

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

Unlawful Conduct

August 2025

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Introduction

Transport for NSW ('Transport') was established in 2011 and is the lead agency of the NSW Transport portfolio. Other operating agencies include Sydney Trains, NSW TrainLink, and Sydney Metro. Independent entities include Transport Asset Manager, Point to Point Commission, Port Authority of NSW, NSW Motorways and Office of Transport Safety Investigations. Transport is one of the largest employers in the NSW Government sector with over 30,000 employees and has a deeply embedded commitment to diversity and inclusion of our workforce.

Interaction with the ADA & Transport's commitments

Transport currently holds an exemption order under section 126 of the *Anti-Discrimination Act 1977* (NSW) ('the Act') to support targeted recruitment and development programs for women, Aboriginal and Torres Strait Islander people, people with a specific disability, people under the age of 25, and Refugees and Migrants on a relevant visa (**ATTACHMENT A**). The exemption order enables us to run programs and activities to increase the diversity of our workforce, and to contribute to addressing the substantive inequality experienced by certain groups of people in society more broadly.

In addition to our efforts to increase the diversity of our workforce, we also have dedicated resources focusing on the prevention and elimination of direct or indirect discriminatory policies, procedures or practices. Through our day-to-day work, we frequently 'engage' with the Act and the protections contained therein.

Transport previously engaged in the NSW Law Reform Commission's review of the Act through the preliminary submissions process in 2023 (**ATTACHMENT B**) ('Preliminary Submission'). Transport made recommendations on a select number of the review's Terms of Reference (Terms of Reference 1, 7 and 8).

We welcome the opportunity to further engage with the review and provide this submission concerning the questions posed in the first consultation paper *Unlawful Conduct* ('Consultation Paper'). This submission:

- a) reiterates Transport's recommendations made in our preliminary submission, and
- b) outlines Transport's position on the following questions outlined in the consultation paper:
 - 6.1: Discrimination at work — coverage
 - 6.2: Discrimination in work — exceptions
 - 9.1: The definition of sexual harassment
 - 9.2: Other sex-based conduct
 - 9.3: Sexual harassment in the workplace
 - 9.4: Workplace-related laws regulating sexual harassment
 - 9.5: Prohibiting sexual harassment in other areas of life.

Preliminary submission – recommendation mapping

In our Preliminary Submission, Transport made four recommendations, linked to Terms of Reference 1, 7 and 8.

Transport reiterates our recommendations previously provided. The table below references which questions in the Consultation Paper are covered in our Preliminary Submission and Transport’s recommendations in relation to amending the Act.

Transport’s full preliminary submission is included in **ATTACHMENT B**.

Recommendation provided in Transport’s Preliminary Submission	Corresponding Questions in the Unlawful Conduct Consultation Paper
<p>Recommendation 1 That the review of the Act focuses on modernising and simplifying the Act by:</p> <ul style="list-style-type: none"> • updating language to reflect leading (and evolving) practice • considering alignment with the federal body of anti-discrimination legislation as a minimum standard for protected attributes and available remedies. 	<ul style="list-style-type: none"> • 4 Discrimination: protected attributes • 5 Discrimination: potential new protected attributes
<p>Recommendation 2 That the Act be amended by introducing a positive obligation on employers to take reasonable and proportionate measures to prevent -or eliminate -discrimination, harassment and vilification on the basis of all protected attributes contained in the Act.</p>	<ul style="list-style-type: none"> • 11.3: A positive duty to prevent or eliminate unlawful conduct
<p>Recommendation 3 That the Act be amended to include an obligation for employers, educators and the providers of goods and services to make reasonable adjustments to support the full and equal participation of people with disability in all areas of public life.</p>	<ul style="list-style-type: none"> • 11.1: Adjustments
<p>Recommendation 4 That the Act be amended to remove the need to apply for an exemption for measures of ‘positive discrimination’ and consider replacing the relevant provisions with special measures provisions that align with federal anti-discrimination legislation.</p>	<ul style="list-style-type: none"> • 11.2: Special measures

Table 1 Preliminary Submission recommendation mapping to Unlawful Conduct Consultation Paper Questions

Select consultation question responses

In addition to the four recommendations previously provided in the Preliminary Submission, Transport makes the following recommendations regarding select questions in the Consultation Paper.

