obligations.

## 7. Should the ADA include positive obligations to prevent harassment, discrimination, vilification, and to make reasonable adjustments to promote full and equal participation in public life?

The ADA does not currently include explicit positive obligations for individuals or organisations to proactively prevent harassment, discrimination, or vilification, nor does it mandate reasonable adjustments to promote full and equal participation in public life. The Act primarily operates through a complaints-based model, whereby individuals must lodge complaints with the Anti-Discrimination Board of NSW.

There is no legal requirement for employers or service providers to take proactive steps to prevent discrimination or harassment and reasonable adjustments (e.g., for people with disabilities) are not clearly mandated in the Act, unlike in federal legislation such as the *Disability Discrimination Act 1992* (Cth).

Federal reforms (e.g., the *Sex Discrimination Act* now include a positive duty on employers) and International human rights standards, emphasise proactive inclusion and if similarly adopted, reforms to the ADA would significantly strengthen protections and promote proactive inclusion across NSW <sup>17</sup>.

## 8. Are there any exceptions, special measures and exemption processes that might apply to people with mental health conditions and psychosocial disability in the ADA?

The NSW Anti-Discrimination Board can grant temporary exemptions under [Section 126 of the Act](#) which allows organisations to implement positive measures that might otherwise be considered discriminatory, but are intended to improve access to jobs, services, or programs for disadvantaged groups—including people with disabilities. While not always framed as "exemptions," the law requires reasonable adjustments to be made for people with disabilities, including those with mental health or psychosocial disability. This includes changes to policies, procedures, or environments to ensure equal participation.

The ADA supports special measures (also known as positive discrimination) to promote substantive equality. These are lawful actions taken to assist people with disabilities to overcome disadvantage or meet their specific needs. However, MHCC call for stronger protections and clearer obligations under the Act, including positive duties to prevent discrimination and provide reasonable adjustments.

The ADA must contain positive duties on relevant duty holders as identified in the ADA, to provide reasonable adjustments and to prevent and eliminate discrimination up to the point of ‘unjustifiable hardship’<sup>18</sup>. It should also state that an aim or purpose of the Act is to encourage a “*preventative culture*” towards discrimination amongst all members of the community not just those in the public sphere or who are otherwise identified as having a specific duty to prevent discrimination, in line with the Australian Human Rights Commission’s Free and Equal model<sup>19</sup>.

## The relationship between the ADA and the NSW Mental Health Act 2007

Under the [Mental Health Act 2007 NSW](#) (MHA) there are several provisions that serve as exceptions, special measures, and safeguards for people with mental health conditions and psychosocial disabilities. It contains special provisions for involuntary treatment including exemptions from certain legal obligations during periods of acute illness and safeguards for rights and advocacy.

While the Act itself does not use the term “*exemptions*” in the same way as the ADA, it does allow for:

- Flexible treatment pathways based on individual needs
- Legal safeguards to ensure that treatment is justified, reviewed, and respectful of rights
- Community Treatment Orders (CTOs) that serve as alternatives to detention, tailored to individual circumstances and focused on keeping people well in the community.

The Objectives and Principles of the MHA specifically state that it should:

- Promote recovery and care for mentally ill or mentally disordered persons
- Protect civil rights while ensuring access to appropriate care
- Encourage voluntary treatment where possible
- [Make concerted efforts to ensure that] carers and family members have rights to be involved in treatment decisions and can request reviews or discharge of patients.

Involuntary treatment is allowed only under strict criteria, such as risk to self or others, and must follow legal procedures. Detention must be based on assessments by accredited professionals, and there are limits on how long someone can be detained without review. Limited detention for “*Mentally Disordered Persons*” as defined under the MHA can only be detained for short periods (up to 3 days), with strict review processes in place.

