

## CEW Submission to NSW Law Reform Commission

### About Chief Executive Women

Chief Executive Women's (CEW) purpose is 'women leaders empowering all women'. CEW's 1,400 members represent Australia's most senior and distinguished women leaders across business, academia, government, sport, the arts, and not-for-profit sectors. They oversee more than 1.3 million employees and \$749 billion in revenue. Members' organisations have a combined market capitalisation greater than \$1.144 trillion and contribute more than \$249 billion to Australia's GDP.

Since 1985, CEW has influenced and engaged all levels of Australian business and government to progress gender equity. Through advocacy, research, targeted programs and scholarships, CEW works to remove the barriers to women's progression, participation, safety and security.

### Acknowledgement

We acknowledge the Traditional Custodians of Country throughout Australia and pay our respect to their Elders past and present. CEW celebrates the diversity of First Nations people and their continuing connection to land, water and community, and acknowledges the strength of First Nations women leading their communities. We extend that respect to Aboriginal and Torres Strait Islander people who are part of the CEW community.

### Executive Summary

CEW welcomes the opportunity to contribute to the NSW Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW)<sup>1</sup>. As Australia's leading network of women in leadership, CEW recognises that effective anti-discrimination legislation is fundamental to achieving gender equality and creating inclusive workplaces and communities.

This submission addresses the Commission's terms of reference with particular focus on:

- The disproportionate impact of discrimination on women across all sectors of society.
- The compounding effects of intersectional discrimination affecting diverse groups of women.
- The critical importance of positive duty frameworks<sup>2</sup> in preventing discrimination.

---

• <sup>1</sup> NSW Law Reform Commission — Anti-Discrimination Act review: [https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review/\[1\]](https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review/[1])(<https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review.html>)

• Terms of Reference — NSW LRC: [https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review/terms-of-reference/\[2\]](https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review/terms-of-reference/[2])(<https://lawreform.nsw.gov.au/content/dcj/law-reform-commission/law-reform-commission-home/current-projects/anti-discrimination-act-review/anti-discrimination-act-review-terms-of-reference.html>)

<sup>2</sup> Respect@Work — Positive duty overview (AHRC/Respect@Work): <https://www.respectatwork.gov.au/new-positive-duty-employers-prevent-workplace-sexual-harassment-sex-discrimination-and-victimisation>

- The need for modernised legal tests and expanded protected attributes.
- International best practices that demonstrate effective anti-discrimination frameworks.

## Key Recommendations

1. **Implement comprehensive positive duty framework** across all protected attributes.
2. **Modernise discrimination tests** replacing comparator with unfavourable treatment test.
3. **Expand intersectional protection** enabling claims based on multiple protected attributes.
4. **Reform exception systems** with narrow, proportionate limitations.
5. **Strengthen enforcement mechanisms** with adequate resourcing and powers.
6. **Enhance accessibility** through streamlined complaints processes and support services.

### 1. Building a Culture of Safety and Prevention

The Federal Government has made significant progress in implementing a positive duty framework under the Sex Discrimination Act. This proactive approach requires employers to take "reasonable and proportionate measures" to eliminate sex discrimination, sexual harassment and victimisation, shifting responsibility from victims to organisational decision-makers.

With broad application across businesses of all sizes and government entities, and the Australian Human Rights Commission being empowered to enforce these duties, we have seen a significant positive impact on Australian Workplaces. Implementation data shows that over 7,000 employers are now subject to these requirements, covering more than 5 million Australian employees.<sup>3</sup> While nearly 100% have formal policies on workplace sexual harassment and discrimination, a critical gap remains with over 25% failing to monitor harassment prevalence despite having policies in place.<sup>4</sup>

#### The Impact on Women and Marginalised Communities

Women and marginalised communities are particularly vulnerable to harassment in the workplace, with 48% of women have experienced sexual harassment in the workplace, with many afraid to report due to fear of dismissal.<sup>5</sup> Digital harassment is increasing, with 26% of women experiencing workplace sexual harassment in 2021-2022.<sup>6</sup> Migrant and refugee

---

<sup>3</sup> WGEA Gender Equality Scorecard 2023-2024 <https://www.wgea.gov.au/publications/australias-gender-equality-scorecard>

