

The University of Sydney submission to the NSW Law Reform Commission Review of the *Anti-Discrimination Act 1977 (NSW)*, August 2025

Introduction

The University of Sydney welcomes the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977 (NSW)* ('**ADA**'). As we discuss at the end of this submission in response to the Commission's [consultation paper and supporting documents released on 20 May 2025](#), the University's aspiration is to reflect the communities it serves by celebrating diversity and inclusion, to create a welcoming environment where all staff, students and visitors are treated fairly and with dignity.

The University acknowledges that the ADA is outdated and requires amending to reflect contemporary values and meet the needs of the NSW community. We have outlined below our feedback on a few of the many important issues addressed in the Consultation Paper, and note that the absence of comment on, or reference to, a particular question or section should not be taken to indicate that the University is not supportive of the proposition or objective contained in it.

Overarching issues

The University supports amending the ADA to protect against 'intersectional discrimination', by allowing for complaints to be based on one or more prohibited grounds, or a combination of prohibited grounds. This would better protect vulnerable members of our community, including international students. (**Question 3.8**)

The University supports extending the test for direct discrimination to include future discrimination, where a duty holder 'proposes to treat' someone less favourably because of a protected attribute. The University also supports the test for indirect discrimination being extended to include circumstances where a person proposes to impose a requirement, condition or practice on a person with a protected attribute. This would allow a person to make a complaint if they were aware of intended discrimination, encouraging conversations between the parties and promoting a focus on solutions before any harm occurs. (**Question 3.9**)

The University is highly supportive of updating and expanding the protected attributes to improve protections for vulnerable communities, including people of diverse sexual orientations and gender identities, people with irrelevant criminal records, and victim-survivors of domestic and family violence. (**Questions 4.4, 4.7 & 4.8**)

Direct and indirect discrimination

The University has reservations about replacing the 'comparator' test for direct discrimination with an 'unfavourable treatment' test, with the effect that it would no longer be necessary for a complainant to prove that they were treated less favourably, in the same or similar circumstances, to the way that a person without the protected attribute was treated or would have been treated (or would be treated, if the ADA was amended to include future discrimination). In the University's view, the comparator test is an effective means of objectively determining whether a complainant has suffered discrimination based on a protected attribute. Replacing it with an 'unfavourable treatment' test would, in our view, cause confusion by creating inconsistencies with Commonwealth anti-discrimination laws. (**Question 3.1**)

The University has similar concerns about removing the 'proportionality' test for indirect discrimination, with the effect that there would no longer be a need for a complainant to show that the requirement or condition imposed on them disproportionately impacts against people with their protected attribute. The University shares the NSWLRC's view from its 1999 review of the ADA that some assessment of proportionality is necessary to establish a link between the detriment and the attribute. (**Question 3.2**)

The University does not support the removal of the requirement for the complainant to demonstrate that they were 'unable to comply' with a condition or requirement. In the University's experience, the fact that a complainant does not comply with a requirement or condition cannot be assumed, and it is not

uncommon for students (for example) to challenge learning and assessment requirements that they are unwilling or unable to comply with for reasons that are unrelated to a protected attribute. In our view, this part of the test for indirect discrimination should not be removed. (**Question 3.3**)

However, the University is supportive of amendments to give the respondent in an indirect discrimination case the burden of proving that a requirement or condition imposed on a complainant is reasonable, and of listing factors to consider when determining whether a requirement is reasonable in all the circumstances. This would promote consistency with Commonwealth anti-discrimination legislation and help address any power imbalance between the parties. (**Questions 3.4 and 3.6**)

Promoting substantive equality

The University is highly supportive of introducing a ‘special measures’ exemption to allow for the implementation of programs to promote or achieve substantive equality for members of a group with a protected attribute, without having to apply for an exemption from the President of Anti-Discrimination NSW. Exemptions currently held by the University for special measures programs include programs to:

- offer, advertise and facilitate programs for women in academic disciplines where there is a historical gender imbalance, including science, technology, engineering and mathematics;
- conduct targeted recruitment for Aboriginal and Torres Strait Islander people; and
- provide financial tuition scholarships to international students from specified under-represented regions.

The removal of the requirement to seek exemptions would facilitate and encourage the development and introduction of additional programs to advance substantive equality for staff and students in the higher education sector. We support the introduction of clear criteria to form part of a ‘special measures’ exemption and the retention of the exemption process to cover unusual or specialised programs that fall outside its scope. (**Question 11.2**)

The University does not support the introduction of an obligation to provide ‘reasonable adjustments’ for anyone with a protected attribute. In the absence of explicit provisions permitting higher education providers to maintain the inherent requirements and academic integrity of their programs (such as those detailed in clause 3.4(3) of the [Disability Standards for Education 2005](#) (Cth)), the requirement to provide adjustments for students with a protected attribute could significantly undermine academic standards and graduate outcomes. In addition, as the University has over 70,000 students enrolled in 450 courses, the administrative burden of considering and determining the reasonableness of requested adjustments for all students with a protected attribute would be overwhelming and unmanageable. (**Question 11.1**)

The University is also unable to support a proposal to introduce a ‘positive duty’ to take ‘reasonable and proportionate steps’ to prevent or eliminate all forms of unlawful conduct. This would further increase the regulatory burden on universities and duplicate obligations under the Respect@Work legislation and NSW Work Health and Safety laws. In addition, the introduction of a positive duty could lead to unintended consequences for the higher education sector, such as complaints of race discrimination from university students seeking teaching and services in languages other than English. (**Question 11.3**)

Other matters

Transport concessions for full fee-paying international and part-time domestic students

The University supports calls by the Sydney University Postgraduate Students Representative Association (SUPRA) for access by full fee-paying international students to public transport concessions in NSW. While we acknowledge that section 88(3) of the *Transport Administration Act* (NSW) operates to override protections against discrimination afforded under the ADA, we encourage the Commission to consider this specific instance of ongoing discrimination based on nationality as part of its review of the ADA, and recommend to the NSW Government that this provision be repealed to remove a longstanding legislative barrier to providing international students with equitable access to concessional travel on public transport in NSW.