Independent inquiries and regular reviews by the Mental Health Review Tribunal ensure oversight and protection of “*patient rights and patients*” and they can appeal decisions and request discharge through various channels. CTOs allow for treatment in the community rather than in hospital, promoting a level of autonomy and safe transition back into the community following discharge from inpatient settings. These orders are subject to review and must meet specific criteria to be issued. The Act includes provisions to prevent misuse of mental health powers, such as prohibiting detention based solely on unusual behaviour or beliefs and strictly requires medical examinations and documentation for detention.

Despite these provisions intended to ensure an individual’s rights are preserved under the MHA, many individuals interacting with the mental health service system feel that their human rights are flagrantly ignored, specifically because anti-discrimination laws are overridden by the superior power of the MHA. Consumers suggest that their rights should be equitable to that of patients seeking treatment in other health contexts.

However, the MHA provisions override ADA protections in situations involving public safety or clinical necessity, raising concerns about civil liberties, and because they serve different but sometimes overlapping purposes; this can lead to issues of principal authority and tensions between them.

Because these are matters of discrimination versus clinical judgment, i.e., the ADA prohibits discrimination in employment, housing, and services whilst the MHA allows clinical discretion in treatment decisions, which may include actions that could be perceived as discriminatory (e.g., forced medication or exclusion from services – consumers frequently consider that their anti-discrimination rights are violated by decisions made under the MHA; and legal recourse can be limited due to the MHA's authority.

A positive duty under the ADA to proactively prevent discrimination and a better alignment between the ADA and MHA would go some way towards ensuring that mental health care does not come at the expense of human rights. As things stand the 'exceptions' often represent a barrier to building trust between consumers and treating professionals and the system; often leading to consumer disengagement with services at all levels of the service system, and poor mental health outcomes.

It is unfortunate that there is no formal mechanism to reconcile conflicts between the two Acts, which can lead to fragmented service delivery, where rights under one Act are not upheld due to obligations under the other<sup>20</sup>. A creative solution to this tension is eagerly sought by consumers, carers, and the mental health sector.

## 9. How adequate and accessibility are complaints procedures and remedies?

The complaints procedures and remedies under the ADA are accessible and free, and complaints can be submitted via an online form, letter, or email, and translated forms are available in community languages. Complaints can be made by individuals, representatives (e.g., unions), or on behalf of someone (e.g., a child or person with a disability who cannot lodge it themselves) and complaints are kept confidential between the complainant and the respondent. Nevertheless, there are limitations in terms of adequacy and effectiveness.

[Anti-Discrimination NSW \(ADNSW\)](#) uses conciliation to resolve complaints. This is a voluntary process where both parties try to reach an agreement. ADNSW cannot make binding decisions or enforce remedies. If conciliation fails, complainants must escalate to the NSW Civil and Administrative Tribunal (NCAT). Remedies may include apologies, policy changes, or compensation, but only if agreed upon or ordered by NCAT.

The ADNSW does not impose a positive duty on organisations to prevent discrimination proactively and cannot compel compliance or impose penalties. Complaints can take time to resolve, especially if they proceed to NCAT. Individuals, especially those with psychosocial disabilities, or developmental impairments may face barriers in understanding or navigating the process, especially when they are unable to access the supports they need.

Improving the complaints procedures and remedies under the ADA involves addressing structural and procedural limitations. ADNSW cannot make binding decisions or impose penalties. It only facilitates conciliation, and the process can be lengthy and complex, especially if escalated to NCAT. There needs to be clearer timelines, a reduction to administrative delays, and the provision of case management support for complainants.

People with disabilities, language barriers, or limited legal knowledge may struggle to navigate the system. They may need advocacy support or legal assistance earlier in the process, and be offered in-person, phone, and digital lodgement options with accessibility features, as well as more 'Easy Read' and translated materials.

MHCC strongly endorse the need for trauma-informed, accessible, and culturally safe complaints processes, and the removal of procedural barriers that prevent complex or intersectional complaints proceeding. There is also a need to provide comprehensive supports for people with cognitive or developmental difficulties wanting assistance to navigate legal systems. It is vital that the capacity and skills of support workers and clinical staff are built through the availability of specific training in supported decision-making (SDM). (Note: MHCC is an Registered Training Organisation and provider of [SDM training](#) for people working in a mental health/psychosocial disability context).