<sup>4</sup> Australian Human Rights Commission: Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces [https://humanrights.gov.au/sites/default/files/document/publication/2022.11.25\\_time\\_for\\_respect\\_2022\\_final\\_digital.pdf](https://humanrights.gov.au/sites/default/files/document/publication/2022.11.25_time_for_respect_2022_final_digital.pdf)

<sup>5</sup> NSW Law Reform Commission — Anti-Discrimination Act review: [https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review\[1\]](https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review[1])

<sup>6</sup> Respect@Work — Positive duty overview (AHRC/Respect@Work): <https://www.respectatwork.gov.au/new-positive-duty-employers-prevent-workplace-sexual-harassment-sex-discrimination-and-victimisation>

women face compounded challenges with intersecting forms of discrimination, while women in leadership positions are disproportionately targeted.

Positive duty frameworks benefit women by establishing proactive workplace policies that prevent discrimination before it occurs, ensuring accommodation for pregnancy and caring responsibilities, creating inclusive services for diverse women's needs, and accelerating cultural change through unconscious bias training.<sup>7</sup>

Prevention is always better than cure, positive duties create environments where discrimination cannot take root, removing the unfair burden from victims who are often in vulnerable positions.

### **International Best Practice:**

International best practice illustrates how these proactive approaches drive meaningful cultural change rather than mere policy compliance.

The United Kingdom's Equality Act 2010 provides a model through its Public Sector Equality Duty framework<sup>8</sup>. This comprehensive approach establishes three core requirements for public bodies: eliminating discrimination, advancing equality of opportunity, and fostering good relations between different groups.<sup>9</sup> The UK model stands out for its proactive evidence-based approach, requiring organisations to give due regard to published evidence when making decisions.<sup>10</sup>

It also explicitly addresses intersectionality by mandating consideration of how policies affect people with multiple protected characteristics. To ensure accountability, equality objectives must be published and reviewed every four years, creating a cycle of continuous improvement and transparency.<sup>11</sup>

### **Australian Best Practice:**

NSW can also look to our domestic neighbours for best practice guidance. Victoria's Gender Equality Act 2021 provides an exemplary model for positive duty implementation with measurable outcomes.<sup>12</sup>

The Act establishes a comprehensive framework requiring workplace gender equality audits every four years, mandatory gender impact assessments for new policies, programs and services, and specific, time-bound gender equality indicators to track progress. The effectiveness of this approach is demonstrated through success stories like 'Victoria's Big

---

<sup>7</sup> AHRC — Guidelines for Complying with the Positive Duty (PDF):

<https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%20%282023%29.pdf>

<sup>8</sup> United Kingdom Government Equalities Office; **Equality Act 2010: guidance**  
<https://www.gov.uk/guidance/equality-act-2010-guidance>

<sup>9</sup> United Kingdom Government Equalities Office: **Public Sector Equality Duty: guidance for public authorities**  
<https://www.gov.uk/government/publications/public-sector-equality-duty-guidance-for-public-authorities>

<sup>10</sup> United Kingdom Government Equalities Office: **Public Sector Equality Duty: guidance for public authorities** <https://www.gov.uk/government/publications/public-sector-equality-duty-guidance-for-public-authorities>

<sup>11</sup> United Kingdom Government Equalities Office: **Public Sector Equality Duty: guidance for public authorities** <https://www.gov.uk/government/publications/public-sector-equality-duty-guidance-for-public-authorities>

<sup>12</sup> Victorian Government Commission for Gender Equality in the Public Sector; Gender Equality Act 2020  
<https://www.genderequalitycommission.vic.gov.au/about-us-and-gender-equality-act-2020>

Build' program, which included the West Gate Tunnel Project, which exceeded its 20% women target by successfully integrating over 400 women into diverse construction roles.<sup>13</sup>

**Recommendations for establishing a culture of safety and prevention:**

- **All protected attributes coverage** - race, age, disability, sexual orientation, religious belief should have positive duty requirements.
- **Industry-specific approaches** - tailor requirements to different workplace contexts.
- **Small business guidance** - provide scaled approaches based on organisational size and resources.
- **Regular review mechanisms** - mandatory assessment of positive duty effectiveness.