Question 6.1: Discrimination at work — coverage

1. Should the definition of employment include voluntary workers? Why or why not?

Transport holds the view that everyone has the right to feel safe and respected at work, regardless of their employment type. Currently the Act expressly protects volunteers and unpaid trainees from sexual harassment, however it is not clear if volunteers and unpaid trainees are offered the same protections in relation to discrimination.¹

In addition to the points raised in the Consultation Paper, Transport recognises that employers in NSW already have a positive obligation to prevent psychosocial hazards, which may include discrimination, towards voluntary workers under the *Work Health and Safety Act 2011 (NSW)*.² Furthermore, SafeWork Australia take the position that some workforce characteristics increase the likelihood that certain cohorts of workers may experience harmful behaviours, which includes new and young workers, and workers in minority groups.³

Transport recognises that volunteers make important contributions to our operations. Some of the partner organisations we work with to design accessible Transport or plan customer journey pathways use volunteers to gather critical feedback. In addition, our staff work with or are themselves State Emergency Service (SES) volunteers. These volunteers play a critical role in our State's disaster response and recovery.

Extending the definition of employment to include voluntary workers in the Act will ensure protections are provided to vulnerable at-risk populations and assist in aligning relevant legislation for employers in NSW, reducing potential confusion arising from differing obligations.

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

Transport is supportive of the Act taking a broader approach to discrimination in work. Currently the Act covers situations where a person with authority at work discriminates against someone without that authority. Adopting a broader approach in alignment with the way the *Sex Discrimination Act 1984 (Cth)* approaches harassment would mean that the focus is placed on *if* and *how* someone has been discriminated at work. This amendment would encourage employers to focus on the systemic drivers of discrimination (understanding the *how*), rather than the relationship between the parties. That is to say, such an amendment would encourage a focus on prevention.

As noted above, employers in NSW already have a positive obligation to prevent psychosocial hazards, which may include discrimination. Adopting a broader approach to discrimination at work in the Act would further align relevant legislation for employers in NSW. As noted in our Preliminary Submission, the introduction of the positive duty and *NSW Work Health Safety Regulation 2017* brought about significant cultural change. It reshaped the way that organisations like Transport understand the role that employers and workplaces can play in

¹ *Anti-Discrimination Act 1977 (NSW)* s 4(1) definition of “employment”, s 22B(6), s 22B(9) definition of “workplace participant”.

² s7(1)(h) *Work Health and Safety Act 2011 (NSW)*

³ Safe Work Australia. (2022). *Code of practice: Managing psychosocial hazards at work* (p. 48).

<https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work>

primary prevention, as well as informing their approach to the prevention of and response to inappropriate or unlawful workplace behaviours.

For example, in response to the introduction of the positive duty, Transport commenced a program of work to identify and remedy (where possible) structural and systemic inequalities embedded in industrial instruments, policies, procedures and practices. The objective of the work is to ensure that Transport's workplaces are free from direct or indirect discrimination on any ground.

A challenge in the current context is the differing standards and obligations across relevant legal frameworks can cause confusion and adds complexity to governance and risk assessment processes. Aligning the Act with relevant legislation for employers in NSW as far as reasonably practicable would help reduce this complexity for employers.

Recommendation 5

That the definition of employment in the Act be updated to include voluntary workers and a broader approach to discrimination in work be adopted.

Question 6.2: Discrimination in work — exceptions [The “Inherent requirements” and “unjustifiable hardships” exceptions]

1. What changes, if any, should be made to the exceptions to discrimination in work?

In our Preliminary Submission, Transport recommended that the Act be amended to include an obligation for employers, educators and the providers of goods and services to make reasonable adjustments to support the full and equal participation of people with disability in all areas of public life (**Recommendation 3**). Reasonable adjustments are one way employers like Transport engage and retain diverse talent. It is also a means by which Transport meets sector-wide diversity objectives such the NSW Government Priorities targets of 5.6% disability representation across the NSW Government.⁴

In addition to **Recommendation 3** put forward in our Preliminary Submission, Transport is supportive of the Act adopting an approach similar to the *Discrimination Act 1991* (ACT) in which the inherent requirements exception is linked with a duty to make adjustments.⁵ Introducing this amendment would require duty holders to actively engage in discussions about adjustments before relying on an exemption.

