



**Submission in response to the public consultation on the
Review of the NSW Anti-Discrimination Act 1977
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Table of Contents

Who is the Physical Disability Council of NSW?	3
Executive Summary	4
Recommendation 1: The NSW Anti-discrimination Act 1977 (ADA) should legally mandate positive duties for organisations to prevent and eliminate, as far as possible, discrimination against people with disabilities.	6
Recommendation 2: The term ‘reasonable’ be removed from ADA and made a standalone test.	12
Recommendation 3: Simplify the language used in the legislation and make sure the content is available in accessible formats.	13
Recommendation 4: The definition of disability should be made consistent with the definition in the United Nations Convention on the Rights of People with Disabilities (UNCRPD).	14
Recommendation 5: Repeal section 49L 3(a) which exempts private educational institutions from anti-discrimination law.	16
Recommendation 6: Repeal section 49D 3(c) which provides exemptions for certain employers to discriminate against people with disabilities.	17
Recommendation 7: The definition of assistance animal in the ADA should be consistent with the Disability Discrimination Act.	18
Recommendation 8: Insurance industries should not be allowed to discriminate on the grounds of genetic disorders and conditions.	20
Recommendation 9: Extend anti-vilification laws to people with disabilities.	21
Conclusion	22

Who is the Physical Disability Council of NSW?

The Physical Disability Council of New South Wales (PDCN) is the peak advocacy organisation for people with physical disabilities in NSW. We stand up for the rights of people with physical disabilities, advocate for disability inclusion across Government and business, and drive systemic reform around accessibility.

The objectives of PDCN are:

- To educate people with physical disabilities in NSW about the range of services and programs available to support them.
- To develop the capacity of people with physical disability in NSW to identify their own goals and build the confidence needed to achieve their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability).

PDCN also convenes the NSW Disability Advocacy Network (NDAN), which is a network of disability advocacy organisations across NSW. We are funded by the NSW Department of Communities and Justice. Collectively we deliver systemic, representative and individual disability advocacy services across the state and represent people with disabilities in NSW at the National level.

The following submission draws on the knowledge and experience of people with lived experience of physical disability (and the lived experience of all people with disabilities shared through NDAN).

Executive Summary

This submission responds to the NSW Law Reform Commission Review of the Anti-Discrimination Act (ADA), focusing on sections 4.29 - 4.66 relating to disability discrimination. It addresses the most significant issues where we hold evidence, drawing on consultations with PDCN members, surveys, regional forums, and our Lived Experience Advisory Panel. We also endorse the submissions to this review prepared by Family Advocacy, the Justice and Equity Centre and recommendation two in the submission by the Council for Intellectual Disability NSW.

The submission is structured by recommendation. The first section recommends positive obligations for duty holders to prevent and eliminate, where possible, discrimination against people with disabilities. This section refers to the Victorian Equal Opportunity Act 2010 as a suitable benchmark. It also discusses the benefits of this legislative change in terms of enhancing disability inclusion, shifting the burden of proof to the more powerful entity, the benefit of expanding the remit of legislation that can be in a tribunal and the potential shift in community attitudes towards people with disabilities.

The second section recommends legislating a standalone test for discrimination by 'failing to provide reasonable adjustments'. It offers the wording for a legislative provision drafted by People with Disabilities Australia.

The third section recommends modernising the definition of disability. It recommends making the definition consistent with the United Nations Convention on the Rights of People with Disabilities (UNCRPD), outlines commonly used terms for disability and discusses the option of using a description of disability based on the social model of disability. Section four recommends making the law available in accessible formats and plain English.

Section four recommends repealing section 49L 3(a) which exempts private educational institutions from anti-discrimination law. This change accounts for the need for children to be safe from discrimination. Section six recommends repealing section 49D 3(c) which provides exemptions for certain employers to discriminate against people with disabilities. This change takes into account modern workplaces.

The seventh section recommends provisions around assistance animals in the ADA are made consistent with the Disability Discrimination Act 1992. This section discusses the need to broaden the cohort of people with disabilities who require assistance from animals, changing the word 'dog' to 'animal' and including provisions that refer to accredited training.

The eighth section recommends that insurance industries should not be allowed to discriminate on the grounds of genetic disorders and conditions. This recommendation is about reducing discrimination but also about responding to public health concerns.

Section nine argues that anti-vilification laws should extend to people with disabilities.