---

<sup>13</sup> Victoria's Big Build, Women in Construction Project <https://bigbuild.vic.gov.au/about/construction-procurement/social-procurement/women-in-construction>

## 2. Modernise the Regulatory Framework

Our existing anti-discrimination framework fails to meet community needs. As the oldest such legislation in Australia<sup>14</sup>, the Act requires modern, dynamic solutions to address contemporary discrimination issues. Complex legal tests create significant barriers to justice, particularly for vulnerable women. The current system forces women with intersecting marginalisations to choose which type of discrimination to challenge rather than addressing their full experience.

International evidence clearly demonstrates that modernised frameworks lead to both increased prevention and more successful resolution of complaints, creating better outcomes for all parties involved.

### **The Current Regulation Framework does not meet the needs of the community.**

The current NSW anti-discrimination framework is hampered by outdated discrimination tests and protected attributes gaps that create significant barriers to justice. The existing comparator test is overly complex, requiring complainants to find appropriate comparators in similar circumstances, while failing to effectively capture unconscious or systemic bias.<sup>15</sup> Indirect discrimination claims face additional hurdles through "disproportionate impact" tests requiring complex statistical evidence difficult for individual complainants to provide, with complainants also bearing the unreasonable burden of proving the unreasonableness of discriminatory requirements.

Protected attributes coverage suffers from outdated terminology (such as "homosexuality" instead of "sexual orientation"), missing protections for bisexuality, asexuality, intersex status, and gender identity as distinct attributes, limited religious discrimination protection (only through "ethno-religious origin"), and no protection for contemporary issues like domestic violence status, irrelevant criminal record, and physical appearance.<sup>16</sup>

### **International Best Practice**

International approaches offer valuable guidance for modernising anti-discrimination frameworks. Canada's Human Rights Act amendments provide comprehensive protection for gender identity and expression across federal employment, services, and housing while requiring courts to consider multiple-ground discrimination through an intersectional lens.<sup>17</sup> The Canadian system emphasises patterns of systemic discrimination rather than individual intent and explicitly permits special programs to address historical disadvantage.

Similarly, New Zealand's Human Rights Act 1993 offers robust protections covering diverse employment arrangements including casual, contract and volunteer work. It also contains comprehensive family status definitions encompassing various family structures, age discrimination protection without upper limits, and disability definitions that recognise fluctuating and episodic conditions often invisible to others.<sup>18</sup>

---

<sup>14</sup> Australian Human Rights Commission- Free and Equal: A reform agenda for federal discrimination laws [https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_free\\_equal\\_dec\\_2021.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_free_equal_dec_2021.pdf)

<sup>15</sup> NSW Law Reform Commission — Anti-Discrimination Act review: <https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

<sup>16</sup> NSW Law Reform Commission — Anti-Discrimination Act review: <https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

<sup>17</sup> Canadian Human Rights Act, R.S.C 1985 <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html>

<sup>18</sup> New Zealand Human Rights Act 1993 <https://www.legislation.govt.nz/act/public/1993/0082/latest/dlm304212.html>

## Reform is needed

Modernised discrimination tests significantly benefit women at all stages of life.<sup>19</sup> Including:

- Simplifying pregnancy discrimination claims through an unfavourable treatment test that eliminates the need for male comparators.
- Caring responsibilities receive better protection as the indirect discrimination disadvantage test more effectively captures workplace inflexibility impacts.
- Sexual harassment claims become more straightforward by focusing on the treatment received rather than requiring complex comparative analysis.

Importantly, women can pursue intersectional claims on multiple grounds simultaneously.

- Expanded protected attributes provide critical protections through domestic violence status inclusion, enabling women to access employment and services while experiencing or recovering from violence.
- Religious belief protection safeguards women of faith while maintaining gender equality rights, while physical appearance protection addresses workplace discrimination that disproportionately affects women.
- Gender identity inclusion protects transgender women and gender diverse people.

These reforms particularly benefit specific intersectional groups:

- Aboriginal and Torres Strait Islander women gain from enhanced racial discrimination protections combined with sex discrimination coverage.
- Women with disabilities benefit from improved definitions capturing invisible conditions.
- Culturally and linguistically diverse women are protected through combined religious belief, race and sex protections.
- Older women receive critical protection against age discrimination as they face retirement insecurity.