In addition, Transport is supportive of the Disability Royal Commission's recommendation that employers consider additional factors in determining whether a person is able to meet a role's inherent requirements.⁶ Increased protections will enable employers like Transport to provide people with disability with meaningful work fostering attraction, retention and progression of diverse talent.

Recommendation 6

Inherent requirement exceptions introduced into the Act should be linked with a duty to make reasonable adjustments.

⁴ NSW Public Service Commission. (2022). *Belonging and Inclusion Strategy* (p. 8).

https://www.psc.nsw.gov.au/assets/psc/documents/15812_NSW-PSC_Belonging-Strategy-2022_v2_ACCESSIBLE.pdf

⁵ *Discrimination Act 1991* (ACT) s 33C

⁶ These are: the nature and extent of any adjustments made, and the extent of consultation with the person. *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, Final Report (2023) vol 7, “Inclusive Education, Employment and Housing” Part B, rec 7.26, 438

Question 9.1: The definition of sexual harassment

1. Should the reasonable person test be expanded to include the “possibility” of offence, intimidation or humiliation? Why or why not?

As noted in the Consultation Paper, the Australian Human Rights Commission’s (AHRC) national inquiry into sexual harassment in Australian workplaces, the *Respect@Work Report*, found that the then federal sexual harassment laws were not fit for purpose in addressing workplace sexual harassment. The threshold of the reasonable person standard was lowered in the *Sex Discrimination Act 1984* (Cth) due to concerns that the previous standard was inadequate.⁷

The Act remains broadly consistent with what the federal sexual harassment laws were at the time. It is the view of Transport that the Act should be amended to align with the findings and recommendations in the *Respect@Work Report*. This includes lowering the threshold of the reasonable person standard to include the “possibility” of offence, intimidation and humiliation. In addition to addressing the limitations the AHRC highlighted, this would have the added benefit of aligning workplace sexual harassment legislation for employers who engage with workforces operating under multiple employment schemes. This concept is discussed further in 9.4 below.

2. Should the ADA expressly require consideration of an individual’s attributes, or the relationship between the parties, in determining whether a person would be offended, humiliated or intimidated by the conduct? Why or why not?

A key theme in the AHRC’s *Respect@Work Report* was that federal sexual harassment laws should change to place greater emphasis on victims, gender and intersectionality.⁸ Inequity influences the likelihood and risk of experiencing sexual harassment, as well as how individuals experience and respond to workplace sexual harassment.

Listing some circumstances for consideration, for example the complainant’s individual circumstances, would give more prominence to intersectionality. In a practical sense for employers such as Transport, the list provided in the *Sex Discrimination Act 1984* (Cth) provides clear and practical guidance that has been embedded in workplace sexual harassment prevention training. It also assists decision makers when determining if sexual harassment has occurred.

Transport recognises concerns raised that the list of circumstances included in the *Sex Discrimination Act 1984* (Cth) is ineffective due to a view that complainants’ additional or intersecting attributes are not required to be considered in sexual harassment matters, as discussed in the Consultation Paper.⁹ Requiring consideration of an individual’s attributes and the relationship between the parties in determining whether a person would be offended, humiliated or intimidated by the conduct would alleviate this concern.

3. Does the ADA need to define “conduct of a sexual nature”? Why or why not?

Whilst from a legal perspective broad terms can be useful and allow for interpretations that protect more individuals, it can be less useful from an operational perspective.

⁷ Explanatory Memorandum, Sex and Age Discrimination Legislation Amendment Bill 2010 (Cth) [69]–[70]. Australia, Senate Standing Committee on Legal and Constitutional Affairs, Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality (2008) [11.36], rec 15.

⁸ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 10.

⁹ Australian Discrimination Law Experts Group, Submission to the Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (4 March 2019) 23. See also Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 456.

Definitions, or at minimum clear practical guidance, is vital for employers like Transport so they can appropriately upskill decision makers, leaders and staff. In addition, clear definitions assist employers to make consistent and fair decisions when assessing workplace grievances.