Recommendations for legislative reform to the Anti-Discrimination Act
for people with disabilities.

Recommendation 1: The NSW Anti-discrimination Act 1977 (ADA) should legally mandate positive duties for organisations to prevent and eliminate, as far as possible, discrimination against people with disabilities.

It is of fundamental importance to people with disabilities in NSW that the ADA is amended to provide a legal requirement, in the form of positive obligations/duties, for organisations to prevent and eliminate, as far as possible, discrimination against people with disabilities. The Victorian Equal Opportunity Act 2010 is a suitable benchmark.

Positive obligations on duty holders will make the following key positive changes:

- The burden of proof for proving the legal elements of discrimination will be placed on the more powerful entity, shifting away from the individual.
- Claims of discrimination under the ADA can be heard in a NSW Tribunal at lower cost to the applicant compared to lodging a complaint under the DDA in a federal court.
- A positive obligation may help shift community attitudes and behaviour in favour of disability rights.

Benchmark NSW law against the Victorian Equal Opportunity Act 2010

The Victorian Equal Opportunity Act 2010 provides positive obligations for duty holders to eliminate discrimination¹. In reference to people with disabilities the law creates positive duties to provide reasonable adjustments for a person with disability.

Consistent with Victorian law, there should be a legal requirement in NSW for duty holders to eliminate discrimination against people with disabilities, coupled with a legal obligation to make reasonable adjustments for people with disabilities. In Victorian law, these positive obligations extend to employment, employment related areas, education, goods and services, accommodation, club and club members, sport and local government². Following legislative requirements, organisations can realise positive obligations through policy, programmes and

¹ State Government of Victoria (2010), *Equal Opportunity Act 2010*, v030, pp1, 14 December 2022
<<https://content.legislation.vic.gov.au/sites/default/files/2022-12/10-16aa030%20authorised.pdf>>

² Ibid

training (amongst other initiatives). This is the benchmark of what people with disabilities deserve in NSW.

Case Study – The need for positive obligations to prevent discrimination in hospitals

Declan is a person with physical disability. He uses a power wheelchair. He reported through PDCN's Lived Experience Advisory Panel meeting held on Tuesday 22 October 2024 that he had a poor experience in a psychiatric facility.

Declan was an admitted patient in the health facility and was treated over a period of about three weeks. The staff at the facility were not trained to care for people with complex physical disability and refused to help Declan to shower.

Declan decided to try to shower himself. He fell on the floor and was unable to get up. The staff came to his aid but would not help him off the floor. Declan suggested to the staff that they should use the hoist to lift him off the ground. The staff said they had not received training to use the hoist and Declan remained on the floor of the bathroom for two to three hours.

After this incident Declan had to ask his parent to attend the facility to shower him. For personal reasons Declan was not comfortable with this arrangement, but he had no choice.

If positive obligations were legally required for hospitals (as the duty holder) there would likely be an investment in disability inclusion and personal care training for staff, which would give them the skills to care for a person with complex physical disabilities. By realising a positive obligation to train staff in manoeuvring person with complex physical disability this incident may not have happened.

Problems with the terms 'reasonable' and 'undue hardship'

There will always be a legal and ethical questions around what constitutes 'reasonable' and 'undue hardship' but there are guidelines and precedential law that provide guidance around these issues. The disability advocacy sector is a critical partner of the design of these guides.

For example, during two phone calls with PDCN members held on Thursday 14 August 2025, both members said they feel overwhelmed with the lights, sounds and crowds in supermarkets. When people with sensory disabilities become overwhelmed in supermarkets, they often experience significant cognitive impacts. It can be difficult to concentrate or

remember what they came to buy, and the stress of the environment can make communicating with staff or companions much harder. Many also experience “brain fog,” which leaves them feeling detached, confused, and unable to process information effectively. In this sense supermarkets are not accessible for people with sensory disabilities. During the COVID-19 pandemic, supermarkets allocated specific hours for older people and people with disabilities to do their shopping to make sure they were able to purchase groceries. In fact, some stores continue to do this³. Reasonable adjustments for people with disabilities in terms of shops could be made in all major supermarkets by scheduling a disability inclusion hour for shoppers where the lights are lowered, music is turned off and there are fewer people. This would make supermarkets more accessible for people with disabilities.

The burden of proof for proving the legal elements of discrimination will be placed on the more powerful entity, shifting away from the individual.