## Recommendations

This review presents an opportunity to meet the needs of the modern community:

- **Replace Comparator with Unfavourable Treatment Test:** Victoria, ACT, and Queensland models have proven effective in reducing complexity and improving access to justice. These approaches focus on the treatment received rather than requiring complainants to find hypothetical comparators. These better capture unconscious bias by recognising that discrimination often occurs without conscious comparative decision-making.<sup>20</sup> The reduced evidentiary burden means complainants need only show unfavourable treatment because of a protected attribute, making the process more accessible and fairer.
- **Adopt Disadvantage Test for Indirect Discrimination:** CEW recommends that the Commission reform the indirect discrimination test by removing the disproportionate impact requirement and replacing it with a simpler disadvantage test. This would require complainants to show only that a requirement or condition disadvantages people with a protected attribute.<sup>21</sup>

<sup>19</sup> Australian Human Rights Commission; Inquiry into the effectiveness of the Sex Discrimination Act 1994 (cth) <https://humanrights.gov.au/our-work/legal/inquiry-effectiveness-sex-discrimination-act-1984-cth-eliminating-discrimination-0>

<sup>20</sup> Human Rights Law Centre: Submission to the Senate Legal and Constitutional Affairs Committee on the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 <https://www.hrlc.org.au/app/uploads/2025/04/Submission-on-Amendments-to-Disability-Discrimination-Act.pdf>

<sup>21</sup> NSW Law Reform Commission — Anti-Discrimination Act review: <https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

Additionally, we recommend shifting the burden of proof so respondents must demonstrate the reasonableness and proportionality of their requirements. This reformed test would work effectively for people with multiple protected attributes, supporting intersectional claims, and would align with international standards consistent with the UN human rights framework approach.<sup>22</sup>

**Expand Protected Attributes:**

- **Contemporary Terminology:** We recommend modernising protected attributes terminology to align with contemporary understanding of diversity. This includes replacing "homosexuality" with sexual orientation to inclusively cover lesbian, gay, bisexual, pansexual, and asexual identities; updating "transgender grounds" to gender identity to better recognise diverse gender experiences; adding sex characteristics as specific protection for intersex people; and establishing religious belief or activity as a distinct category separate from ethno-religious origin.<sup>23</sup>
- **Additional Protections:** Expanding protected attributes to include domestic and family violence status is critical for women's workforce participation and service access, while irrelevant criminal record protection removes barriers to employment and housing for people who have served their time.<sup>24</sup>

---

<sup>22</sup> NSW Law Reform Commission — Anti-Discrimination Act review:

<https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

<sup>23</sup> Australian Human Rights Commission: Terminology <https://humanrights.gov.au/our-work/sex-discrimination/terminology>

<sup>24</sup> NSW Law Reform Commission — Anti-Discrimination Act review:

<https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

### 3. Improve the Practical Application of Laws

The NSW anti-discrimination framework faces two significant operational challenges:

- NSW allows exceptions for all private schools regardless of religious affiliation; religious exceptions are too broad, covering harassment and vilification beyond employment; exceptions lack reasonableness tests; and taxpayer-funded organisations can discriminate against taxpayers.<sup>25</sup>
- Key coverage gaps exist: gig economy (unprotected workers in flexible arrangements); volunteer work (limited protections for unpaid participation); government administration (inconsistent decision-making/service delivery coverage); and digital spaces (online harassment and algorithmic discrimination lack clear remedies).<sup>26</sup>

Exceptions should be exceptional, not the result of outdated workplace assumptions that inadvertently exclude people from the community. This review provides NSW an opportunity to support women who face multiple forms of discrimination through comprehensive, not fragmented, legal responses and to develop a best practice approach to the practical application of law.

