

Review of the Anti-Discrimination Act 1977 (NSW): Community survey on procedures and compliance

About our review

The NSW Law Reform Commission is reviewing the *Anti-Discrimination Act 1977* (NSW) (ADA).

The ADA prohibits discrimination, vilification, sexual harassment and victimisation. It also allows people to make a complaint if they think they have experienced unlawful conduct.

As part of our review, we're considering the ADA's complaints procedures, what happens if the ADA is breached, and how the ADA can be enforced. We're also considering what else could be done to encourage and promote compliance with the ADA.

We've released a detailed consultation paper on these issues. We've also released a community summary. This is a simplified, shorter version of the consultation paper. You can find these documents on our [website](#).

You can also visit the [website of Anti-Discrimination NSW](#) for a range of accessible resources on discrimination and the complaints process.

About this survey

This survey includes questions on a range of key issues about ADA's complaints procedures and other ways of promoting compliance with the law. There's space for you to raise other issues too.

The survey is designed to complement the community summary, available on our [website](#). We encourage you to read the summary as you complete the survey. The summary provides background information that can help you answer the questions. It also sets out some ideas and options for changing the law that we've heard so far.

The survey closes on **2 October 2026**.

Content warning

The survey deals with content that some people may find distressing. This includes discrimination, sexual harassment and vilification. If you need support, there are some free services you can contact. These include [Beyond Blue <beyondblue.org.au>](#) and [Lifeline <www.lifeline.org.au>](#).

How to complete the survey

You can choose to answer all of the questions or just some of them. The only compulsory question is Question 1, which asks how we may use your response.

There are 27 questions in the survey:

- Question 1 is about **confidentiality and privacy**
- Question 2 is about **your experience and why you are interested in this review**
- Questions 3 – 4 are about the **objectives and structure of the ADA**
- Questions 5 – 10 are about **complaints to Anti-Discrimination NSW**
- Questions 11 – 13 are about **investigation and conciliation**
- Questions 14 – 16 are about **complaints to the NSW Civil and Administrative Tribunal**
- Questions 17 – 18 are about **settlement agreements**
- Questions 19 – 21 are about **remedies and enforcement**
- Question 22 is about **costs orders**
- Question 23 is about **other proactive and preventative steps**
- Questions 24 – 26 are about **exemptions**
- Question 27 asks for **any other comments on procedures and compliance issues under the ADA.**

You can complete the survey:

- by completing this document and emailing your responses to adareview@dcj.nsw.gov.au, or
- online, using the link available on [the ADA project page on our website](#).

Confidentiality and privacy

You can choose to keep your answers anonymous or confidential.

If you choose to keep your survey response anonymous, we may refer to your answers in our publications. However, we won't reveal information that could identify you.

If you choose to keep your survey response confidential, we won't refer to your answers in our publications. As explained in our [privacy and information management policy](#), we'll keep your information confidential unless a law or other public interest reason requires us to disclose it.

Question 1: How can we use your responses?

- ☐ You can refer to, and publish, my responses anonymously
- ☐ Don't refer to, or publish, my responses. I want my responses to be confidential

Your experience

While this survey is anonymous, it would help our research to understand why you're completing the survey.

Question 2: Why are you completing this survey?

Select all that apply:

- ☐ I have experienced discrimination, vilification, harassment or victimisation
- ☐ I work for, or represent people who experience discrimination, vilification, harassment or victimisation
- ☐ I responded to a complaint under the ADA about me
- ☐ I responded to a complaint under the ADA on behalf of an organisation
- ☐ Other (please detail):

Question 2a: What would you like to tell us about your experience?

Objectives of the ADA

Unlike some other discrimination laws in Australia, the ADA doesn't have a clear, modern statement of its objectives, purposes or guiding principles.

Question 3: Should the ADA include a clear statement of its purposes and objectives?

☐ Yes

☐ No

Please explain your answer:

If a statement of purposes and objectives is added to the ADA, what should those purposes and objectives be?