In NSW the complainant(s) (individual) – not respondent(s) (organisation) - must prove each part of the tests for discrimination on the balance of probabilities. It is important for law makers to understand that many people with disabilities live more complicated lives than people who do not have disabilities. The requirement to lodge a complaint under anti-discrimination law and then to carry the burden of proof needed to prove discrimination is, in our view, an unfair burden.

The Law Reform Commission’s consultation paper⁴ on page 34, outlines some of the challenges people with disabilities face in proving discrimination.

To add to this list, from a ground level perspective, we have heard that people are too traumatised and exhausted after dealing with discrimination to face making a complaint under the law, let alone collect the evidence needed to defend their claim.

³ Scentre Group (2025), ‘Quiet Time: Every Tuesday between 10:30-11:30am’, *Westfield Hornsby*, accessed 28th August 2025 <<https://www.westfield.com.au/hornsby/news/6z0YWyMCxADyjEkJ8BVBZs/quiet-time>>

⁴ Review of the Anti-Discrimination Act 1977 (NSW), Consultation paper 24, NSW Law Reform Commission, May 2025

Case Study - Lived Experience Advisory Panel member - Discrimination in education; why complaining about discrimination is a challenge following the experience of discrimination.

My daughter was discriminated against by the local public school. First, they refused to provide wheelchair access when she needed her wheelchair (her disability is dynamic). On one occasion she had a seizure and was found unconscious on the concrete floor of the quadrangle. On another occasion we were told that attending school was inconvenient because they hadn't put extra staff on. My daughter was isolated in school. She lost some of her functions and was hospitalised for 7 weeks. We were one of the case studies in the Disability Royal Commission. We didn't go through with a discrimination complaint because it was all too traumatic. After fighting constant battles with the school, we felt overwhelmed, distressed and upset. We didn't have the energy left to raise a complaint.

Discrimination is commonplace, shifting the burden of proof creates a fairer legal dynamic

Discrimination against people with disabilities is commonplace. In the PDCN Lived Experience Advisory Panel meeting held on Tuesday 17 July 2025, members were invited to share recent experiences of discrimination. Members discussed discrimination around hotel bookings, inaccessible concerts and event venues, public schools not providing adequate care for children causing severe harm, bus transfers being cancelled, inflated costs to air travel for carers compared to booking a regular ticket, poor assumptions being made in medical practices around appropriate care, medical care, failure of disability employment services, refused transport due to guide dogs, and NDIS funding cuts creating more risk of harm.

While conducting community consultations in regional areas of NSW, we engaged with the physical disability community and asked about issues relating to inclusion, accessibility and discrimination. We heard that shop owners leave boxes in the doorway of shops and get annoyed when a wheelchair user asks for the boxes to be removed. Bus stops are sometimes located near grassy areas where wheelchairs cannot manoeuvre. There is a very limited supply of wheelchair accessible taxis across NSW. We also heard that the pavements are often cracked and uneven in local council areas and there is limited disability parking near major shopping centres. We heard from local MPs that the issues around inclusion and discrimination are more significant for people with disabilities in regional areas.

What should be noted from these examples - apart from the extent and gravity of discrimination across multiple service areas - is that people with disabilities are coming up against large scale government and commercial organisations with more power and resources. Shifting the burden of proof to organisations creates a fairer legal dynamic and makes the route to justice more accessible for individuals.

Claims of discrimination under the ADA can be heard in a NSW Tribunal at lower cost to the applicant compared to federal legislation cases; therefore, the provision should be as protective as possible.

When it comes to discrimination against people with disabilities there are two primary laws that can be used: the Disability Discrimination Act (DDA) 1992 (Cmth)⁵ or the NSW Anti-Discrimination Act (ADA) 1977⁶. Both these laws must be as comprehensive and protective as possible. However, in the latter part of the legal process a complaint under the DDA will be filed in a Federal Court whereas an ADA complaint can be referred to a tribunal. Generally, court proceedings are more complex, and they cost a lot more than tribunal proceedings⁷. Affordability is critical for accessing justice, especially for people with disabilities, most of whom have lower incomes compared to people who do not have disability⁸.