Following the amendments to the *Sex Discrimination Act 1984* (Cth) in 2023, the AHRC produced detailed guidance for employers on how to meet their obligations under the positive duty.¹⁰ This guidance has been used by Transport to both bolster existing compliance mechanisms as well as informing new governance and primary prevention measures. In a very practical sense, the guidance is a core component of Transport's Positive Duty Masterclasses which are designed to upskill our leaders in understanding their obligations under the positive duty.

Recommendation 7

The Act should be updated to:

- **expand the reasonable person test to include the “possibility” of offence, intimidation or humiliation,**
- **expressly require consideration of an individual’s attributes, or the relationship between the parties, in determining whether a person would be offended, humiliated or intimidated by the conduct, and**
- **define conduct of a sexual nature to the extent it is defined in the *Sex Discrimination Act 1984* (Cth).**

Recommendation 8

That the NSW Anti-Discrimination Board produce clear and practical guidance for employers following any amendments made to the Act which impacts employers.

Question 9.2: Other sex-based conduct

1. **Should harassment on the ground of sex be expressly prohibited by the ADA? Why or why not?**
2. **Should the ADA prohibit workplace environments that are hostile on the ground of sex? Why or why not?**
3. **Are there any other options or models to prohibit conduct which may fall in the gap between sex discrimination and sexual harassment? What could be the benefits of these options?**

The addition of sex-based harassment and a hostile workplace environment on the ground of sex under the unlawful behaviours prohibited under the positive duty in the *Sex Discrimination Act 1984* (Cth) affords protections that are not clearly prohibited by sex discrimination or sexual harassment.¹¹ This clarity helps employers such as Transport ensure that they are meeting their obligations and assists organisations to develop training and awareness materials for leaders and staff.

¹⁰ Australian Human Rights Commission. (2023). *Guidelines for complying with the positive duty under the Sex Discrimination Act 1984* (Cth). <https://humanrights.gov.au/our-work/sex-discrimination/publications/guidelines-compliance-positive-duty>

¹¹ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 457, 460; Revised Explanatory Memorandum, Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 (Cth), Statement of Compatibility with Human Rights [12].

The Consultation Paper focuses on the nuance of language and how this language may be of help or detriment to a complainant, and in which jurisdiction they can bring claims. This is an important perspective to consider carefully. A missing perspective from the discussion however is that of an employer. The additional unlawful behaviours introduced under the positive duty provides more clarity on an employer's role in primary prevention. Furthermore, the interconnected nature of sexual harassment, sex discrimination and sexism requires employers to consider what drives this behaviour. In many instances, workplaces with an underlying culture of inappropriate behaviour enables unlawful conduct to occur, perpetuate and escalate. Introducing prohibitions that specifically require employers to address the systemic drivers of unlawful conduct and drive positive cultural change has helped Transport to focus attention on prevention, risk assessment and education and awareness.

In addition, sex-based harassment and discrimination and hostile working environments on the ground of sex are identified as harmful behaviours under Safe Work NSW's *Code of Practice: Sexual and gender-based harassment*. Importantly, this code further identifies the following harmful behaviours:

- gender-based harassment
- gender and sexuality-based discrimination
- gendered violence
- misgendering or deadnaming, and
- intersectional harassment.

Under this Code, employers in NSW are required to “*eliminate or minimise the risk of sexual and gender-based harassment so far as is reasonably practicable,*”¹² and thus must take a broader approach to primary prevention. Aligning as far as reasonably possible the Act with Safe Work NSW's *Code of Practice: Sexual and gender-based harassment* would reduce inconsistency across NSW. Again, for Transport, this has the additional benefit of aligning workplace sexual harassment legislation for employers who engage with workforces operating under multiple employment schemes. This concept is discussed further in 9.4 below.

