

Review of the Anti-Discrimination Act

August 2025

NSW Law Reform Commission

Via email: ADAreview@dcj.nsw.gov.au

Intellectual Disability Rights Service Inc (IDRS) welcomes the review of the NSW Anti-Discrimination Act. The Act has been in operation since 1977, and since then much has changed. IDRS welcomes the establishment of an Act that will make appealing against discrimination more accessible, and easier for a person to assert their human rights and that the Act will operate to uphold and protect those rights.

This submission addresses principles of access to justice when people we support feel discriminated against. IDRS makes this submission as advocates working alongside people with lived experience of intellectual disability, cognitive impairment or psychosocial disability.

The term ‘intellectual disability’ is used throughout this document to refer to intellectual disability, cognitive impairment or psychosocial disability.

About IDRS

The Intellectual Disability Rights Service (IDRS) is a community legal centre and disability advocacy service for people with cognitive impairment in NSW. IDRS is the only service of its kind in Australia, with two key service functions.

Firstly, the IDRS Ability Rights Centre (ARC), offers free criminal and civil legal assistance to people living with a disability across NSW and supports on average 850 people per year. Our NDIS appeals team operates from the CLC, supporting approximately 90 people per year with access to the NDIS or matters arising from an NDIA decision relating to their plan.

Secondly, the IDRS Justice Advocacy Service (JAS) provides 24/7 support across NSW to people with intellectual disability who come in contact with the criminal justice system, whether as victims, defendants or witnesses. Each year, JAS supports on average 2,500 people with intellectual disability including approximately 2,250 people recorded as offenders and 200 people recorded as victims of crime.

In addition to those two broad functions, IDRS is committed to advocating for the collective rights of people with intellectual disability across NSW.

Our commitment to systemic advocacy is under-resourced. However, in recognition of the ongoing patterns of unfair treatment of people with intellectual disability, we would be doing our community an injustice if we did not highlight to Government and others, the changes required to the practices, policies, and laws to promote the human rights and to uphold the social and economic rights of people in the disability community.

Finally, IDRS's governance arrangements include people with intellectual disability, and our lived experience panel of people with intellectual disability, the Make Rights Real Group, inform our recommendations to amend public policy, to self-advocate, improve community awareness and achieve systemic reform.

Disability and Discrimination

Discrimination against people with disability is deeply entrenched across systems.

When compared with people without disability, people with disability continue to experience discrimination and poorer life outcomes across all life domains. As the Disability Royal Commission reported, it is estimated that 22% of people aged over 15 with disability in Australia have experienced some form of discrimination compared with 15% of those without disability.

Disability discrimination is the largest ground of complaint to Anti-Discrimination NSW (ADNSW) and the Australian Human Rights Commission (AHRC).

IDRS and Discrimination Complaints

Direct discrimination matters reflect a very small proportion of the overall civil and criminal legal advice and support provided to clients of the Ability Rights Centre. As reflected in our 2023-2024 annual report, less than eight per cent of all matters involved direct discrimination.

However, we submit that the majority of clients' matters involve indirect discrimination including in the areas currently covered by the Act including employment, housing, specific and mainstream disability and health services, NDIS access and provider related issues, transport, care and protection and domestic and family violence responses. Many of our clients who we support in police stations and at court have experienced both direct and indirect discrimination in their interactions with police officers and throughout court processes.

People with intellectual disability and cognitive impairment often have hidden disability, and their communication styles are often misunderstood. Further, the policies and practices of individuals and their institutional settings have a negative effect on people with intellectual disability. Our clients are often not believed, they speak of circumstances where escalation occurs frequently, mostly because frontline staff of the agencies our clients commonly interact with are not appropriately resources to work with people with intellectual disability.

In the experience of our legal and non-legal advocates, IDRS is of the view that in its current form, the Anti-Discrimination Act (in no particular order):

- is no longer suitable for purpose
- does not sufficiently describe all forms of direct and/or indirect discrimination experienced by people with intellectual disability
- does not empower people with intellectual disability to take action in circumstances where they feel discriminated against
- does not empower people with intellectual disability from appealing a decision about discrimination when they feel that the decision does not address the full circumstances of their complaint, and not provide sufficient redress to the issues giving rise to the complaint

Case Histories

These examples below come from our legal advocates (solicitors) in the Ability Rights Centre (ARC) and non-legal advocates in the Justice Advocacy Service (JAS).

While case histories indicate individual circumstances, systemic discrimination operates as a significant barrier to people with intellectual disability.

Case Study One - Roger

Roger has an intellectual disability and autism spectrum disorder. His disability means that he has difficulty in reading social cues and a low tolerance for frustration.

Roger enjoys going with his brother to the local bowling club. Recently, there was an incident where a delay in serving his meal at the club's bistro caused Roger to become angry and frustrated. He swore at staff members and shoved the club's

security manager, who stumbled backwards but did not fall. As a result of this incident, Roger was banned from the club for three months.