⁵ Australian Government (2018), *Disability Discrimination Act 1992*, compilation no.33, Act no. 26, Attorney-General's Department, Federal Register of Legislation <<https://www.legislation.gov.au/C2004A04426/2018-04-12/text>>

⁶ NSW Government (2024), *Anti-Discrimination Act 1977 no 48*, NSW Government, 1st July 2024, accessed 28 August 2025 <<https://legislation.nsw.gov.au/view/html/inforce/current/act-1977-048>>

⁷ Disability Discrimination Legal Centre NSW (2011), 'Part Two: Acting Against Discrimination', *Using Disability Discrimination Law in New South Wales*, part 2, pp.5, May 2011, accessed 28th August 2025 <https://lawfoundation.net.au/wp-content/uploads/2023/12/Using_Disability_Discrimination_Laws_NSW_2011WEB.pdf>

⁸ Australian Institute of Health and Welfare (2024), 'Income and Finance', *People with disability in Australia*, Australian Government, 23rd April 2024, accessed 28 August 2025 <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/income-and-finance/income>>

According to the Australian Institute of Health and Welfare as of 31 March 2023, 769,300 people received Disability Support pension⁹. This equates to around 57% of the NSW population with a disability. Many people with disabilities do not have the financial resources to argue a case of discrimination in a Federal court.

Positive obligation will shift community attitudes and behaviour in favour of disability rights.

It is our view that positive obligations for duty holders to prevent, and eliminate where possible, discrimination against people with disabilities will contribute to a positive shift in community attitudes towards people with disabilities. As it states in the article produced by Bilz and Nadler, *Law, Moral Attitudes and Behavioural Change* 2014 “In general, when the law imposes obligations ...[on]general intuitions about justice, then people are more likely to view the legal system as a legitimate and reliable source of morality”¹⁰.

The implementation of the Respect at Work Laws introduced in the Sex Discrimination Act 1984 in 2022 is an example of the law shaped and shifted by community attitudes¹¹. Put simply, the positive duty requires organisations and businesses to take ‘reasonable and proportionate measures’ to eliminate discrimination on the grounds of sex in a work context. These laws send a message to organisations about the type of behaviour that is and is not acceptable and makes them implement strategies to prevent sex discrimination.

Sexual harassment laws have shifted the way people think about behaviour in the workplace. In a media article published by Our Watch¹² on 30 January 2025 is stated:

“Three-quarters of people would consider leaving a job where workplace sexual harassment was not treated as a serious issue, new data from national violence prevention organisation Our Watch has found.

⁹ Australian Institute of Health and Welfare (2023), ‘Disability Support Pension’, *Australia’s Welfare*, Australian Government, 7th September 2023, accessed 28th August 2025 <<https://www.aihw.gov.au/reports/australias-welfare/disability-support-pension>>

¹⁰ Bilz & Nadler (2014), ‘Law, Moral Attitudes, and Behavioral Change’, *The Oxford Handbook of Behavioral Economics and the Law*, ed. Zamir & Teichman, 2014, pp. 245, accessed 28th August 2025 <<https://www.law.northwestern.edu/faculty/fulltime/nadler/bilz-nadler-lawmoralattitudespageproofs.pdf>>

¹¹ Australian Human Rights Commission (2022), ‘Respect@Work – Changes to the Sex Discrimination Act 1984 and the Australian Human Rights Commission Act 1986’, *Recent Changes to the Law*, December 2022, accessed 28th August 2025 <<https://humanrights.gov.au/our-work/complaint-information-service/fact-sheet-respectwork-changes-sex-discrimination-act-1984-ahrc-act-1986-december-2022>>

¹² Our Watch Media Team (2025), *Our Watch Sexual Harassment response a key issue in attracting and retaining staff, new data shows*, 30 January 2025, accessed 28th August 2025 <<https://www.ourwatch.org.au/news/sexual-harassment-response-a-key-issue-in-attracting-and-retaining-staff-new-data-shows>>

The survey of leaders and employees in medium to large workplaces commissioned by Our Watch shows 83% of female and 67% of male employees agreed that they would consider leaving a job that didn't treat workplace sexual harassment as a serious issue.

The latest data also shows gender equality is a key issue for attracting female employees in particular, with 75% of women compared to 44% of men agreeing that if they were looking for a new job, the workplace's approach to gender equality would be an important consideration".¹³

Employees are aware of their rights and people's attitudes are shifting towards employment that is safe. We believe a similar obligation for people with disabilities will shift community attitudes more positively towards disability inclusion.

Recommendation 2: Legislate a standalone test for discrimination by "failing to provide reasonable adjustments".