Characteristically, people are unaware of their rights or how to complain; and the ADA is reactive, relying on individuals to lodge complaints. A positive duty is needed to ensure employers and service providers have mechanisms in place to prevent discrimination proactively.

The ADA primarily functions by responding to individual complaints of discrimination after they occur, rather than proactively preventing discrimination before it happens. The ADA does not empower ADNSW to investigate systemic issues or intervene unless a complaint is filed. This limits its ability to address widespread or institutional discrimination unless individuals come forward. Since remedies are limited and often depend on conciliation or NCAT decisions - there should be room for broader remedies, including systemic change orders and an increase in the compensation cap and allow for public interest outcomes (e.g., policy changes).

## 10. Are the powers and functions of the Anti-Discrimination Board of NSW (ADNSW) and its President, including potential mechanisms to address systemic discrimination effective?

ADNSW is an independent statutory body established under the ADA through which it receives and investigates complaints of discrimination, harassment, and vilification. It also has a role in conciliating disputes between complainants and respondents. It also provides education and training to promote anti-discrimination awareness. It can also grant temporary exemptions under Section 126 to allow special measures. However, ADNSW does not have enforcement powers, meaning it cannot make binding decisions or compel compliance. If conciliation fails, complaints must be escalated to the NSW Civil and Administrative Tribunal (NCAT).

The ADNSW can only act on individual complaints, limiting its ability to investigate or intervene in systemic issues unless patterns emerge. There is no formal mandate for proactive audits or systemic investigations and the President's role is largely administrative and conciliatory, not judicial or regulatory.

The question of whether the ADNSW and its President have adequate powers to address systemic discrimination, and whether the Act should include positive obligations to prevent discrimination and promote equality, and how accessible and adequate are the complaints procedures and remedies reflects growing recognition that the current framework is reactive and may be insufficient to tackle institutional or widespread discrimination.

Improving the effectiveness of ADNSW and its President's powers involves addressing several structural and legislative limitations. We suggest that there is need to introduce a positive obligation on employers and service providers to actively prevent discrimination, harassment, and vilification.

MHCC agree with the ADNSW's proposal that they must be granted powers to conduct proactive investigations into patterns of discrimination across sectors or organisations and provided with the authority to issue compliance notices, binding conciliation agreements, or refer cases directly to NCAT with stronger enforcement options<sup>21</sup>.

By updating the ADA to reflect contemporary understandings of discrimination, intersectionality and including new protected attributes, many individuals, especially with psychosocial disabilities, will face fewer barriers in lodging complaints. People will also be assisted better if the ADA is funded to provide advocacy support and legal assistance and have increased access to funding for resources, including for community outreach and education programs.

## 11. How do the protections, processes and enforcement mechanisms that exist in other Australian and international anti-discrimination and human rights laws, and other NSW laws affect the NSW ADA?

The ADA is influenced by and interacts with other Australian and international anti-discrimination and human rights laws, as well as other NSW laws. These relationships can both enhance and highlight limitations in the ADA's protections, processes, and enforcement mechanisms.

Laws like the *Disability Discrimination Act 1992*, *Sex Discrimination Act 1984*, and *Racial Discrimination Act 1975* provide broader protections and stronger enforcement mechanisms than the NSW ADA in some areas. These federal laws often include positive duties to prevent discrimination; stronger remedies, including enforceable orders and compensation, and national consistency, which can highlight gaps in the NSW law.

Treaties like the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and International Covenant on Civil and Political Rights (ICCPR) set global benchmarks for equality and non-discrimination. These standards encourage proactive obligations on governments and institutions, systemic approaches to discrimination and inclusive definitions of disability and discrimination.