Recommendation 9

That the Act be updated to:

- **expressly prohibit harassment on the ground of sex**
- **expressly prohibit workplace environments that are hostile on the ground of sex**
- **align as far as reasonably practicable to Safe Work NSW's *Code of Practice: Sexual and gender-based harassment*.**

Question 9.3: Sexual harassment in the workplace

1. **Should the ADA adopt the *Sex Discrimination Act's* approach of prohibiting sexual harassment in connection with someone's status as a worker or person conducting a business or undertaking? Why or why not?**

The Act is currently more complex than the *Sex Discrimination Act* and limited in the individuals for whom it affords protections. The *Sex Discrimination Act* protects more types of workers and

¹² SafeWork NSW. (2023). Code of practice: Managing the risk of work-related gendered violence (p. 11). <https://www.safework.nsw.gov.au/resource-library/code-of-practice/managing-the-risk-of-work-related-gendered-violence>

prohibits sexual harassment in connection with a person's status as a worker or person conducting a business or undertaking. The Act prohibits sexual harassment of specific types of workers by other specified workers or employers.

If the Act was to adopt the *Sex Discrimination Act 1984* (Cth)'s approach of prohibiting sexual harassment it would mean:

- more types of workers would be covered,
- all types of workers would be treated the same, and
- sexual harassment done by any person, not just an employer or co-worker, would be prohibited, if done in connection with someone's status as either a worker or a person conducting a business or undertaking.¹³

For Transport, this change would extend protections to large parts of our workforce who have public-facing roles or who work on partner or third-party sites.

Other acts have also extended the prohibiting of sexual harassment in connection with someone's status as a worker or person conducting a business or undertaking. The *Fair Work Act 2009* (Cth) prohibits sexual harassment in connection with someone's status as a worker or person conducting a business or undertaking.¹⁴

Changes to the *Sex Discrimination Act 1984* (Cth) and *Fair Work Act 2009* (Cth) were designed to support a positive workplace culture. As noted in our Preliminary Submission, changes to these instruments have reshaped the way that organisations like Transport understand the role that employers and workplaces can play in primary prevention. Aligning the Act with other workplace sexual harassment law streamlines compliance for employers. This is further discussed in 9.4 below.

Transport also refers to **Recommendation 2** and related discussion in our Preliminary Submission (**ATTACHMENT B**).

Recommendation 10

That the Act adopt the *Sex Discrimination Act's* approach of prohibiting sexual harassment in connection with someone's status as a worker or person conducting a business or undertaking.

Question 9.4: Workplace-related laws regulating sexual harassment

1. Are workplace-related sexual harassment laws and the ADA currently working well together, in terms of the definitions of sexual harassment?
2. Should the ADA and workplace-related sexual harassment laws be more aligned?

The Consultation Paper notes that sexual harassment in the workplace is prohibited, directly and indirectly, under the *Fair Work Act 2009* (Cth) and the *Work Health and Safety Act 2011* (NSW).¹⁵ In addition, Transport notes that sexual harassment in the workplace is also prohibited under the *Sex Discrimination Act 1984* (Cth) and the *Industrial Relations Act 1996* (NSW).

The *Fair Work Act 2009* (Cth) uses the *Sex Discrimination Act 1984* (Cth) definition of sexual harassment. The *Work Health and Safety Act 2011* (NSW) does not provide a statutory definition, however Safe Work NSW categorises sexual harassment as a psychosocial workplace hazard

¹³ Unlawful conduct s9.56

¹⁴ Fair Work Act 2009 (Cth) s 527D, s 527B

¹⁵ Unlawful Conduct s9.59

and adopts an *Sex Discrimination Act 1984* (Cth) aligned definition in its guidance.¹⁶ The *Industrial Relations Act 1996* (NSW) references the Act.

Whilst similar, there are distinct differences in the definitions between the *Sex Discrimination Act 1984* (Cth) and the Act (discussed in 9.1). The NSW Transport portfolio includes entities that fall under both the National System and the NSW Industrial Relations System. The differing definitions pose practical challenges for employers operating under both systems. For example, when developing training and awareness materials Transport's enabling functions either have to produce multiple versions of the same product, include lengthy explainers to reference both acts or adopt the highest standard across all entities.

In addition, all of the aforementioned legal instruments have undergone significant review and amendments in recent years, in keeping with community expectations and practises. Of note are the increasing positive or proactive obligations these laws are placing on employers and in an operational context on leaders. A key challenge for employers of persons conducting a business or undertaking is ensuring leaders are aware of their obligations and have the capability to respect, protect and promote workers' rights. Greater alignment between these laws would ease the compliance burden on employers and assist employers to more effectively meet their obligations.