At the heart of disability inclusion is the recognition that true equality requires active steps to remove barriers. It states in an article on *Disability Standards for Education and the obligation of reasonable adjustment* by Elizabeth Dickson "the task of eliminating discrimination cannot be adequately addressed in the absence of a duty to make reasonable adjustments. If disability discrimination legislation only went as far as formal equality, it would entrench existing disadvantages".¹⁴

In other words, inclusion is not achieved by treating everyone the same, but by ensuring that people with disability have equitable access and opportunities through proactive measures that dismantle systemic disadvantage. Reasonable adjustments prevent direct and indirect discrimination against people with disability. For example, people with disabilities might need ramps, quiet sensory spaces, additional learning support in schools, a peer mentor to help navigate university, an interpreter in hospitals, accessible desks in workspaces, online

¹³ Our Watch Media Team (2025), *Our Watch Sexual Harassment response a key issue in attracting and retaining staff, new data shows*, 30 January 2025, accessed 28th August 2025 <<https://www.ourwatch.org.au/news/sexual-harassment-response-a-key-issue-in-attracting-and-retaining-staff-new-data-shows>>

¹⁴ Dickson (2006), 'Disability Standards for Education and the Obligation of Reasonable Adjustments', *QLD University of Technology Australia and New Zealand Journal of Law and Education* Volume 11 No 2

shopping, and/or disability parking close to a venue. This enables people with disabilities to realise the benefits of services in a way that is comparable to people who do not have disabilities. Reasonable adjustments are a social and economic investment.

People with Disabilities Australia (PWDA) raised this issue in a letter dated 25 June 2021 addressed to the Attorney General's Department.¹⁵ In this letter they offered the content for a legislative provision for reasonable adjustments as a test for discrimination.

- *SECT 6A Discrimination by failing to provide reasonable adjustments.*

“For the purpose of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if: (a) because of the disability, the aggrieved person requires adjustments; and (b) the discriminator does not make, or proposes not to make, reasonable adjustments for the person. For the avoidance of doubt, it is not necessary for there to be a causal connection between the failure or proposal not to make reasonable adjustments and the disability of the aggrieved person.”

Recommendation 3: Simplify the language used in the legislation and make sure the content is available in accessible formats.

Simplicity – Plain English

Laws that are clear and easy to understand are an essential part of an accessible justice system. Clearly written laws can be better understood, complied with and administered¹⁶.

This piece of legislation is more likely than others to be translated into accessible formats – as it is people that are vulnerable that will need to use it. The Victorian Equal Opportunity Act is an example of simple legislation that can be used as a benchmark in NSW.

Where possible, legislation should be written in plain English. However, technical language that resolves ambiguity and can be more easily understood by courts is also an important consideration.

¹⁵ Sebastian Zagarella (2021) Reform of reasonable adjustment provisions under the Disability Discrimination Act (unpublished)

¹⁶ Attorney-General's Department (2025), 'Reducing the Complexity of Legislation', Australian Government, accessed 28th August 2025 <<https://www.ag.gov.au/legal-system/access-justice/reducing-complexity-legislation>>

Accessible Format

Legislation must be made available in Easy Read to ensure people who have different communication needs can locate anti-discrimination law in Easy Read format, giving people a better chance to be able to read and understand their rights.

People with disabilities digest information in various formats. NSW law should be available in formats such as Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology¹⁷.

Recommendation 4: The definition of disability should be made consistent with the definition in the United Nations Convention on the Rights of People with Disabilities (UNCRPD). It should be modernised to reflect more commonly used terms. And it should consider a description of disability that is based on the social model of disability.

The definition should be consistent with the UNCRPD.

The definition of disability in the ADA is out of date and needs to be modernised. For a more modern approach and to ensure consistency in the language used across states and territories we recommend adopting a definition of disability consistent with the UNCRPD:

*“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.*¹⁸

The definition should be consistent with commonly used definitions of disability.

The Disability Discrimination Act (under review), Government departments, not for profits, and community organisations can use slightly different definitions of disabilities. This may create challenges in defining disability in the NSW Law.