Roger and his brother contacted the Ability Rights Centre. They wanted to know if he should have been treated more leniently because of his disability and asked if Roger could make an anti-discrimination claim.

ARC advised that it appeared that the club had already treated Roger quite leniently. If the club had called the police, Roger could have been arrested and charged with the criminal offence of common assault for pushing the security manager. A three-month ban was quite lenient for a member who had assaulted club staff.

ARC advised that Roger's prospects of success in an anti-discrimination claim were poor.

Case Study Two – Maisie

Maisie contacted the Ability Rights Centre (ARC) seeking advice on an anti-discrimination claim. She told us that she receives the Disability Support Pension due to her mental health issues.

She explained that she had been discriminated against by various government bodies and a neighbour over many years.

They had caused her problems across many domains of government services in a co-ordinated effort to silence her from speaking out against the systemic corruption that she had uncovered in a government department.

Maisie described many incidents that she said were part of this campaign. She wanted ARC to represent her in a single combined legal action against all those responsible. She hoped that this would provide her with compensation for her suffering, make public the government corruption, impose criminal sanctions upon those involved and end the matter once and for all.

ARC explained that it was not possible to do exactly what Maisie wanted. Many of the incidents happened long ago and were out of time for any potential cause of action, others had already been dealt with by a court or tribunal, whilst still others could not be characterised as unlawful discrimination or as any other kind of unlawful act. In addition, it is not legally possible to wrap up a collection of actions of various different kinds against various different parties into one single multi-faceted proceeding.

ARC identified one particular recent incident that could be considered an instance of unlawful discrimination and another where police inaction could be the subject of a complaint to the Law Enforcement Conduct Commission. ARC offered to help Maisie with these two matters. Maisie was not interested in pursuing either matter,

since she did not think that the available outcomes would be a sufficient response to the entirety of her issue.

Case Study Three - John

John's father approached ARC telling us that John was a young person with intellectual disability, autism, and Tourette's-type behaviours. He was non-verbal. He was living in a group home in a country town as his father was not able to care for him anymore, but his father remains his guardian.

His father said that John's main activity was swimming, which he loved. He had been swimming in an indoor pool at [redacted] and loved this. This was his main activity. John's father told us that there had been an incident at the pool where John had defecated in the pool. This was not a deliberate act, it had not happened before throughout many years of swimming, and John's father had taken him to an incontinence specialist where they had found that it would be unlikely that it would happen again.

The [redacted] had banned him from the pool and attempts to get him allowed back had failed. There appeared to be no allegations of actual violence. John's father told us that although John was not violent, he was fairly large and had unusual behaviours so can appear to be intimidating to the public. John's father wanted our assistance to get John back to the pool. We advised John's father that the banning from the pool may amount to disability discrimination. We told him that we could assist to make a formal complaint to [redacted] and, if that failed, assist to make a complaint to the Australian Human Rights Commission or Anti-Discrimination NSW.

ARC wrote a letter of complaint to [redacted] and as a result a videoconference was called to try and have an informal mediation to resolve the complaint. During the conference we were able to advocate for John. We were told that the reason he was banned was allegedly for his own "safety" as there was an occasion where he got upset that the pool opened late and started banging his head against the wall. We were told that this was distressing for staff to witness. We alleged that this was not a sufficient reason to deny him access to the pool and amounted to disability discrimination.

We came to an agreement where John would be allowed back to the pool with a risk assessment done with his support workers and a plan in place including communication strategies between John's staff and the pool staff to resolve any concerns from either party in the future before matters escalate.

All parties seemed happy with this outcome. After he was allowed back to the pool John was at first a bit reluctant to go, but his father helped him feel at ease again.

Case Descriptions: IDRS Justice Advocacy Service (JAS) Clients’ Interactions with NSW Police

IDRS’s Justice Advocacy Service (JAS) is funded to provide individual advocacy support to people with intellectual disability or cognitive impairment in their interactions with police. This is often at the point of arrest or charge. We also assist those clients in managing their matters through the court should the matter proceeds to hearing.

IDRS staff operate in all court jurisdictions but our work is more commonly with people appearing before the local court, as witnesses, victims, alleged offenders or defendants.

Some general concerns about police interactions with IDRS clients include the following:

1. The most common and pervasive example we see is someone trying to make a report to police and not being taken seriously or being unable to tell their story in a way that the police want to hear it. When the Justice Advocacy Service (JAS) is involved the police will then take the time to listen.
2. There is also very common feedback from volunteers/staff/clients of police using derogatory and/or ableist language towards and about our clients while in police custody.
3. Profiling of people with disability/mental health is standard police practice and our clients are targeted if they are known or because they look/behave oddly/differently.