Select all that apply:

☐ To promote equality

☐ To recognise certain human rights laws and principles

☐ To eliminate and prevent discrimination, vilification, sexual harassment and victimisation

☐ To give people a way to seek a remedy if they experience this conduct

☐ To give certain roles and powers to agencies such as Anti-Discrimination NSW and the NSW Civil and Administrative Tribunal

☐ To recognise the links between discrimination and social disadvantage

☐ To recognise the harm discrimination causes to individuals, groups and society

☐ To address systemic discrimination

☐ To address intersectional discrimination

☐ To promote community education

☐ Other (please specify):

Please explain your answer:

Structure of the ADA

Question 4: Could the structure or language of the ADA be improved to make it easier to understand and use?

☐ Yes

☐ No

If yes, how?

Complaints to Anti-Discrimination NSW

People can make a complaint if they think they have experienced discrimination or other conduct prohibited by the ADA. A complaint must first be made to Anti-Discrimination NSW (ADNSW).

Who can make a complaint

The ADA has rules about who can make a complaint to ADNSW. A complaint can be made by:

- one or more persons on their own behalf
- one or more persons on their own behalf, as well as on behalf of another person or persons
- a parent or guardian of someone who lacks legal capacity to make a complaint (the ADA says this could be, for example, due to age or disability), or
- a representative body, on behalf of one or more named persons.

An agent, including a lawyer, can make a complaint on behalf of any of the people listed above.

Question 5: Who should be able to make a complaint to ADNSW?

Select all that apply:

☐ Individuals personally or directly affected by the alleged conduct

☐ Individuals should be able to make complaints on behalf of other individuals

☐ Organisations representing people protected by the ADA should be able to make complaints on their behalf

☐ Others (please specify)

Please explain your answer:

Question 6: Should it be easier for representative organisations to make a complaint on behalf of the people they represent?

☐ Yes

☐ No

Please explain your answer:

How to make a complaint

It's free to make a complaint to ADNSW. Complaints must be made in writing, but there's no set format and people can add information later. ADNSW can help people make complaints. For instance, this can involve arranging for complaints in a different language to be translated to English, or writing down a complaint someone tells ADNSW on the telephone.

Question 7: Should anything change about the process for making a complaint to ADNSW?

☐ Yes

☐ No

Please explain your answer:

When ADNSW can decline a complaint

The ADA allows ADNSW to decline a complaint for many reasons. ADNSW can choose to decline a complaint, but isn't required to.

ADNSW can decline complaints before, during or after the investigation process, but the rules differ depending on the stage of the process.

Question 8: When should ADNSW be able to decline a complaint?

Select all that apply:

☐ It's clear the alleged conduct wouldn't breach the ADA

☐ The conduct happened more than 12 months before the complaint was made

☐ The complaint is frivolous, vexatious, misconceived, or lacks substance

☐ The complaint is better dealt with elsewhere

- ☐ The complaint was dealt with, or is being dealt with, elsewhere
- ☐ No further action is needed due to the nature of the conduct
- ☐ It's not in the public interest to take further action
- ☐ The complaint duplicates an earlier complaint
- ☐ The conduct has no connection to NSW
- ☐ The respondent has no connection to NSW
- ☐ Other reasons (please specify):

Please explain your answer:

Question 9: Should ADNSW be required to decline certain complaints?

- ☐ Yes
- ☐ No

Please explain your answer:

If yes, when should ADNSW be required to decline a complaint?

Question 10: When ADNSW declines a complaint, should the complainant be able to ask the NSW Civil and Administrative Tribunal to review this decision?

- ☐ Yes, always
- ☐ No, never
- ☐ Sometimes (please specify):

Please explain your answer:

Investigation and conciliation

The role of ADNSW is to investigate a complaint and, if appropriate, help the parties try to resolve it through conciliation.

Investigation

If ADNSW accepts a complaint, this doesn't mean the complaint has been proven. It just means the complaint handling process can continue.

The next stage is "investigation". The ADA doesn't say what an investigation should involve. ADNSW usually sends the complaint to the respondent and asks for a response. If the respondent replies, their response is shared with the complainant, who can reply if they wish.