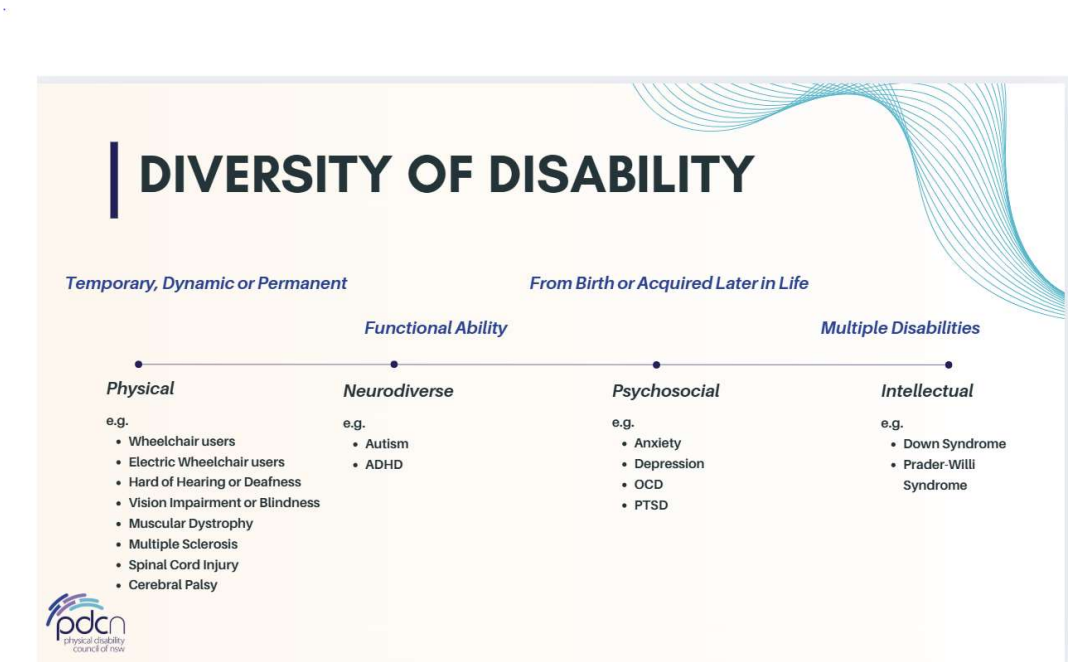
¹⁷ United Nations (2025), 'Article 2 – Definitions', *Convention of the Rights of Persons with Disabilities (CRPD)*, Department of Economic and Social Affairs, accessed 28th August 2025 <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities>>

¹⁸ United Nations (2025), 'Article 1 – Purpose', *Convention of the Rights of Persons with Disabilities (CRPD)*, Department of Economic and Social Affairs, accessed 28th August 2025

PDCN is the sector coordinator for disability advocacy organisations in NSW. We know from working with stakeholders that the most used terms for categorising disability are physical disability, neurodiverse, psychosocial and intellectual disability.

PDCN delivered a presentation about Lived Experience Engagement to the NSW Public Service in December 2024. As part of the presentation PDCN offered a definition of disability and categorised the different disability types. See diagram below:

Diagram 1: Diversity of Disability



The process of identifying a broad disability category and breaking it down is a useful and pragmatic tool to apply in defining disability in the ADA.

The definition of disability should reflect the social model of disability (not the medical model).

The social model of disability says that disability is caused by the way society is organised.

The medical model of disability says people are disabled by their impairments or differences.

Under the medical model, these impairments or differences should be ‘fixed’ or changed by medical and other treatments. The medical model looks at what is ‘wrong’ with the person

and not what the person needs. It creates low expectations and leads to people losing independence, choice and control in their own lives.

There is a strong view from the disability community that a description of disability from a social model is preferable. “The medical model of disability is all about what a person cannot do and cannot be. The social model sees 'disability' is the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers.”¹⁹

If the law can describe people with disabilities using a social model, this would be ideal. However, we are also in favour of defining disability in a way that can be used most effectively to protect people and keep them safe. Substantial law must be as clear as possible for both policy makers, organisations and court officials.

Recommendation 5: repeal section 49L 3(a) which exempts private educational institutions from anti-discrimination law.

In New South Wales the *Anti-Discrimination Act 1977* makes it unlawful to expel, refuse to enrol, limit access to benefits provided by a school, or subject a student to any other detriment based on certain grounds of discrimination. These grounds are race, sex, transgender, marital or domestic status, disability and homosexuality.

However, on all grounds but race, there are exemptions for private schools and other private education institutions, allowing private schools to discriminate or condone discrimination against students in ways that are unlawful for public schools.

- Section 49L (1) states that “It is unlawful for an educational authority to discriminate against a person on the ground of disability...”