Recommendation 11

Align the ADA as far as reasonably practical (both in terms of definitions and obligations) to be more aligned to workplace-related sexual harassment laws, particularly those that already pose a positive duty on employers.

Question 9.5: Prohibiting sexual harassment in other areas of life

1. **Should the ADA continue to limit the areas of life where sexual harassment is unlawful? Why or why not?**
2. **Should sexual harassment be unlawful in other areas of life? For example:**
 - a. **areas of life that are protected from discrimination**
 - b. **all areas of public life, or**
 - c. **any area of life, public or private?**

Currently the Act prohibits sexual harassment in certain areas of public life. Evidence highlights however that sexual harassment, and harassment more broadly, is being experienced in other areas of public life. In 2023 Transport published its *Safer Cities Survey Report: perceptions of safety in public spaces and transport hubs across NSW* (Safer Cities Report). The *Safer Cities Report* found that most women do not feel safe in public spaces after dark. In addition, 42% of women surveyed feel unsafe 'most of the time' or 'all of the time' in public spaces after dark, compared to 17% of men surveyed.¹⁷ This feeling of lack of safety influences the way in which women engage in public spaces. Almost all (92%) of women agreed that a sense of safety influences the routes they chose when travelling.¹⁸

¹⁶ SafeWork NSW, *Sexual and Gender-Based Harassment: Code of Practice* (2023)

¹⁷ Transport for NSW, *Street harassment has no grey area*, viewed 29 July 2025, <https://www.transport.nsw.gov.au/industry/cities-and-active-transport/cities-revitalisation-and-place/festival-of-place-0/street>

¹⁸ Transport for NSW, *Street harassment has no grey area*, viewed 29 July 2025, <https://www.transport.nsw.gov.au/industry/cities-and-active-transport/cities-revitalisation-and-place/festival-of-place-0/street>

The *Safer Cities Report* also notes that:

- Most people would walk more (74%), use public transport more (67%), and go out more during the day (64%) and at night (51%) if they felt safer.
- Some groups feel less safe in public spaces: Aboriginal and Torres Strait Islander women, LGBTIQ+ women, people with disabilities, young women, and women over 75.¹⁹
- Women noted that lived experiences of harassment, assault or being followed makes them feel less safe in public spaces.²⁰
- LGBTIQ+ women and men surveyed were less likely to feel safe due to fear of discrimination and harassment based on sexuality.²¹

In response to the findings of the *Safer Cities Report*, Transport launched the 'Street harassment has No Grey Area' safety campaign in Greater Sydney as part of the Safer Cities Program. The Safer Cities Program has invested to date \$30 million to help improve perceptions of safety in our cities and towns across NSW, particularly for women, girls and gender diverse people.²² The program uses a holistic approach to improving perceptions of safety through trialling both on-the-ground and non-physical initiatives including a public education campaign and new guides, tools and case studies.²³

In March 2025, in partnership with the Office of the Women's Safety Commissioner and NSW Department of Planning, Housing and Infrastructure, Transport published the second iteration of the *Women's Safety Charter for the Public Domain: Places and Transport* ('Women's Safety Charter'). The *Women's Safety Charter* brings together government agencies, the non-government sector, advocates and industry to take collective action to improve the safety of women in public places and on the transport network (the public domain) across the Greater Sydney metropolitan area and regional NSW.²⁴ The *Women's Safety Charter* supports the United Nations Sustainable Development Goal 5 to achieve gender equality and empower all women and girls through eliminating violence against all women and girls in public spheres.²⁵ Feeling and being safe, welcome and comfortable in the public domain is essential for social and economic participation and contributes to overall wellbeing and quality of life.²⁶

Transport's investment in the Safer Cities Program and Women's Safety Charter which focus on addressing all forms of gender-based violence and harassment, not just sexual harassment, highlights Transport's commitment to increase feelings of safety for all people in NSW.