In the NSW context, laws such as the *NSW Mental Health Act 2007* and *Work Health and Safety Act 2011* intersect with the ADA, especially in areas like psychosocial disability and workplace discrimination. They may offer additional protections or conflicting procedures, requiring better integration and clarity<sup>22</sup>.

In considering the interface between all these acts and standards our key areas of concern include:

- Ensuring NSW laws align with federal and international standards
- Updating definitions, protected attributes, and enforcement tools
- Learning from jurisdictions with Human Rights Acts (e.g., Victoria, ACT) that include positive duties and systemic oversight.

## 12. The interaction between the ADA and Commonwealth anti-discrimination laws and International Treaties

The idea of consolidating and streamlining anti-discrimination laws has been discussed to address the complexities and inconsistencies. MHCC appreciate that there are challenges in achieving complete alignment due to differing legislative priorities and the need to balance national consistency with local needs.

While Australian anti-discrimination laws aim to protect individuals from discrimination, the concurrent operation of federal and state/territory laws unfortunately creates a complex landscape with variations in coverage and procedures. Whilst there are ongoing efforts aimed at improving harmonisation and clarity, individuals and businesses need to be aware of the specific laws applicable to their situation<sup>23</sup>.

In the meantime, people who are already marginalised on account of their lived experience of mental health challenges and psychosocial disability, including people with coexisting conditions and cognitive impairment are further disadvantaged. MHCC advocate that the amended legislation clearly explains the interface between these different instruments especially as there are numerous Commonwealth Acts that cover aspects of discrimination also included in the NSW ADA.

## 13. Other matters relevant to the Terms of Reference

In addition to the points raised in this submission, MHCC take several points from the Commission's earlier consultations, and support recommendation to include provisions in the ADA that:

- Promote Substantive Equality that allow for a move from formal equality (treating everyone the same) to substantive equality, which considers systemic disadvantage and real-world impacts, and introduces positive duties for employers and service providers to prevent discrimination proactively.
- Make intersectionality and mental health awareness training available for public servants, educators, and frontline workers supported by community-led education campaigns to raise awareness of rights and supports.
- Expand vilification protections to include attributes like disability, mental health, neurodiversity and gender identity, and provide both civil and criminal remedies for hate speech and harassment.

## Concluding comments

This review represents an important opportunity to modernise NSW's anti-discrimination law and ensure that it reflects the realities of people living with mental health challenges, psychosocial disability and intersecting identities.

We have reviewed relevant literature and consulted other stakeholders for the purposes of this inquiry and acknowledge their contributions to this submission.

MHCC thanks the Commissioners for this opportunity to comment on the important issues to be considered in this review of the Anti-Discrimination Act 1977 (NSW). We also express our appreciation for the invitation to meet the Commissioners and consult in person, which greatly assisted us in providing this submission.

We look forward to the final report and the Government's response.

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This submission also refers to contents from papers provided by the NSW Law Reform Commission:

NSW Law Reform Commission 2025, *Anti-Discrimination Act Review – Consultation Paper on Unlawful Conduct*. Available at: [https://lawreform.nsw.gov.au/documents/Current-projects/ada/cp24/ADA\\_CP24.pdf](https://lawreform.nsw.gov.au/documents/Current-projects/ada/cp24/ADA_CP24.pdf)

This paper outlines the scope of the review, including definitions of discrimination, vilification, and victimisation, and raises questions about intersectionality and systemic disadvantage.

NSW Law Reform Commission 2025, *Community Summary – Anti-Discrimination Act Review*. Available at: [https://lawreform.nsw.gov.au/content/dam/dcj/law-reform-commission/documents/Current-projects/ada/cp24/ADA\\_CP24\\_Summary.pdf](https://lawreform.nsw.gov.au/content/dam/dcj/law-reform-commission/documents/Current-projects/ada/cp24/ADA_CP24_Summary.pdf)

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NSW Law Reform Commission Website – Anti-Discrimination Act Review.

Available at: <https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review.html>

This page includes submission guidelines, and links to all key documents including the Easy Read version.



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