Section 49L (3) states that “Nothing in this section applies to or in respect of a private educational authority”

¹⁹Queensland Government (2024), ‘Appendix A – Social and Medical Models of Disability’, Disability Service Plan 2022-2025, Department of Premier and Cabinet, November 2024, accessed 28th August 2025

Students at private schools can legally be refused enrolment if they have a disability. Students attending private schools who suffer from discrimination on cannot go to the Anti-Discrimination Board.

Our primary argument is that all children should be protected from discrimination where possible. The DDA does not exempt private schools from disability discrimination requirements. But the DDA requires a complaint to be handled in a federal court, which is costly and a deterrent for complainants. The option of referring a matter to a tribunal is more feasible for an NSW resident.

The second argument is that all children receive government funding for schooling. By accepting this funding private schools are entering into a relationship with the taxpayer. The taxpayer should reasonably expect that all educational institutions are subject to anti-discrimination law in the same way and held to account in the same manner.

PDCN endorses the submission made by Family Advocacy NSW on this recommendation.

Recommendation 6: repeal section 49D 3(c) which provides exemptions for certain employers to discriminate against people with disabilities.

It is against the law to discriminate against a person with disabilities in employment and employment related areas. See s49D (1) of the ADA where it states:

“It is unlawful for an employer to discriminate against a person on the ground of disability.”²⁰

However, s49D (3) provides exemptions to this provision when employment is:

- (a) for the purposes of a private household, or
- (b) where the number of persons employed by the employer, disregarding any persons employed within the employer’s private household, does not exceed 5, or
- (c) by a private educational authority²¹.

The nature of the workplace has changed overtime. This submission does not provide an analysis around the changes to the workplace since 1977, however technology in particular

²⁰ Section 49D (1) Discrimination against applicants and employees, Anti-Discrimination Act 1977 (NSW)

²¹ Section 49bD (3) Discrimination against applicants and employees, Anti-Discrimination Act 1977 (NSW)

has changed the way industries and business operate. For example, people can operate a business from home and work remotely.²²

The 2021 Covid pandemic (among other things) normalised working from home and created the new common ‘hybrid’ work arrangement. It is not uncommon for people to work in small numbers in a private household. Disability support workers often work in a home assisting a person with disability. These people should not be subject to discrimination – we must protect this important category of worker. Section 49D 3(c) should be repealed as it no longer accounts for modern workplace environments.

Recommendation 7: The provisions around assistance animals in the ADA should be consistent with the Disability Discrimination Act 1992.

The ADA states in s49B (3) that *“For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability[...]”*.

The Disability Discrimination Act 1992 (DDA) s9 (2), by comparison makes it unlawful to discriminate against a person with a disability who has an assistance animal. This applies to all assistance animals that are:

- “(a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or*
- (b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or*
- (c) trained:*
 - (i) to assist a person with a disability to alleviate the effect of the disability; and*
 - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.”²³*

²² Hotte, Somers and Theodorakapoulos (2023), *Technology and Jobs: a systemic literature review*, Technological Forecasting and Social Change Volume 124 September 2023.

²³ Department of Veterans' Affairs (2025), Assistance Dogs and Public Access Rights, Australian Government, accessed 28th August 2025 <<https://www.dva.gov.au/get-support/health-support/care-home-or-aged-care/services-support-you-home/assistance-dogs/assistance-dogs-and-public-access-rights>>

Under the DDA, trained and accredited assistance animals must be given access to all public places including retail and hospitality venues, health services, public transport including rideshare and taxis, and accommodation.²⁴

There is a view shared across the disability sector that these definitions should be made consistent.

The definition of disability should be broader in the ADA

The ADA limits the need for assistance animal to a person with a disability relating to vision, hearing or mobility. However, there are other people with disabilities who might require an assistance animal such as people with broader physical disabilities, sensory issues and psychosocial support needs.

The word ‘dog’ should be removed and replaced with the word ‘animal’

The ADA refer to an assistance animal as a “dog which assists”. This limits the potential for other animals to be trained as assistance animals.

The requirement for accredited training to be qualified as an assistance animal

There is no clear understanding of what accreditation or training is required under the ADA definition of an assistance animal. Assistance animals are highly trained and specialised and are vital to the independence of their handlers. If this qualification is not included in the definition of assistance animal in the ADA, it will leave people with disabilities open to further discrimination.

