

14 August 2025

The Hon. Tom Bathurst AC KC
Chairperson
NSW Law Reform Commission
via email: ADAreview@dcj.nsw.gov.au

Dear Mr Bathurst,

The Advocate for Children and Young People (the Advocate) welcomes the opportunity to provide a submission to the NSW Law Reform Commission's (NSWLRC) Review of the Anti-Discrimination Act 1997 (NSW) (ADA).

The Advocate previously provided a preliminary submission to the Review in September 2023.¹ As a result, the below submission is focused on providing updated data of relevance and reiterating the Advocate's positions in regard to the questions outlined in the unlawful conduct consultation paper.²

The role of the NSW Advocate for Children and Young People

Established under the *Advocate for Children and Young People Act 2014*, the Advocate for Children and Young People is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. The Advocate promotes the safety, welfare and wellbeing of children and young people aged 0-24 years and their participation in decisions that affect their lives. The Act requires the Advocate to 'give priority to the interests and needs of vulnerable and disadvantaged children and young people' and to 'focus on systemic issues

¹ Advocate for Children and Young People (2023). '[Submission to the NSW Law Reform Commission's Review of the Anti-Discrimination Act 1977 \(NSW\)](#)'. Preliminary Submissions – NSW Law Reform Commission review of the Anti-Discrimination Act 1977 (NSW).

² NSW Law Reform Commission (2025). 'Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct – Consultation Paper (May 2025)'. Accessed via: https://lawreform.nsw.gov.au/documents/Current-projects/ada/cp24/ADA_CP24.pdf

affecting children and young people.’ Further information about the Advocate for Children and Young People work can be found at: www.acyp.nsw.gov.au.

Children and young people’s experiences of discrimination

Throughout the Advocate’s engagement and consultation activities with children and young people across NSW, discrimination is consistently highlighted as a key issue of concern.

In 2024, more than 1 in 4 (27%) children and young people reported experiencing discrimination in the past year, with 23% of those reporting they experience discrimination weekly.³ Although the number of children and young people reporting discrimination has decreased in recent years, down from 1 in 3 (33%) in 2021, discrimination is still a significant concern for children and young people in NSW. Discrimination also has negative impacts on children and young people’s physical, social and emotional wellbeing, including their mental health.

In 2024, the most common reason for discrimination was ethnicity or cultural background which was raised by 40% of children and young people.

Among children and young people who speak a language other than English at home, 63% of those who experienced discrimination said it related to their ethnic or cultural background.

Those children and young people who were most likely to experience discrimination included:

- children and young people living with a physical disability (57%);
- neurodiverse children and young people (51%);
- those with a mental illness (44%); and
- Aboriginal or Torres Strait Islander children and young people (42%).

Concern about discrimination is also theme that is regularly reiterated throughout the Advocate and the team’s broader engagement with children and young people through qualitative

³ Note: Since 2021, the Advocate’s team has undertaken annual polling data tracking both children and young people’s experiences of discrimination, as well as positive experiences of respect and acceptance. This polling was undertaken as part of the NSW Strategic Plan for Children and Young People 2022-2024 and can be accessed via: <https://www.acyp.nsw.gov.au/strategic-plan-2022-2024>.

consultations. For instance, many children and young people have shared experiences of racism and/or discrimination due to a range of factors including age, disability, religion, gender, sexuality or ethnicity and/or cultural background. Some examples of this are included below.

Children and young people with disability

In the Advocate's report '[Voices of children and young people with disability 2020](#)', children and young people with a disability talked about experiencing discrimination in many aspects of their lives including when seeking to access education, training, employment, accessing services, navigating systems, and when trying to participate in events and general community activities.

Though children and young people believed that discrimination based on disability is getting better, one young person told us they felt:

"People still discriminate just because you have a physical disability."

Young people believed that sometimes they are not being given an opportunity like others to show that they do have the ability. One young person said they had experienced:

"...being discriminated against when going to job interviews."

Another young person thought that some employers who hired young people with disabilities:

"... take advantage (of young people with disabilities) and pay very poorly."

LGBTQIA+ young people

In the Advocate's report '[The Voices of LGBTQIA+ Young People in NSW 2020](#)', young people raised concerns about their safety and not feeling accepted and respected in a range of settings. For instance, students who attended, or had previously attended religious schools spoke about the difficulty being in classes where LGBTQIA+ concepts were discussed or taught as being sinful. At times this was taught by religious leaders in the school, but at other times by regular teachers. One young person recounted their experience of having their geography teacher lecture them about why same sex marriage should not be legalised.

