

Our ref: D25/1966808

Thursday, 14 August 2025

**RE: New South Wales Law Reform Commission Anti-Discrimination Act review update.**

Sent via email: [ADAreview@dcj.nsw.gov.au](mailto:ADAreview@dcj.nsw.gov.au)

Dear New South Wales Law Reform Commission,

Thank you for the opportunity to provide feedback on the New South Wales Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW) (ADA). The Disability Council NSW (the 'Council') is a statutory body that provides independent advice to the Minister for Disability Inclusion on matters affecting people with disability in NSW, as well as their families and carers. The Council is pleased to support DCJ in engaging with the disability community on this important issue. While the ADA was pioneering at the time of its introduction, it no longer reflects contemporary understandings of equality, human rights, or the lived experiences of people with disability. This submission outlines key areas for reform to ensure the Act effectively addresses discrimination, fosters inclusion, and aligns with Australia's international obligations under the Convention on the Rights of Persons with Disabilities (CRPD).

**1. Recognition of Intersectional Discrimination** - The ADA does not currently recognise intersectional discrimination, where individuals experience discrimination due to the interaction of multiple attributes (e.g., disability and race, or disability and gender). This omission fails to account for the compounded and unique barriers faced by people with multiple protected attributes.

Recommendation: Amend the ADA to explicitly recognise and prohibit intersectional discrimination to reflect the complexity of lived experiences and provide effective redress.

**2. Burden of Proof** - Currently, the burden of proof rests entirely on the complainant. For people with disability, this presents a significant barrier due to the power imbalance, accessibility challenges, limited financial resources, difficulty navigating the legal system without appropriate support, and the emotional toll involved in pursuing complaints.

Recommendation: Introduce a shared burden of proof so that, once a basic case of discrimination is established, it is up to the respondent to prove their actions were not discriminatory.

**3. Objectives Clause and Alignment with CRPD** - The ADA lacks an objectives clause and does not reference the CRPD. Embedding the CRPD principles would ground the legislation in a human rights framework and provide clear interpretive guidance for courts and duty holders.

Recommendation: Add an objectives clause that refers to the CRPD and commits to equality and the social model of disability.

**4. Application to All Forms of Work** - The ADA does not extend protections to gig economy workers, volunteers, or individuals in non-traditional employment arrangements, leaving significant gaps in coverage.

Recommendation: Expand the definition of “employment” to include all forms of paid and unpaid work, including the gig economy and volunteer roles.

**5. Positive Duty to Make Reasonable Adjustments** - The ADA does not require employers, educators, and service providers to make reasonable adjustments proactively. Instead, people with disability often fight for their rights, which creates barriers to inclusion.

Recommendation: Create a positive duty for employers and service providers to actively consider and meet the needs of people with disability by making reasonable adjustments.

**6. Definition of Disability** - The ADA’s current definition of disability is deficit-based and medicalised, using terms such as “malfunction” and “disfigurement.” This framing prolongs stigma and fails to align with the social model of disability.

Recommendation: Update the definition of disability to reflect the CRPD and social model, recognising that disability results from barriers in attitudes and the environment.

**7. Protections for Assistance Animal Users** - The ADA’s assistance animal provisions are narrow, covering only vision, hearing, and mobility impairments. This exclusion applies to individuals with psychosocial, neurological, or other disabilities who rely on assistance animals.

Recommendation: Broaden the definition of assistance animals to include those used for psychosocial, cognitive, and neurological disabilities.

**8. Protection Against Genetic Information Discrimination** - While the ADA covers discrimination arising from possible future disability, it does not protect against discrimination based on genetic predisposition.

Recommendation: Amend the ADA to prohibit discrimination based on genetic information explicitly.

**9. Inherent Requirements Exception** - The inherent requirements exception allows employers and educators to refuse individuals who cannot meet inherent requirements, without considering reasonable adjustments.

Recommendation: Mandate employers and educators to first consider and make reasonable adjustments before deciding whether a person can meet the inherent requirements of a role or course.

**10. Protection for Associates and Relatives** - The ADA only protects associates of people with disability from direct discrimination. Indirect discrimination against associates is not covered, leaving families and carers vulnerable.

Recommendation: Extend protections to cover indirect discrimination against associates and relatives.

**11. Addressing Harassment and Systemic Discrimination** - The ADA lacks comprehensive provisions on attribute-based harassment and does not adequately address systemic discrimination. Relying solely on individual complaints does not address deeper structural and systemic inequalities

Recommendation:

- Strengthen protections against harassment across all protected attributes.
- Include mechanisms to address systemic discrimination, such as enabling representative complaints and empowering regulators to start investigations.

**12. Accessibility of the ADA** - The language and structure of the ADA create barriers for people with disability. It is complex and uses outdated terminology.

Recommendation: Modernise and simplify the ADA's language, ensuring it is accessible and reflects current Australian understandings of disability.

Conclusion The ADA was pioneering legislation when it was developed over 40 years ago; However, it is now in urgent need of reform to meet modern standards of human rights and equality. Updating the Act to reflect the CRPD, address systemic barriers, and promote proactive inclusion will better protect the rights of people with disability and support a fairer, more equitable NSW.

The NSW Disability Council welcomes and supports the Law Reform Commission in this critical process of legislative renewal.

Thank you once again for the opportunity to provide feedback.

Yours faithfully

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Chair

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