PDCN have heard from our members that they have experienced discrimination based on having an assistance animal. It is essential that legislation is clear, consistent and understood across the community so that this discrimination can be prevented.

“In the past, with my Guide Dog, I had a negative experience (more so for my wife and kids), as my family (my wife and young kids) were denied access to a Restaurant in North Sydney because my Guide Dog accompanied me. Basically, we got kicked out very harshly! We left very upset, as my family also felt discriminated against and somewhat because of me!”

²⁴ Ibid

- PDCN Lived Experience Advisory Panel member reported on Tuesday 17 July 2025.

Recommendation 8: Insurance industries should not be allowed to discriminate on the grounds of genetic disorders and conditions.

In accordance with the ADA s49Q, it is not unlawful to discriminate against a person with a genetic condition, including people who suffer from disabilities as a result of that genetic condition.

“Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or conditions appertaining to a superannuation or provident fund or scheme or with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained...”²⁵

In 2018 a report by the Parliamentary Joint Committee on Corporations and Financial Services²⁶ expressed concerns that the use of genetic tests in underwriting life insurance was adversely impacting participation in health prevention.

Under the *Insurance Contracts Act 1984* consumers must take reasonable care not to make a misrepresentation to life insurers when entering contracts. The *Disability Discrimination Act 1992* makes it unlawful to discriminate against a person with disability or has a genetic predisposition. However, under s49Q of the ADA, discrimination in insurance and superannuation products is permitted in [some] circumstances.

PDCN has been informed by the Genetic Alliance that there are cases where people who are unwell are not seeking genetic testing in case they are subsequently unable to obtain insurance. This means that conditions may go undiagnosed and untreated – costing more money down the line in the health system.

We recommend discrimination against people with genetic conditions be unlawful due to public health concerns.

Recommendation 9: Provision around anti-vilification should extend to people with disabilities.

²⁵ Anti-Discrimination Act NSW 1977 Section 49Q

²⁶ Australian Treasury (2023), ‘Use of genetic testing results in life insurance underwriting’, Consultation Paper November 2023

“Vilification is a public act that could incite hatred, serious contempt or severe ridicule towards a person or group. Vilification because of certain characteristics is against the law”.²⁷

Under the Criminal Code, there are criminal protections against vilification. These apply to protected groups, members of groups, and close associates of groups that are distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality, national or ethnic origin or political opinion.²⁸ Again, this submission argues that this provision should extend to the NSW ADA to enable NSW residents to lodge a complaint in NSW and be referred to tribunal for resolution at lesser costs than being referred to a federal court.

The reason for applying this provision to people with disabilities is not simply for prudence. At this current time in NSW and Australia people with disabilities are at the forefront of the political debate. The costs of the NDIS to the taxpayer, allegations of fraudulent NDIS providers, the cost of foundational disability supports and the pressure to make mainstream systems more inclusive are topics prominent in the media. The more people with disabilities push for inclusion and become more visible in the community, the more opportunity there is for ridicule and contempt. An anti-vilification law will afford additional legal protection.

It is also important to remember that many people with disabilities are physically and intellectually vulnerable. People with disabilities do need additional protection where possible.

²⁷ Review of the Anti-Discrimination Act NSW 1977, Unlawful Conduct, Consultation Paper 24 May 2025, NSW Law Reform Commission

²⁸ Review of the Anti-Discrimination Act NSW 1977, Unlawful Conduct, Consultation Paper 24 May 2025, NSW Law Reform Commission

Conclusion

In conclusion, this submission has addressed the NSW Law Reform Commission Review of the Anti-Discrimination Act (ADA), with a particular focus on sections 4.29 - 4.66 of the consultation paper relating to disability discrimination. We have concentrated on the most significant issues where evidence and lived experience demonstrate the need for reform, including: establishing positive obligations for duty holders, creating a standalone test for reasonable adjustments, modernising the definition of disability, improving accessibility of NSW law, repealing outdated exemptions, aligning provisions on assistance animals, preventing discrimination in insurance, and extending anti-vilification protections to people with disabilities.

Our recommendations are informed by extensive engagement with people with physical disabilities across NSW through surveys, consultations, and our Lived Experience Advisory Panel, ensuring they are grounded in the realities faced by our community. We strongly urge the Commission to adopt these recommendations to strengthen protections, advance inclusion, and uphold the rights of people with disabilities in NSW.