

13 August 2025

The Hon Tom Bathurst AC KC
Chairperson
NSW Law Reform Commission
GPO Box 31
Sydney NSW 2001
By email: ADAreview@dcj.nsw.gov.au

Dear Mr Bathurst

Submission on the Review of the Anti-Discrimination Act 1977 (NSW) – Consultation Paper 24

The Northcott Society (Northcott) welcomes the opportunity to contribute to the review of the *Anti-Discrimination Act 1977 (ADA)*.

Northcott is a disability service provider that works with customers to realise their potential. As one of Australia's largest not-for-profit disability service organisations, we provide services throughout New South Wales, Queensland and the Australian Capital Territory. With more than 95 years of experience in the disability service industry and as a registered NDIS provider, we employ over 2,000 staff and provide empowering, personalised services to over 13,500 people with disability, their families and carers each year.

While the ADA was progressive when enacted, many of its provisions no longer reflect current values, lived experience or best practice. This submission calls for modernisation across several areas including disability and carer protections, removal of unnecessary exemptions, intersectionality, outdated language and the introduction of enforceable positive duties similar to those in the Work, Health, and Safety (WHS) legislation.

1. Strengthen and Modernise Disability Protections

b) Update the Definition of Disability

- Modernise the definition to reflect the social model of disability, not just the medical model.
- Expressly include:
 - Neurodivergence, for example, autism, ADHD
 - Psychosocial and episodic conditions and

1 Fennell Street, North Parramatta NSW 2151
PO Box 4055, Parramatta NSW 2124

P 1800 818 286 **F** (02) 9683 2827

E northcott@northcott.com.au

www.northcott.com.au

- Chronic illnesses and fluctuating health conditions.

c) Positive Duty to Provide Reasonable Adjustments

- Introduce a clear, enforceable duty across all public domains (employment, education, services, accommodation).
- This should not depend on an individual needing to first make a complaint.
- Adjustments should be anticipatory, person-centred and flexible.

2. Expand Protections for Carers and Family Responsibilities

The ADA's current protections for carers are limited and outdated.

Recommendations:

Extend protections to all areas of public life, not just employment.

- Broaden the definition to include:
 - Parents and guardians
 - Kinship and elder care and
 - Cultural and community-based caregiving (particularly for Aboriginal and CALD communities).

3. Modernise Language and Expand Protected Attributes

a) Replace outdated terms:

- Replace "homosexuality" with "sexual orientation."
- Update "transgender grounds" to "gender identity."
- Introduce "sex characteristics" as a standalone attribute to protect intersex people.

b) Add missing attributes:

- Health status and genetic information
- Lawful sexual activity and sex work
- Political belief and union activity and
- Socio-economic status (as a factor in education, housing, access to services).

4. Recognise Intersectionality and Reform the Comparator Model

Intersectional Discrimination:

- a) People experience discrimination based on combinations of attributes. The Act should allow claims based on "one or more protected attributes." This small wording change makes a major impact by recognising real-world complexity.
- b) Move away from the Comparator Test. The comparator test entrenches a 'norm vs. other' framework that excludes lived experience, particularly for individuals facing

multiple forms of discrimination. By relying on a comparison to a hypothetical 'norm,' the test fails to reflect the real-world experiences of people who may face discrimination due to overlapping and intersecting characteristics. A shift to a harm or impact-based test would better recognise how discrimination operates in complex, lived experiences and offer a more nuanced approach to addressing inequality. This would ensure that all individuals, especially those at the intersection of multiple marginalised identities, are fully recognised and protected. A harm or impact-based test would better reflect how discrimination actually occurs.

5. Fair Expression Without Harm

Freedom of expression and beliefs are important but must not override the rights of others to access employment, education, services or safety.

Recommendation:

Protect fair expression but ensure it cannot be used to justify discrimination or exclusion, particularly where there is no inherent requirement involved.

6. Oppose Broad Exemptions That Are Not Inherently Required

Currently, many exemptions under the ADA allow:

- Religious schools and service providers to discriminate
- Charitable bodies to exclude persons based on outdated values and
- Employers to avoid inclusive hiring practices without justification.

Recommendation:

Exemptions should only apply where a protected attribute is clearly tied to an inherent requirement of the role or function.

Require accountability and evidence before allowing such exemptions.

7. Expand Civil Protections Against Vilification and Harassment

Extend vilification and harassment protections to cover:

- Disability
- Sexual orientation
- Gender identity and expression and
- Sex characteristics.

These protections should apply to all areas of public life, including online and public platforms.

8. Introduce a Positive Duty – Drawing from WHS Legislation

One of the most urgent gaps in the ADA is the lack of a positive, proactive duty on organisations to prevent discrimination. In contrast, Work Health and Safety (WHS)

legislation requires employers and businesses to take active steps to assess and manage risk – not just respond when harm occurs.

Recommendation:

Introduce a positive duty under the ADA, requiring:

- Any person or organisation supplying goods, services or public functions to assess whether the provision of that good or service in the manner contemplated would be discriminatory — and if so, to take reasonable and proportionate steps to remove or reduce the discriminatory impact.

This would:

- Align anti-discrimination obligations with WHS-style risk management
- Reduce harm before it occurs and
- Shift responsibility away from marginalised individuals and toward structural accountability.

Such a duty could be accompanied by guidance, education and gradual enforcement — just as WHS reforms were implemented.

9. Improve Enforcement and Systemic Remedies

Empower Anti-Discrimination NSW to:

- Investigate systemic discrimination
- Issue compliance or improvement notices and
- Report on trends and conduct education campaigns.

Reduce barriers to complaints by:

- Sharing the burden of proof
- Offering anonymous and third-party reporting, and
- Ensuring trauma-informed complaint handling.

Conclusion

The ADA should be amended not just to prohibit discrimination, but to proactively prevent it. To do so, we need:

1. Clear duties
2. Modern, inclusive language
3. Recognition of intersecting identities
4. Genuine protection for carers and people with disability, and

5. Systems that hold organisations to account — not only individuals.

By aligning anti-discrimination protections with positive WHS-type duties, and removing exemptions that enable avoidable harm, NSW can lead the way in building an inclusive and equitable future for all.

Thank you for the opportunity to contribute.

Yours sincerely

Liz Forsyth
Chief Executive Officer