#### **Reforming the exception system would provide significant benefits for women across multiple domains and across their life course**

- Educational access would be protected for pregnant students and young mothers who could no longer be excluded from publicly funded private schools.<sup>27</sup>
- Women in religious organisations would gain protection from sex discrimination while still respecting genuine religious requirements.<sup>28</sup>
- Service access would improve as women could not be denied healthcare, social services, or accommodation based on marital status or family structure. LGBTIQ+ women would particularly benefit from limits on religious exceptions.<sup>29</sup>

Expanding coverage would also create substantial advantages:

- Increasing numbers of women in flexible work arrangements would gain discrimination protection in the gig economy.<sup>30</sup>

---

<sup>25</sup> NSW Law Reform Commission — Anti-Discrimination Act review:  
<https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

<sup>26</sup> NSW Law Reform Commission — Anti-Discrimination Act review:  
<https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review>

<sup>27</sup> Australian Human Rights Commission: The rights and needs of young parents and their children: Summary of key findings from the Children's Rights Report 2017  
[https://humanrights.gov.au/sites/default/files/AHRC\\_CRR\\_2017\\_Summary.pdf](https://humanrights.gov.au/sites/default/files/AHRC_CRR_2017_Summary.pdf)

<sup>28</sup> Australian Human Rights Commission: Religious Educational Institutions and Anti Discrimination Laws  
[https://humanrights.gov.au/sites/default/files/submission\\_alrc\\_religious\\_educational\\_institutions\\_review\\_0.pdf](https://humanrights.gov.au/sites/default/files/submission_alrc_religious_educational_institutions_review_0.pdf)

<sup>29</sup> Australian Human Rights Commission: Religious Educational Institutions and Anti Discrimination Laws  
[https://humanrights.gov.au/sites/default/files/submission\\_alrc\\_religious\\_educational\\_institutions\\_review\\_0.pdf](https://humanrights.gov.au/sites/default/files/submission_alrc_religious_educational_institutions_review_0.pdf)

<sup>30</sup> COOK, CODY, et al. "The Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers." *The Review of Economic Studies*, vol. 88, no. 5 (322), 2021, pp. 2210–38.  
<https://www.jstor.org/stable/27164113>

- Women maintaining professional networks during career breaks would receive protection in volunteer work.<sup>31</sup>
- Protection against online harassment and algorithmic bias would address digital discrimination affecting women's employment and service access.<sup>32</sup>
- Comprehensive coverage would ensure women can access government services without discrimination.

These operational improvements would be particularly beneficial from an intersectional perspective, allowing women to bring claims combining sex with other attributes, addressing patterns of discrimination affecting particular groups of women, benefiting women with disabilities, caring responsibilities and religious requirements, and ensuring diverse women's voices are heard in policy development.

### **International best practice:**

International approaches provide valuable models for anti-discrimination frameworks.

- Ireland's Employment Equality Act and Equal Status Act<sup>33</sup> offer comprehensive protection across nine grounds including family status, sexual orientation, and civil status, with mandatory reasonable accommodation for people with disabilities, clear employer liability for discrimination, and explicit recognition of multiple discrimination grounds.
- Scotland's implementation of the Equality Act 2010 features a comprehensive public sector equality duty covering policy development, procurement, employment, and service delivery, with mandatory equality impact assessments for major decisions, biennial progress reporting requirements, and meaningful community consultation in policy development.<sup>34</sup>
- Ontario's Human Rights Code recognises constructive discrimination where neutral policies have discriminatory effects, requires accommodation to the point of undue hardship, empowers the Human Rights Tribunal to order systemic changes beyond individual remedies, and provides detailed guidance on human rights compliance in policy development.<sup>35</sup>

### **Recommendations:**

#### **Expanding Coverage to Modern Work and Digital Spaces:**

CEW recommends expanding anti-discrimination protection to modern work arrangements by including gig economy workers (contractors, freelancers), volunteers, work-related environments (social functions, client sites, remote work), and professional networks. Government and digital spaces need protection covering government services, algorithmic discrimination, online platform content, and digital accessibility to ensure equal participation in today's increasingly digital society.<sup>36</sup>

---

<sup>31</sup> ILO: Analysis of the Effect of Flexible Working Styles on Women's Employment and Decent Work <https://www.ilo.org/sites/default/files/2024-12/FINAL%20-%20v3%20-%20ENG-ILO-Esnek%20Cal%C4%B1sma%20Bicimleri%20ile%20Kad%C4%B1n%20I%CC%87stihdam.pdf>

<sup>32</sup> Parliament of Australia: Inquiry into the digital transformation of workplaces <https://www.aph.gov.au/DocumentStore.ashx?id=5d74e470-341c-479f-a741-30cb8a24b889&subId=760877>