ADNSW can require people to produce information or documents relating to the complaint. People can be fined if they don't comply.

Question 11: Should ADNSW be given additional powers to investigate a complaint?

☐ Yes

☐ No

Please explain your answer:

Conciliation

After investigation, the next step is usually conciliation. An independent conciliator from ADNSW helps the parties talk through the issues and try to reach an agreement. Conciliation is usually quicker and more flexible than going to court or a tribunal.

One feature of conciliation under the ADA is that parties need to ask ADNSW for permission if they want a lawyer to represent them.

Question 12: Should the ADA allow parties to have legal representation at conciliation, without needing to ask for permission?

☐ Yes

☐ No

Please explain your answer:

Question 13: What other changes, if any, could be made to conciliation procedures?

Complaints to the NSW Civil and Administrative Tribunal

If the parties don't reach an agreement at conciliation, the complainant might take the second step in the complaints process. That is, they might take their complaint to the NSW Civil and Administrative Tribunal (NCAT).

ADA complaints can't be made to NCAT directly. Complainants must first go through the ADNSW process. ADNSW can then refer the complaint to NCAT in certain situations, including if there's no agreement and a complainant asks for it.

The ADA doesn't allow ADNSW to refer complaints to any other tribunal or to a court.

Question 14: When, if ever, should ADNSW be allowed to refer a complaint to NCAT?

Question 15: Should people be able to take ADA complaints directly to NCAT, instead of having to go through the ADNSW processes?

☐ Yes

☐ No

Please explain your answer:

Question 16: Should work-related complaints be referred to the NSW Industrial Relations Commission or Industrial Court, instead of NCAT?

☐ Yes

☐ No

Please explain your answer:

Settlement agreements

Parties who resolve a complaint at ADNSW or NCAT usually enter into a settlement agreement. This document records what the parties agreed to. For example, the parties may agree to compensation, policy changes, staff training or disciplinary action.

Confidentiality clauses

Settlement agreements often include confidentiality clauses (non-disclosure agreements). These prevent parties from sharing details of the complaint or agreement with others.

Question 17: Should there be limits on the use of confidentiality clauses in settlement agreements?

☐ Yes

☐ No

Please explain your answer:

Enforcing settlement agreements

ADNSW doesn't have the power to enforce settlement agreements made at conciliation. NCAT can't enforce settlement agreements made during its processes either. If a respondent doesn't comply with a settlement agreement, it's ultimately up to the complainant to try to enforce it in court.

Question 18: Should any changes be made to the process for enforcing a settlement agreement?

☐ Yes

☐ No

Please explain your answer:

Remedies and enforcement

If NCAT decides a respondent has breached the ADA, it can order the respondent to do certain things to address the harm suffered by the complainant. These are called "remedies". The ADA lists the types of remedies that NCAT can order.

Question 19: When a respondent has breached the ADA, what remedies should NCAT be able to order?

Select all that apply:

☐ Order the respondent to pay compensation

☐ Order the respondent to stop certain conduct

☐ Order the respondent to take action to redress the complainant's loss or damage

- ☐ Order the respondent to make a public apology
- ☐ Void parts of a contract or agreement that breaches the ADA
- ☐ Order the respondent to develop and implement a program or policy to address unlawful conduct
- ☐ Order the respondent to pay a fine for breaching the ADA
- ☐ Declare that the respondent acted unlawfully
- ☐ Order a respondent to attend or provide work training, or to re-employ a complainant
- ☐ Other: (please specify)

Please explain your answer:

Compensation

NCAT can only order each respondent to pay the complainant damages of up to \$100,000 to compensate them for any loss or damage they suffered because of the respondent's conduct. This is known as the "compensation cap".

Question 20: What changes, if any, should be made to the compensation cap?

- ☐ Keep the compensation cap at \$100,000
- ☐ Remove the compensation cap
- ☐ Increase the compensation cap

Please explain your answer:

Question 21: What other changes (if any) should be made to NCAT's powers to award damages?