Transport notes that other jurisdictions have introduced legislation that has expanded the areas of public life in which sexual harassment or sex-based harassment are unlawful. For example, in 2023 the United Kingdom passed the Protection from Sex Based Harassment in Public Act which

¹⁹ Transport for NSW, *Street harassment has no grey area*, viewed 29 July 2025, <https://www.transport.nsw.gov.au/industry/cities-and-active-transport/cities-revitalisation-and-place/festival-of-place-0/street>

²⁰ Transport for NSW. (2023). *Safer Cities survey report* (p. 11). Transport for NSW. https://www.transport.nsw.gov.au/system/files/media/documents/2023/Safer-Cities_Survey-Report_0.pdf

²¹ Transport for NSW. (2023). *Safer Cities survey report* (p. 24). Transport for NSW. https://www.transport.nsw.gov.au/system/files/media/documents/2023/Safer-Cities_Survey-Report_0.pdf

²² Transport for NSW, *Safer Cities Program*, viewed 29 July 2025. <https://www.transport.nsw.gov.au/industry/cities-and-active-transport/cities-revitalisation-and-place/festival-of-place-0>

²³ Transport for NSW, *Safer Cities Program*, viewed 29 July 2025. <https://www.transport.nsw.gov.au/industry/cities-and-active-transport/cities-revitalisation-and-place/festival-of-place-0>

²⁴ Transport for NSW. (2025). *Women's safety charter for the public domain* (p. 6). https://www.transport.nsw.gov.au/system/files/media/documents/2025/Womens-Safety-Charter-for-the-Public-Domain_0.pdf

²⁵ United Nations Department of Economic and Social Affairs, *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, viewed 30 July 2025, <https://sdgs.un.org/goals/goal5>

²⁶ Transport for NSW. (2025). *Women's safety charter for the public domain* (p. 7). https://www.transport.nsw.gov.au/system/files/media/documents/2025/Womens-Safety-Charter-for-the-Public-Domain_0.pdf

introduced a new offence under the Public Order Act 1986 for intentional harassment, alarm or distress where the conduct is motivated by the victim's sex.²⁷ In 2018 the Philippines introduced the Safe Spaces Act which criminalises gender-based sexual harassment in public spaces, including public transport.²⁸ Other international jurisdictions have criminalised or outlawed sexual harassment in specific areas of public life such as on streets, public transport or in public-access spaces.²⁹

The introduction of such legislation has resulted in public education initiatives, guidance and tools for police and community to raise awareness and enforce compliance.³⁰ Transport is interested to understand how effective these legislative changes have been and what impact (if any) these changes have had on individuals, community, and business operating in public spaces.

Recommendation 12

That the NSW Law Reform Commission consider undertaking a review of other jurisdictions approach to prohibiting sexual / sex-based harassment in public life to understand the effectiveness and impacts.

²⁷ Protection from Sex-based Harassment in Public Act 2023, c. 47. Available at [Protection from Sex-based Harassment in Public Act 2023](#).

²⁸ Public spaces are defined as: streets and alleys, public parks, schools, buildings, malls, bars, restaurants, transportation terminals, public markets, spaces used as evacuation centers, government offices, public utility vehicles as well as private vehicles covered by app-based transport network services and other recreational spaces such as, but not limited to, cinema halls, theatres and spas. Safe Spaces Act, Republic Act No. 11313, 2019 s.3.

²⁹ These include but are not limited to France, Netherlands, Costa Rica, Peru and Argentina.

³⁰ For examples see: Philippine Commission on Women, *Republic Act No. 11313: Safe Spaces Act (Bawal Bastos Law)*, accessed 8/08/2025 at [FAQs Republic Act No. 11313: Safe Spaces Act \(Bawal Bastos Law\) | Philippine Commission on Women](#) and UK Parliament, *House of Commons Library: Protection from Sex-based Harassment in Public Bill 2022-23*, accessed 8/08/2025 at [Protection from Sex-based Harassment in Public Bill 2022-23 - House of Commons Library](#).