<sup>33</sup> Irish Human Rights and Equality Commission: Human Rights Act and Equal Status Act <https://www.ihrec.ie/>

<sup>34</sup> UK Public General ActsL Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>35</sup> Ontario; Human Rights Code, R.S.O. 1990, c H.19 <https://www.ontario.ca/laws/statute/90h19>

<sup>36</sup> NSW Law Reform Commission — Anti-Discrimination Act review: <https://www.lawreform.nsw.gov.au/projects/anti-discrimination-act-review/> and Australian Human Rights Commission: New Guidelines to help providers of digital tech meet accessibility obligations <https://humanrights.gov.au/about/news/media-releases/new-guidelines-help-providers-digital-tech-meet-accessibility-obligations>

**CEW** Women Leaders  
Empowering  
All Women

## 4. Enhance Access to Justice

CEW welcomes recent progress in gender equality legislation in Australia, including a stronger, more cohesive approach to applying an intersectional gender lens to policy, legislation, and practice. However, the practical application of legislation can sometimes weaken the good faith intent behind its creation. In some cases, complex processes effectively deny women their right to equality. While individual complaints are important, systemic change is essential for gender equality. Women shouldn't have to choose between financial security and challenging discrimination. Women often face multiple barriers to justice that require comprehensive support.

The current system creates significant barriers to justice. Complainants face a confusing web of agencies (federal AHRC, state ADB NSW, industrial tribunals) with disparate processes. A major representation imbalance exists - only 47% of complainants have legal representation versus 89% of respondents.<sup>37</sup> The 12-month filing deadline is insufficient for complex cases or delayed harm recognition. The system lacks mechanisms to stop ongoing discrimination during complaints, focuses on individual rather than systemic remedies, exposes complainants to financial risk through potential costs liability, and fails to address fundamental power imbalances between vulnerable individuals and well-resourced respondents.

The system struggles with intersectional complexity where multiple forms of discrimination affect diverse women simultaneously. Women face unique barriers to accessing justice under the current system. In the workplace, many fear retaliation while being economically dependent on discriminating employers.<sup>38</sup> Time constraints due to caring responsibilities make navigating complaint processes challenging, and trauma from sexual harassment requires sensitive handling.

Enhanced access to justice would benefit women through legal support regardless of financial resources, addressing systemic workplace cultures, providing interim protection during complaint processes, and enabling representative claims for pattern discrimination.

Improvements should include cultural competency training for complaint handlers, multiple language support for CALD women, disability accessibility features, and remote access options. Specific supports are needed for Aboriginal and Torres Strait Islander women (culturally appropriate processes recognising kinship obligations), women with disabilities (accessible formats with reasonable adjustments), migrant and refugee women (support regardless of visa status with protection against immigration retaliation), and LGBTIQ+ women (confidentiality protections where disclosure could cause harm).<sup>39</sup>

### International Best Practice

Successful international models offer valuable frameworks for anti-discrimination reform:

---

<sup>37</sup> UNSW, Gaze and Hunter; Access to justice for discrimination complainants: Courts and legal representation <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/32-3-19.pdf>

<sup>38</sup> Australian Human Rights Commission: Speaking from Experience Project <https://humanrights.gov.au/our-work/sex-discrimination/projects/speaking-experience-project>

<sup>39</sup> Australian Human Rights Commission; Speaking from experience project <https://humanrights.gov.au/our-work/sex-discrimination/projects/speaking-experience-project>

- The UK Equality and Human Rights Commission uses strategic litigation, formal investigations into discriminatory practices, compliance notices, and judicial review of government policies.<sup>40</sup>
- Canada's Human Rights System features an investigative model where the Commission represents complainants, initiates complaints about discrimination patterns, provides interim relief, and issues remedial orders for hiring, promotion, and policy changes.<sup>41</sup>
- Northern Ireland's Equality Commission implements a good relations duty between groups, mandatory equality impact assessments, legal support for public interest cases, and formal investigations into discrimination patterns.<sup>42</sup>

## Recommendations

**Single Point of Entry:** CEW recommends a unified complaints portal that routes cases to appropriate jurisdictions, with cross-referral protocols between agencies, shared case management for overlapping issues, and clear guidance on rights and processes.