Costs orders

Except in special circumstances, each party pays their own legal expenses (known as "costs") in NCAT regardless of who wins. This is known as a "no costs" model. It is different from the general rule that applies in courts. There, the unsuccessful party usually pays some or all the successful party's legal expenses, as well as their own.

A different model applies to complaints made to federal courts under the *Australian Human Rights Commission Act 1986* (Cth). Respondents pay the complainant's legal costs if the complainant wins. If the complainant is unsuccessful, each party pays their own costs. A complainant can only be ordered to pay the respondent's costs in certain situations. This is known as the "equal access" or "asymmetrical" model.

Question 22: What is your preferred approach to legal costs?

- ☐ The "no costs" model (the current approach in NCAT)
- ☐ The "equal access" / "asymmetrical" model (the federal approach)
- ☐ Other approach (please specify):

Please explain your answer:

Other proactive and preventative steps

Some people think the ADA needs to give ADNSW (or another government agency) new powers to encourage compliance with the ADA, address systemic discrimination and promote substantive equality.

Question 23: What additional powers, if any, should be given to ADNSW?

Select all that apply:

- ☐ Investigate or initiate complaints itself, without requiring someone to make a complaint
- ☐ Help people make a complaint to NCAT
- ☐ Initiate its own investigations and inquiries outside the complaints process
- ☐ Intervene or appear in court or tribunal cases to help develop the law
- ☐ Conduct inquiries into systemic discrimination
- ☐ Seek civil penalties (fines) for serious breaches of the ADA
- ☐ Seek criminal prosecution for serious breaches of the ADA
- ☐ Other (please specify):
- ☐ None, ADNSW's powers should remain the same

Please explain your answer:

Exemptions

The ADA allows duty holders to apply to ADNSW for temporary exemptions from the ADA. Exemptions permit a duty holder to undertake conduct that would otherwise be unlawful under the ADA.

Exemptions are often used to:

- run programs, like targeted employment or education initiatives, for particular groups to promote substantive equality and address historical disadvantage (also called “special measures”), or
- allow discriminatory conduct because another important interest outweighs equal treatment.

Question 24: What role and purpose should exemptions serve?

Select all that apply:

- ☐ Exemptions should be granted to address historical disadvantage
- ☐ Exemptions should be granted where there’s another good justification for the discriminatory conduct (eg, the public interest)
- ☐ Other: (please specify)

Please explain your answer:

Question 25: What, if any, changes should be made to the current process for seeking an exemption?

Select all that apply:

- ☐ The process should be more transparent, for instance by giving the public a chance to be involved
- ☐ NCAT should have the power to decide whether to grant an exemption, not ADNSW
- ☐ Exemptions should only be available in relation to certain conduct or protected attributes
- ☐ The duration for which an exemption can be granted should change
- ☐ There should be a fast-track process for certain types of applications
- ☐ There shouldn’t be an exemption application process – the ADA should allow duty holders to take “special measures” without needing to seek an exemption
- ☐ Other: (please specify)
- ☐ None, the current exemption process should remain the same

Please explain your answer:

Question 26: What should ADNSW be required to consider when deciding whether to grant an exemption?

Select all that apply:

- ☐ Whether the proposed exemption is appropriate or reasonable
- ☐ Whether the proposed exemption is necessary
- ☐ Whether there is another way of achieving the exemption's purpose without discriminating
- ☐ Whether the applicant has taken reasonable steps, or can take such steps, to avoid or reduce adverse impacts before seeking the exemption
- ☐ The public, business, social or other community impacts of granting the exemption
- ☐ Any conditions or limitations that could be included in the proposed exemption.
- ☐ Whether any other person or body supports the application
- ☐ The effect of not granting the exemption
- ☐ Whether other laws already prohibit the proposed conduct.
- ☐ Whether the exemption is consistent with the ADA's objectives and purposes
- ☐ Other: (please specify)

Please explain your answer:

Additional Comments

Question 27: Is there anything else you'd like to tell us about procedures and compliance issues under the ADA?

End of Survey

Thank you for taking the time to complete this survey.

Your responses will help inform our recommendations to the NSW Government.

If you'd like to receive updates on our work, please sign up to [join our mailing list](#).