



Jesuit
Social Services
Building a Just Society

Unlawful conduct under the Anti-Discrimination Act

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

August 2025

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of people, community, land and all life.

For further information, contact:

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Jesuit Social Services: Who we are and what we do

Jesuit Social Services is a social change organisation. For almost 50 years we have been delivering support services and advocating for improved policies, legislation and resources to achieve a just society where all people can thrive. We are a national organisation with a significant footprint in Victoria, New South Wales and the Northern Territory, where we work with some of the most marginalised individuals and communities.

We work with young people and adults who have contact with the justice system and offer diversion, restorative group conferencing, and transitional and intensive support. We also deliver programs in violence prevention and early intervention, housing, mental health, education, training and employment. All these programs are focused on delivering outcomes for people facing significant disadvantage.

Since 2016 we have supported more than 8,000 jobseekers in Victoria facing complex barriers into employment. We have developed an effective employment model that bridges the gap between employers and excluded jobseekers – including those with criminal justice system contact – to create employment opportunities and increase productivity.

Our work in New South Wales

Since 2008, Jesuit Social Services has been building on the strengths of Western Sydney communities to support them to break out of the cycle of disadvantage. We use a place-based, community development approach to support community members to develop local solutions to local problems. We currently support the community in two key ways:

- **Community building** – including through the Willmot Community Hub, a thriving community centre offering a range of programs to local residents; and Pathways to Participation, through which we employ local people and engage a team of local volunteers to provide pathways to enhanced community participation, skill building and employment.
- **Social enterprises centred around food security and ecological justice** – including the Ignite Food Store, Currawong Kitchen, and The Open Pantry.

Jesuit Social Services is a member of the 'Together in 2770' collective, a group of organisations working across the 2770 postcode in Mt Druitt to create structural and systemic change, with a deep focus on community-led advocacy. The collective's current advocacy priorities are public transport, housing and infrastructure.

We are also a member of Keeping Women Out Of Prison (KWOOP), an independent coalition comprised of individuals and organisations including service providers, philanthropic and not-for-profit organisations, universities and women with lived experience of the criminal legal system. KWOOP's vision is for better outcomes for women and children affected by the criminal legal system.

Submission

Jesuit Social Services welcomes the opportunity to respond to the NSW Law Commission's review of the *Anti-Discrimination Act 1977* (NSW) (the ADA).

Our submission focuses on question 5.2 from the consultation paper, *Potential new attributes*, and discrimination experienced by individuals who have had contact with the criminal justice system. It draws on our place-based, community-led work in Western Sydney, based in Willmot and Emerton (Mt Druitt), as well as our delivery of employment services programs and our work with people in contact with the justice system, including people who have been in prison.

The submission details employment-related discrimination experienced by individuals in NSW who have a criminal record, the way this discrimination impacts their ability to participate in the workforce, as well as broader ramifications.

For the reasons set out below we support the addition of a new protected category in the ADA, 'irrelevant criminal record', as highlighted in the consultation paper. In saying this, we emphasise that the safety of the community – and particularly its most vulnerable members, including children – should always be paramount. We recognise there are instances where an individual's criminal history is relevant to and should be taken into account in hiring decisions – for example, a dangerous driving conviction for someone applying to work as a bus or truck driver. However, we propose a default position that criminal history not be a factor in hiring decisions.

5.2 (1) Should any protected attributes be added to the prohibition on discrimination in the ADA? If so, what should be added and why?

Jesuit Social Services recommends the addition of a new protected category in the ADA, 'irrelevant criminal record'. This category would help to address the issues identified below regarding employment discrimination experienced by individuals with a criminal record, and recognise the importance of employment as a protective factor against recidivism.

Discrimination experienced by people with justice system contact seeking to enter employment

People with prior involvement in the justice system face ongoing and deeply entrenched discrimination in employment, particularly due to the use of police checks in hiring processes. As a community service organisation working directly with some of the most marginalised individuals and communities in Western Sydney, we see firsthand how this discrimination exacerbates existing hardships, deepens cycles of disadvantage and increases the risk of recidivism.

Having a criminal record is not a reliable indicator of an individual's trustworthiness, skills or suitability for a job,¹ but Australian and international research demonstrates that criminal records can be a key factor in hiring decisions.² We work with community members who report being found unsuitable for job opportunities after being asked to undergo a police check, when they otherwise meet the role criteria and have positive references. This has been observed even when the offence occurred years earlier and has no bearing on their current character or the role they are applying for – for example sentences

¹ Ministry of Justice. (2023a). Employing prisoners and ex-offenders. London, UK. ([Weblink](#))

² Naylor et al. (2018). LIVING DOWN THE PAST: Criminal Record Checks and Access to Employment for Ex-offenders: Final Report. ([Weblink](#)); Porter et al. (2025). Employability perceptions and the disclosure of a violent offence. *Legal and Criminological Psychology*, 00, 1–20. ([Weblink](#)); Sugie et al (2019). Employer aversion to criminal records: An experimental study of mechanisms. *Criminology*, 58(1). ([Weblink](#))

related to substance misuse for which the person has subsequently gone through rehabilitation, or charges of theft that occurred in the context of severe financial hardship.