It was common for students at religious schools to raise concerns about their teachers' views of homosexuality. A few also raised fears about being expelled if their school found out about their gender identity or sexual orientation, and one noted this had happened to them in their first year of high school.

"I went to a Catholic school for not even half a term and one of the kids found out that I had a girlfriend and then went and told the principal, and they actually expelled me from the school."

Young people from refugee and migrant backgrounds

In the Advocate's report ['The experiences of young people from refugee and migrant backgrounds in NSW 2024'](#), they heard that experiences of racism and discrimination are common and impacting young people's sense of belonging and their feelings of acceptance within communities, schools, peer groups and at work.

For instance, young people shared experiences of racial discrimination and exclusion when they were applying for jobs. When outside their own community, children and young people raised the challenges they face about navigating social, work and public spaces that may be unfamiliar to them. This was compounded where cultural diversity and inclusion were not predominant features of the environments or communities they were situated in. This led to awkward and alienating experiences in some instances, and more obvious racial, cultural or religious exclusion and discrimination in others.

Modernising the definition and parameters of unlawful conduct under the Anti-Discrimination Act

Given the ongoing prevalence of discrimination being experienced by children and young people across NSW, it is critical that comprehensive reform is undertaken to ensure the ADA aligns with current community expectations and provides adequate protections.

Simplifying the existing tests for discrimination



The Advocate has previously recommended in the preliminary submission that reform be undertaken to the ADA to simplify the existing tests for discrimination. Current tests for discrimination in NSW under the ADA are overly onerous and can create barriers for people, including children and young people, to report, prove and seek redress for discrimination. These recommendations are in line with other preliminary submissions from organisations such as Legal Aid NSW and the Public Interest Advocacy Centres.

Key changes to simplify the test for discrimination should include:

- updating the definition of discrimination to combine direct and non-direct discrimination into a single definition, including intended future conduct, removing the requirement for discrimination to have occurred before a complaint is lodged; and
- removing the comparator test for direct discrimination, and replace it with a focus on unfavourable treatment.

Redefining and widening the list of protected attributes

The Advocate recommends that there be an expansion of who is provided protection under the ADA as outlined in the preliminary submission. Currently the ADA provides protection against discrimination for a range of personal attributes and situations, however compared to other states and territories the attributes and situations are quite limited and do not conform with current community expectations

At present, the ADA provides protection on the basis of: race; sex (including pregnancy and breastfeeding); transgender status; marital or domestic status; disability; responsibilities as a carer; homosexuality; and age. The Advocate recommends that the definition of disability in the ADA be updated through consultation(s) with children and young people living with disability. This is because the concept of disability has evolved since the Act was written, and the current definition is based on a physical deficits model which does not align with modern understandings of disability.

In addition, the Advocate has recommended that the list of protected attributes be expanded to provide protection for:

- the expression of religious belief and religious activities;

- bisexual and heterosexual people, by replacing the term ‘homosexual’ with ‘sexual orientation’;
- intersex people by adding ‘sex characteristics under the section on protected attributes’; and
- people with non-binary identities by replacing the term ‘transgender status’ with the term ‘gender identity’, and provide an updated, inclusive definition of gender identity.

The Advocate is also broadly supportive of exploring proposals⁴ which are expanding protection for the following groups or people in the following situations (in line with legislation in other state jurisdictions):

- subjection to domestic or family violence;
- employment activity and status;
- immigration status;
- irrelevant criminal record;
- political conviction/opinion;
- socioeconomic status;
- industrial activity/trade union activity;
- profession, trade or occupation;
- lawful sexual activity;
- accommodation status;
- physical features;
- genetic information; and
- medical record.

Expanding the definition of public life

The Act should be updated to apply to discrimination in all areas of public life, whilst still providing an exception for ‘private conduct’.

⁴ See for example, Public Interest Advocacy Centres’s Preliminary Submission to NSW Law Reform Commission Review of AntiDiscrimination Act 1977 (13 October 2023). Accessed via: https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD82.pdf

Currently the ADA limits ‘public life’ to work, education, the provision of goods and services, accommodation, and registered clubs. This means that under the Act there may be either no protection, or incomplete protection for many areas of public life.

Expanding the definition would improve protections for children and young people in a wider range of settings. This would bring the ADA in line with other legislation, such as the Racial Discrimination Act 1975 (Cth) which has discrimination provisions which can be applied to all areas of public life, as well as racial vilification provisions that apply to acts done ‘otherwise than in private’.

