

5 August 2021



The Hon Mark Speakman, SC MP
NSW Attorney General
GPO Box 5431
SYDNEY NSW 2001

Dear Attorney General

Independent Review and Comprehensive Reform of the *Anti-Discrimination Act 1977* (NSW)

We, the undersigned organisations, call on you to commission an independent review of the *Anti-Discrimination Act 1977* ('the ADA') as a matter of priority.

This legislation is failing in its fundamental duty to protect vulnerable people in NSW against discrimination and vilification.

We understand that you have been provided with a report from the Public Interest Advocacy Centre that sets out some of the serious limitations and shortcoming of the ADA. These include that it:

- Does not offer protection against discrimination to all those who need it
- Adopts an ineffective and outdated test to determine what constitutes discrimination
- Fails to require reasonable adjustments to be provided to allow people with disability to fully participate in the community on an equal basis to others
- Contains significant gaps in terms of which areas of public life are covered
- Offers inadequate and inconsistent prohibitions on vilification, and
- Undermines protections by providing the widest exceptions, allowing discrimination that would otherwise be unlawful, of any anti-discrimination law in Australia.

On these and other measures, the *Anti-Discrimination Act* compares poorly to every other Commonwealth, State and Territory anti-discrimination law.

NSW was a leader in taking action on discrimination when it passed the ADA in 1977. It is now lagging behind.

The ADA is out of step with community expectations. It is also out of step with the law on discrimination applying across other Australian jurisdictions, making it costly for business and confusing for individuals. This legislation is no longer fit for purpose.

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The ADA has not been comprehensively reviewed since a NSW Law Reform Commission Inquiry in the late 1990s – and the recommendations of that Inquiry were never implemented.

For example, in the area of sexual harassment, the ADA's provisions have not been substantively amended in the 24 years since they were first introduced. There is currently no positive duty on employers to eliminate sexual harassment.

In our view, it is time for a comprehensive review rather than the piecemeal amendments to the ADA in the four proposals currently before Parliament. Some of these Bills would actually make the Act's problems worse, by adding even more complexity and inconsistency, and in some cases undermining existing rights to be protected against discrimination for different groups.

We urge you to commission an independent review of the *Anti-Discrimination Act* to ensure all people in NSW can enjoy their daily lives free from discrimination and vilification on the basis of who they are.

Yours faithfully,

Jonathon Hunyor
Chief Executive Officer
Public Interest Advocacy Centre

Co-signed by:

Professor Simon Rice OAM, University of Sydney Law School



public interest
ADVOCACY CENTRE



PEOPLE WITH DISABILITY
AUSTRALIA



**Women's
Electoral
Lobby (NSW)**



**Gay & Lesbian
Rights Lobby**