Appendix

ATTACHMENT A

Anti-Discrimination Act 1977

EXEMPTION ORDER

Under the provisions of section 126 of the *Anti-Discrimination Act 1977* (NSW), the exemption order granted to the Transport Cluster - comprising Transport for NSW, the State Transit Authority, Sydney Trains, NSW Trains, Sydney Metro Authority and Point to Point Commission - on 14 April 2022 is HEREBY VARIED to read:

1. Women

- 1.1. Targeted support to women in preparation for recruitment processes;
- 1.2. Targeted recruitment of women into senior service roles;
- 1.3. Targeted recruitment of women into entry level employment programs including graduate programs, scholarship programs, traineeships and apprenticeships;
- 1.4. Targeted recruitment of women into Science, Technology, Engineering, Mathematics and Construction roles (STEMC) and other non-traditional roles;
- 1.5. Targeted recruitment of women into frontline service delivery roles;
- 1.6. Targeted development programs for women including targeted talent management programs, leadership development, coaching, shadowing and sponsorship development opportunities;
- 1.7. Capability development, mentoring and connecting programs for women leaders and potential leaders.

2. Aboriginal and Torres Strait Islanders

- 2.1. Targeted support for Aboriginal and Torres Strait Islanders in preparation for recruitment processes;
- 2.2. Targeted recruitment of Aboriginal and Torres Strait Islanders into senior service roles;
- 2.3. Targeted recruitment of Aboriginal and Torres Strait Islanders into entry level employment programs including graduate programs, scholarship programs, traineeships and apprenticeships;
- 2.4. Targeted recruitment of Aboriginal and Torres Strait Islanders into frontline service delivery roles;
- 2.5. Targeted development programs for Aboriginal and Torres Strait Islanders including targeted talent management programs, leadership development, coaching, shadowing and sponsorship development opportunities;
- 2.6. Capability development, mentoring and connecting programs for Aboriginal and Torres Strait Islanders leaders and potential leaders.

3. People with a specific disability

- 3.1. Targeted support for people with a specific disability in preparation for recruitment processes;
- 3.2. Targeted recruitment of person with a specific disability;
- 3.3. Targeted recruitment of people with a specific disability into entry level employment programs including graduate programs, scholarship programs, traineeships and apprenticeships;
- 3.4. Targeted recruitment of people with a specific disability into frontline service delivery roles;
- 3.5. Targeted development programs for people with a specific disability including targeted talent management programs, leadership development, coaching, shadowing and sponsorship development opportunities;
- 3.6. Capability development, mentoring and connecting programs for people with a specific disability at or post entry level employment

programs and making the transition from such programs into roles within the Transport Cluster.

4. People under the age of 25

4.1. Targeted support of people under the age of 25 in preparation for recruitment processes;

4.2. Targeted recruitment of people under the age of 25 into entry level employment programs including graduate programs, scholarship programs, traineeships and apprenticeships;

4.3. Targeted recruitment of people under the age of 25 into frontline service delivery roles;

4.4. Targeted development programs for people under the age of 25 including targeted talent management programs, leadership development, coaching, shadowing and sponsorship development opportunities.

*5. Refugees and migrants on a relevant visa**

5.1. Targeted support for refugees and migrants on a relevant visa in preparation for recruitment processes;

5.2. Targeted recruitment for refugees and migrants on a relevant visa for roles including graduate programs, scholarship programs, traineeships and apprenticeships;

5.3. Targeted recruitment for refugees and migrants on a relevant visa for non-STEMC related frontline roles; and

5.4. Targeted career development programs for refugees and migrants on a relevant visa.

* A relevant visa includes Bridging Visa A – subclass 010, Bridging Visa B – subclass 020, Bridging Visa C – subclass 030, Bridging Visa E – subclasses 050, 051, Global Special Humanitarian Visa – subclass 202, Refugee visa – subclasses 200, 201, 203, 204, Protection Visa – subclass 866, Temporary Protection Visa – subclass 785, Safe Haven Enterprise Visa – subclass 790 and Resolution of Status Visa – subclass 85.

This exemption will remain in force until 13 April 2027.

Dated 7 June 2023

Helen McKenzie
President
Anti-Discrimination NSW

ATTACHMENT B

Transport previously engaged in the NSW Law Reform Commission’s review of the Act through the preliminary submissions process in 2023. The submission is available on the NSW Law Reform Commissions webpage: https://lawreform.nsw.gov.au/content/dam/dcj/law-reform-commission/documents/Current-projects/ada/preliminary_submissions/PAD91.pdf (ID PAD91).



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