Here we note that the NSW Independent Pricing and Regulatory Tribunal (IPART) in its [Maximum Opal fares 2025-2028 – Final Report](#), released in October 2024, discussed and made recommendations to Transport for NSW about expanding public transport concessions to international and part-time domestic students. The report noted that for international students studying in NSW: transport costs can be difficult

to estimate from overseas; changing economic conditions or loss of family support significantly impact student finances; and these students have limited options for improving their financial situation due to visa restrictions on working hours. The IPART recommended that Transport for NSW collaborate with the higher education sector and government stakeholders like Study NSW, to explore the costs and benefits of providing concession discounts on public transport for student cohorts currently excluded from such arrangements (i.e. international full fee-paying and domestic part-time students).¹ We also note that full fee-paying international students and domestic part-time students pay GST, other consumption-based taxes and income taxes, alongside their full-time domestic student counterparts, while most employers in NSW provide payroll tax to the NSW Government linked to the wages paid to international students.

The University of Sydney's anti-discrimination commitments and actions

The University's commitments to equity and eliminating all forms of discrimination from our campuses and workplaces are underlined by our: [Anti-racism Statement](#); [Disability Inclusion Action Plan](#); [One Sydney, Many People Aboriginal and Torres Strait Islander Community Strategy](#); [Gender Equity Program](#); [Safer Communities Office](#); and [Modern Slavery Strategy and Statements](#), which recognise that respect for human rights is fundamental to our strength as an academic institution. Additionally, the University achieved the [highest recognition of Platinum accreditation in the Australian LGBTQ+ Inclusion Awards](#) in 2025 and is proud to be recognised as a gold employer of choice for the [Australian Workplace Equality Index](#).

Our Anti-racism Statement recognises that racism is a serious form of discrimination, which can intersect with other forms of discrimination based on colour, descent, caste, national or ethnic origin, language, sex, sexual orientation, gender, gender identity or expression, sex characteristics, marital or relationship status, age, disability, religion, migration status, refugee or asylum status and socio-economic status. Our commitment to anti-racism is consistent with our ethos of promoting respect for human dignity, equity, diversity and inclusion. Developed after extensive consultation with staff, student groups and community stakeholders, the Anti-racism Statement also affirms our whole-of-University commitment to valuing and respecting the knowledge and cultures of Australia's First Nations peoples. The Statement has been endorsed by our Senate and Academic Board.

The University was founded on the vision of 'opportunity for all'. Our support for staff and students of all genders, sexualities and sex characteristics aims to strengthen this founding ethos to create a place of work and learning where everyone can thrive and be their authentic selves. We have made significant investment to support our LGBTQIA+ staff, students and community through internal and external activities and partnerships. This includes the launch and expansion of the [Pride Network](#) and establishment of [LGBTQIA+ Student Support Liaison Officer](#) roles, to ensure inclusion for our students is integrated into faculties. In 2019, we founded the NSW/ACT Higher Education Pride Network to facilitate cross-institutional learning and develop best practice.

We have extended our positive duty under the *Sex Discrimination Act 1984* (Cth) to take steps to eliminate work-related discrimination on the grounds of sex, sexual harassment, sex-based harassment and related acts of victimisation, by making a commitment in our Enterprise Agreement to take reasonable and proportionate steps to eliminate all forms of unlawful workplace conduct including bullying, harassment and sexual misconduct. Our [Respect@Work Program](#) was established in consultation with staff and community stakeholders to ensure that the positive duty is met and maintained. Our Respect@Work Action Plan outlines strategic deliverables from 2024-2026, categorised under the seven standards identified by the Australian Human Rights Commission: Leadership, Culture, Knowledge, Risk management, Support, Reporting and response, and Monitoring, evaluation and transparency.

We have recently published our [2024 Annual Report on Sexual Misconduct](#), which is our third annual report on sexual misconduct and underscores our commitment to transparency, accountability and care in addressing sexual assault and sexual harassment within our community. Our work is guided by evidence-based strategies and shaped by the voices of victim-survivors, and is aligned with the requirements of the draft [National Higher Education Code to Prevent and Respond to Gender-based Violence](#) proposed by the Commonwealth. While we have made progress in fostering a safer and more respectful environment for our community, we continue working to listen, build trust, and reduce barriers for victim-survivors to report sexual misconduct. The report sets out our priorities for the future, aimed at strengthening safety and support frameworks and enhancing preventative initiatives.

¹ NSW Independent Pricing and Regulatory Tribunal (IPART), [Maximum Opal fares 2025-2028 – Final Report](#), October 2024, p.25