**Enhanced Support Services:** CEW recommend expanded legal aid for discrimination specialists, increased funding for specialised legal centres, interpreter services for CALD communities, and trauma-informed processes acknowledging the psychological impact of discrimination.

### Improved Remedies and Enforcement for long term reform:

#### Systemic Remedies Power:

- **Pattern recognition** - authority to address systemic discrimination beyond individual cases.
- **Institutional change orders** - mandate policy reforms and training where patterns exist.
- **Representative complaints** - allow organisations to bring claims for affected groups.
- **Compliance monitoring** - ongoing oversight of implementation.

#### Cost Protection and Support:

- **No adverse costs presumption** - protect complainants from costs except in frivolous cases.
- **Interim relief powers** - temporary measures to prevent ongoing discrimination.
- **Expedited processes** - fast-track urgent employment and service denial cases.

---

<sup>40</sup> United Kingdom: Equality and Human Rights Commission: <https://www.equalityhumanrights.com/>

<sup>41</sup> Canadian Human Rights Commission: Human rights based approach to workplace investigations <https://www.chrc-ccdp.gc.ca/resources/publications/human-rights-based-approach-workplace-investigations>

<sup>42</sup> Equality Commission for Northern Island's Equality Commission <https://www.equalityni.org/Home>

- **Alternative dispute resolution** - mandatory mediation with good faith requirements.

## Conclusion and Recommendations

The NSW Anti-Discrimination Act 1977 has served as pioneering legislation for almost 50 years but now requires comprehensive modernisation to meet contemporary challenges facing women and NSW communities. This review presents a critical opportunity to create a preventative, intersectional, and accessible anti-discrimination framework that leads Australia in promoting substantive equality.

These reforms will particularly benefit women by preventing discrimination through positive duty requirements rather than relying on individual complaints. They will recognise intersectional discrimination affecting diverse groups of women, simplify legal tests making justice more accessible, address systemic patterns of discrimination in workplaces and institutions, and provide comprehensive protection across all areas of public life including emerging sectors.

<b>Immediate Reform</b>	<ol style="list-style-type: none"> <li>1. <b>Adopt unfavourable treatment test</b> for direct discrimination, replacing complex comparator requirements.</li> <li>2. <b>Implement disadvantage test</b> for indirect discrimination, shifting burden of proof to respondents.</li> <li>3. <b>Extend positive duty framework</b> across all protected attributes, not limited to sex discrimination.</li> <li>4. <b>Establish single point of entry</b> for discrimination complaints with enhanced support services.</li> </ol>
<b>Medium Term</b>	<ol style="list-style-type: none"> <li>1. <b>Expand protected attributes</b> with contemporary terminology and additional grounds including domestic violence status.</li> <li>2. <b>Enable intersectional discrimination claims</b> recognising multiple ground discrimination.</li> <li>3. <b>Enhance systemic remedies</b> with power to address patterns of discrimination through institutional change orders.</li> <li>4. <b>Implement comprehensive coverage</b> including gig economy, volunteers, and digital discrimination.</li> <li>5. <b>Strengthen enforcement mechanisms</b> with adequate resourcing and compliance monitoring.</li> </ol>
<b>Long Term Vision</b>	<ol style="list-style-type: none"> <li>1. <b>Establish equality impact assessments</b> for all major government policies and programs</li> <li>2. <b>Create positive measures framework</b> enabling special programs to address historical disadvantage</li> <li>3. <b>Integrate anti-discrimination law</b> with other equality frameworks including human rights charter</li> <li>4. <b>Develop community education programs</b> promoting understanding of equality rights and responsibilities</li> <li>5. <b>Regular review mechanisms</b> ensuring legislation keeps pace with social and technological change</li> </ol>

CEW urges the NSW Law Reform Commission to recommend comprehensive reform that positions NSW as a national leader in anti-discrimination law. Women represent half the population and contribute enormously to NSW's economic and social prosperity. They deserve legal protection that recognises their diversity, addresses the reality of their discrimination experiences, and provides accessible pathways to justice.



The evidence is clear: proactive, intersectional, and accessible anti-discrimination laws drive cultural change, economic growth, and social cohesion. NSW can create a framework that serves as a model for Australia and internationally. We look forward to working with the Commission, government, and community partners to achieve this vision.