Where employers make decisions based on the existence of a criminal record, regardless of its context or relevance, people are locked out of meaningful work. They are pushed into low-paying, insecure, or undesirable jobs, even when they have the skills or qualifications to make a more meaningful contribution. The stigma attached to a criminal history can also mean jobseekers are excluded from sectors where their lived experience would be of great value, such as mental health or youth work.

Discrimination in hiring processes due to the use of police checks also disproportionately impacts groups who are overrepresented in the justice system. This includes First Nations people and other marginalised communities, who are often impacted by complex, systemic and entrenched disadvantage. Without clear guidelines around when it is or is not appropriate to require or rely on a police check, applicants are subject to the discretion of employers, perpetuating cycles of exclusion.

In NSW, one of the purposes for which a court may impose a sentence is to ensure that an offender is adequately punished for the offence.³ Once an individual has served their sentence, ongoing discrimination due to criminal history means they are effectively further punished through exclusion from employment and the associated impacts. Our program participants who have spent time in prison describe a feeling of being punished twice – once by the formal justice system, and then in an ongoing way because of the stigma and discrimination they experience when they return to the community.

Employment as a protective factor against reoffending

The discrimination experienced by people with a criminal record is of concern not only because it denies them equal and fair treatment, but also because employment is a strong protective factor against reoffending. Employment prospects are also a major factor in a person's ability to find safe and secure housing – itself another important protective factor against recidivism. The challenges of finding secure, affordable housing are compounded when an individual is forced into low-paying, insecure employment.

The NSW Bureau of Crime Statistics and Research's (BOCSAR's) 2021 Report on Vocational Training, Employment and Recidivism points to emerging evidence that recidivism of those who have been incarcerated is linked to improving their educational outcomes and their ability to find stable employment post-release.⁴ The report also found that participating in a traineeship is associated with large and statistically significant reductions in recidivism within 12 months of release from prison. A 2017 Corrective Services NSW report that explored vocational training in custody similarly found that parolees who found employment in the post-release transitional period were more likely to stay employed and less likely to reoffend over time.⁵

This research aligns with Jesuit Social Services' experience working with jobseekers in Victoria who have been engaged with the criminal justice system. We have previously partnered with the Victorian Government to deliver the Jobs Victoria Mentors Service, providing personalised support to assist jobseekers improve their employability and source suitable opportunities. The employment model we have developed has proven particularly effective in supporting people engaged with the justice system by addressing the unique barriers they face – including developing relationships with employers themselves to address the stigma associated with a criminal record. Of people with justice system contact who were placed into employment through Jesuit Social Services' Jobs Victoria Mentors Service

³ Judicial Commission of NSW. *Purposes of sentencing*. ([Weblink](#))

⁴ Ooi (2021). Vocational training in NSW prisons: Exploring the relationship between traineeships and recidivism. BOCSAR. ([Weblink](#))

⁵ Lindeman et al (2017). Evaluation of vocational training in custody: Relationships between Training, Post-Release Employment and Recidivism. Corrective Services NSW. ([Weblink](#))

across 2023 and 2024, just 9.5% reappeared in the prison system.⁶ The average recidivism rate in Victoria is 46.9%.⁷

Our staff in Western Sydney are experienced in supporting community members who have contact with the justice system to find employment, including by providing extensive referee information, seeking to overcome the stigma associated with having a criminal record. For individuals without access to such support, the lack of clear anti-discrimination protections means they face complex and ongoing barriers to securing reliable employment.

Given the importance of employment as a protective factor against reoffending, there is a policy imperative for governments to support more people with justice system contact into secure employment.

5.2 (2) How should each of the new attributes that you have identified above be defined and expressed?

We argue that an individual who has met their sentence requirements (through community service, a prison sentence, or other conditions) should not have their criminal history considered as a factor in their employability, except where it is directly relevant to the position for which they are applying.

Other elements of the hiring process – for example interviews, referee checks and probationary periods – provide a more meaningful and equitable assessment of an individual’s suitability to undertake a specific role. In comparison, a police check is a blunt instrument which lacks information about the context in which an offence occurred, what rehabilitative action has subsequently been taken, or the character of the subject.

In defining ‘irrelevant criminal record’, we recommend the ADA set out (in the legislation or supporting materials) the specific conditions under which a criminal record is relevant and criteria for considering it in a hiring process – i.e. the specific industries or roles, and within those what specific criminal record would be of relevance to a hiring decision.

5.2 (3) If any new attributes were to be added to the ADA, would any new attribute-specific exceptions be required?

We acknowledge that there are some circumstances where an individual’s criminal record is relevant in determining their suitability to undertake a role, outweighing the otherwise fair treatment of a person – for example where there are legitimate community safety concerns, or legislative requirements associated with a role or sector. In recommending ‘irrelevant criminal record’ be added to the ADA as a protected attribute, we emphasise that the safety of the community – and particularly its most vulnerable members, including children – should always be paramount.

We recommend the Law Reform Commission consult further with people with lived experience of employment discrimination relating to criminal history, as well as industry bodies and other relevant experts to define a set of circumstances under which criminal record should lawfully be taken into account in a hiring decision.

⁶ Corrections Victoria unpublished data (2025).

⁷ Sentencing Advisory Council (2022-23). *Released Prisoners Returning to Prison*. ([Weblink](#))