Examples of clients’ interactions:

i.	Client with diagnosis of severe traumatic brain injury, alcohol or other drug dependency and other complex mental health matters was arrested and taken into police custody. Client reported that whilst in police custody in the cells they did not have access to either meals or medical support. They further reported that they were physically assaulted by police whilst in custody.
ii.	Non-verbal client was arrested and taken into police custody overnight. Solicitor was unable to obtain instructions from the client due to barriers in communication over the phone. The police would not provide a pen and paper when client was in the AVL unit with solicitor. Therefore, the solicitor was unable to obtain any instructions from the client. Additionally, no attempts were made to source an AUSLAN interpreter or other form of interpreter.

iii.	<p>Client with major neurocognitive disorder was approached by police on the street and near a school. Police subjected client to a search, client complied with the search. Due to communication barriers and not understanding instructions from police, client dropped their pants in the search as their understanding from the police was to do so. Police then charged client with “wilfully and obscenely exposing his or her person near a school”.</p>
iv.	<p>Client attempted multiple times to make a report as a victim of sexual assault/rape to the police. They reported that police were not responding to them and when they did, it was in a disrespectful and at times 'rude' manner. They have a diagnosis of autism spectrum disorder and made a self-referral to JAS for assistance. Once JAS were involved, the client advised the interactions with the police were positive and then they felt heard by the police.</p>
v.	<p>A client with autism explained to the police that he had hypersensitive hearing and was trying to report an issue with a neighbour. The police had called the psychologist because they thought he was having auditory hallucinations instead of sensory sensitivity to sound.</p>
vi.	<p>Client with diagnosis of autism spectrum disorder, PTSD and sensory processing disorder, currently subject to community corrections orders and apprehended violence orders. Police attended their unit, they are very well known to police and it is also known that police interactions contributed to the diagnosis of PTSD, and continues to be a trigger.</p> <p>The client is non-verbal but gestured for police to leave the property and was using other non-verbal communication cues such as shaking their head.</p> <p>Police approached closer, and the person responded by using exaggerated non-verbal communication cues like waving arms to gesture for police to leave.</p> <p>Police moved closer and restrained client, and due to combination of the client’s PTSD, sensory processing disorder and ASD (their sensitivity to physical touch) they attempted to remove themselves physically from the touch of police.</p> <p>As a result, they were charged with resisting arrest and assault to police officer.</p>
vii.	<p>Client was a victim of a serious assault many years ago and feels that police did not investigate his case properly and had been contacting them in relation to this, as they wanted to see if it could be re-examined. He felt that they kept fobbing him off and not taking his requests seriously.</p> <p>Due to his disability, he can take a while to get to the point of what he is asking and brings in a lot of detail that others might not see as relevant. Police would get</p>

	<p>frustrated with him and kept hanging up on him, which only escalated him. He reported that police would do things like answer the phone stating he had phoned McDonalds when they knew it was him calling, and say he had the wrong number.</p> <p>Police at one point transferred him to a variety of different police stations, including _____ for no logical reason. He then escalated by calling police back, where they ended up charging him with “Use Carriage service to harass”. He was arrested by _____ police and the matter was at _____ Court before the Magistrate determined that it needed to be heard at _____ (as it is being defended). The lawyer he had in Sydney could no longer keep the matter and it has been transferred to _____ .</p> <p>IDRS is still unclear whether he will need to attend _____ Court in person. The client is very upset as he was a victim of crime, trying to seek proper police assistance and has ended up being charged with a crime, because of the behaviour of police.</p>
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Recommendations

Taking a principled approach to recommended drafting of a new Anti-Discrimination Act, IDRS makes the following recommendations.

That the Act:

1. be grounded in international human rights principles
2. adopt a social model of disability
3. its implementation includes community education about forms of discrimination and how the Act prohibits and responds to those forms of discrimination, and how the Act empowers complainants to use the Act when they seek redress for discrimination
4. objects of the Act recognises patterns and types of systemic discrimination
5. requires the Anti Discrimination Board (or whatever its new oversight body will be) to take steps to eliminate forms of systemic discrimination, making biannual reports to Parliament on these matters
6. a positive duty be an aim of the Act

Improving overall access to justice

The NSW Government must take steps to ensure access to justice is improved for people with intellectual disability, cognitive impairment or psychosocial disability by ensuring:

1. independent, fully funded services be available to support decision making by complainants where required
2. decisions made through supported decision making be regarded in law as made by the person requiring support
3. materials about the operation of the Act and its complaints processes be available in a variety of accessible formats, suitable for all people with lived experience and diversity of disability
4. community legal centres must be fully funded so that all persons experiencing discrimination have access to justice, legal advice, and representation when making a complaint under the Act
5. individual advocacy organisations, with experience in supporting people with intellectual disability, cognitive impairment and psychosocial disability are fully funded to enable them to provide non-legal support and advocacy in their clients' efforts to complain under the Act
6. government agencies should be held accountable under the act, including the NSW Police Force and nothing in the new Anti-Discrimination Act should prohibit a complainant from making a complaint under the Law Enforcement Conduct Commission.

Thank you for the opportunity to contribute to the review of the Anti-Discrimination Act.
Please do not hesitate to contact me IDRS if there's anything
in our submission you wish to further discuss.

Yours sincerely

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Intellectual Disability Rights Service