Removing exceptions for private educational authorities

The Advocate has previously recommended that all exceptions only available to private educational authorities should be removed from the Act and not included in any future NSW anti-discrimination law.

In addition, the Advocate supports proposals put forward in preliminary submissions by Equality Australia and the Public Interest Advocacy Centre that any future NSW anti-discrimination law should ensure that:

- there are no exceptions that allow religious bodies to discriminate on the basis of sexual orientation, gender identity and variations in sex characteristics/sex, characteristics in employment, education or the provision of goods, services, facilities or accommodation to the public;
- if religious belief or activity is added as a protected attribute, then any exemption applying to religious bodies should be limited to where religion is relevant to a role or the service in question, and where it would be reasonable and proportionate in the circumstances of the case;
- religious institutions operating from state or federal public funding should not be exempt;
- targeted religious exceptions for religious leaders, the education of religious leaders, and for the purposes of participation in religious practice or observances are consistent with international human rights law.

Consistent civil and criminal law protections for vilification

The Advocate is supportive of proposals to make the vilification component of the ADA consistent with the Crimes Act, including allowing complainants to use a civil remedy. The Advocate has previously recommended:

- Providing a civil remedy for all groups and attributes covered under the vilification section of the Crimes Act – people of faith or no faith, bisexuals, non-binary people and people with variations of sex characteristics, people living with a disability;
- Revising the test for racial vilification to prohibit ‘an act, otherwise than in private, if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate’, which is in line with the Racial Discrimination Act.

Positive obligation and promotion of substantive equality

Across the Advocate’s consultations with children and young people, many have raised concerns about discrimination occurring within workplaces and educational settings. A significant critique of the current ADA is that it fails to place positive obligations on groups such as employers and educational institutions to provide reasonable adjustments and proactively prevent discrimination. Given the substantial impact that discrimination has on children and young people’s wellbeing, the Advocate is strongly supportive of any measures which seek to create a positive duty to both prevent and eliminate discrimination and harassment from occurring in the first place. By imposing positive duties, the ADA would become more proactive rather than reactive piece of legislation.

The Advocate is supportive of positive obligations and measures to promote substantive equality. Previous recommendations supporting positive obligations and measures to promote substantive equality have included:

- Requirements to the Act requiring employers to proactively prevent discrimination and harassment;
- Imposing a positive obligation on employers, educators, providers of goods and services and others to make ‘reasonable adjustments’ to support the full and equal participation of people with disability in all areas of public life; and

- Conducting a comprehensive review of the Act to make reasonable adjustments for other groups – such as LGBTQIA+, for people living with a disability, for people with family responsibilities or in relation to pregnancy.

Importance of accessible and youth-friendly complaints processes

Whilst the current NSW LRC consultation paper is focused on how discrimination is defined under the ADA, the Advocate also wishes to highlight the importance of ensuring that any future complaints processes are accessible and designed in partnership with young people to ensure they are youth friendly.

The Advocate's 2023 Youth Week Poll asked children and young people about their awareness of existing formal avenues to make complaints about discrimination. The results indicate that there are currently relatively low levels of awareness amongst children and young people.

The most cited agencies were the Australian Human Rights Commission (19%), Anti-Discrimination NSW (24%) and NSW Fair Trading (27%). Meanwhile, the majority (36%) of children and young people responded 'none of the above' when rating their awareness of existing complaints avenues. As a result, there is significant room to improve young people's awareness and understanding of the formal avenues they can use to report and seek recourse for discrimination, particularly for those aged under 18 years, 46% of whom had no awareness of any existing channels to make a complaint.

Young people have regularly told us they are much more likely to confide in a trusted friend or adult when they have concerns about their safety or wellbeing, rather than reaching out via a formal complaints' mechanism. Young people told us that providing examples and information, specifically for young people, which explain the process and next steps are good ways to encourage them to make a complaint. They also valued opportunities to have a support person assist them to make a complaint, and to be able to make a complaint via an online form, email or chat service.

Conclusion

Thank you once again for the opportunity to provide feedback to the NSW LRC's Review of the ADA. We note that we would be happy to share existing data or facilitate feedback from children and children and young people, in order to continue inform the development, implementation and monitoring of amendments in the future.

Should you wish to discuss these matters further, please do not hesitate to contact my office via acyp@acyp.nsw.gov.au or phone: (02) 9248 0970.

Yours Sincerely,

Zoë Robinson
Advocate for Children and Young People