



# **Review of the *Anti-Discrimination Act* 1977 (NSW)- Procedures and compliance consultation**

**NSW LAW REFORM COMMISSION**

**Submission of the Community Restorative  
Centre (CRC)**

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## 1. ACKNOWLEDGEMENT OF COUNTRY

CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community. The offices of CRC stand on the lands of the Gadigal, Wangal, Bidjigal, Wilyakali, Baarkintji, Darug, Wiradjuri, Dharawal, Awabakal, and Worimi peoples. We recognise their continuing connection to land, water, and community, and pay respects to Elders, past and present.

The overrepresentation of First Nations people in the criminal legal system<sup>1</sup> across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations people to reduce the criminalisation of their communities. Ultimately, incarceration is not part of First Nations cultures, and First Nations people have had, and continue to have, systems of accountability outside of the colonial carceral system.

## 2. ABOUT COMMUNITY RESTORATIVE CENTRE

Community Restorative Centre (CRC) is a lead NGO in New South Wales (NSW) providing specialist support to people affected by the criminal legal system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and intersecting needs.

CRC has over 70 years of specialist experience supporting people involved with prison systems. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal legal system involvement, and build pathways out of the criminal legal system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social

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<sup>1</sup> We use the term 'criminal legal system', as opposed to 'criminal justice system' to reflect that the 'justice system' in Australia has been imposed on First Nations communities without their consent through settler colonialism. The term 'criminal legal system' also highlights the way the system-including police, courts and prisons- frequently fail to deliver justice. These failures are part of a broader, ongoing problem. This is evident in the fact that First Nations people in Australia have the highest imprisonment rate in the world, are racially targeted by police, and experience a lack of accountability from the 'justice system' when First Nations people die in custody.



isolation, physical and mental health, disability, employment, education, domestic and family violence, financial hardship, and histories of trauma.

## INTRODUCTION

Thank you for the opportunity to provide input into the second phase of consultation on the NSW Anti-Discrimination Act (ADA). Our submission focuses on the need for processes, procedures and remedies to be accessible to people who have been incarcerated, and those who are at risk of it. We have not responded to all of the questions from the consultation paper, and have only included reference to those we have responded to. Consultation with the Aboriginal Legal Service (NSW/ACT) and Sydney Bi+ Network informed some of the points in this submission.

We note that updates to the ADA are long overdue, and encourage urgent and genuine political action to bring about the needed changes to the ADA, to ensure NSW community members are adequately protected from discrimination.

### **Context**

Given the overrepresentation of minoritised and disadvantaged people in the prison system, ADA enforcement should be accessible, inclusive and culturally appropriate for these cohorts. First Nations people, people with cognitive disabilities, people with unmet mental health needs, those experiencing homelessness, people experiencing poverty, LGBTQ+ communities and more are all hyperincarcerated cohorts (McCausland & Baldry, 2023; Walters et al., 2024), and ADA procedures and remedies should be accessible to these populations.

In our work, we are privy to numerous instances where discrimination plays out in prison settings, and for those who are exiting prison, making accessible ADA enforcement for these populations crucial. For instance, we see people discriminated against based on irrelevant criminal records when they exit prison (such as when opening a bank account, applying for jobs and attempting to access healthcare). We witness the precarity and denial of adequate cultural supports and activities in prisons for First Nations communities, for instance



through First Nations community members being denied access to pre-planned NAIDOC week activities. Disability discrimination is another pressing concern for people impacted by the prison system. For instance, Taylor Budin, an autistic First Nations woman, publicly shared the discrimination she faced during 3 months of incarceration in the NSW prison setting. She described being called an ‘autistic dog’ by a prison guard, not having access to her medication for the first 12 days of imprisonment, and not having access to therapeutic programs (Budin, 2021a, p. 203). The prevalence of discrimination for people in prison speaks to the necessity for ADA remedies and procedures to be accessible to people impacted by the prison system.

## RESPONSE TO THE CONSULTATION QUESTIONS

### **Chapter 2: Objectives and structure**

#### **Question 1: A statement of objectives, purposes and/or principles**

**Should the ADA include an express statement of objectives, purposes and/or principles?**

**Why or why not?**

Yes, we support such a clause. The clause can be a metric for whether the objectives of the Act have been met. As mentioned in the consultation paper for this review, it can also guide legislative interpretation and promote consistency in how the Act is applied.

#### **Question 2: Contents of an objects, purposes or principles clause**

**If a new objects, purposes or principles clause is added to the ADA, what should it contain?**

The clause should be worded in a way that gives effect to international human rights instruments, including those that pertain to communities deprived of their liberty. The intersectional and structural nature of discrimination should also be recognised.

#### **Question 3: International human rights instruments and principles**

**a. If a new objects, purposes or principles clause is added to the ADA, should it expressly recognise international human rights instruments and principles? Why or**



## **why not?**

Yes, the clause should state that the Act intends to implement international human rights principles, including those from instruments that Australia has ratified, and those from international human rights instruments that Australia has not. We make the latter point recognising that some international human rights instruments crucial to the wellbeing of people impacted by the prison system are international best practice rules, rather than ratifiable conventions, say, such as the United Nations *Standard Minimum Rules for the Treatment of Prisoners*.

We recognise that it may not be possible to exhaustively list all international human rights instruments relevant to NSW communities in the clause. Thus, the clause could include a general statement that the Act intends to implement Australia's international human rights obligations, including non-binding, reputable, best practice human rights principles.

## **b. If so:**

### **i. what instruments or principles should be recognised**

Ensuring the clause includes human rights principles that protect people deprived of their liberty is particularly important for people we support, given the widespread discrimination that people impacted by the prison system face. The wording of the clause should be framed in a way that aligns with international human rights instruments that are relevant to people who are deprived of their liberty, including:

- the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)
- the *Convention on the Rights of Persons with Disabilities*
- the *Yogyakarta Principles*, an international human rights instrument that protects the rights and dignity of LGBTQI+ communities
- The *Convention on the Rights of the Child*
- The *International Covenant on Civil and Political Rights*
- The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention against Torture) and its *Optional Protocol* (OPCAT)



- the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (also known as the *Nelson Mandela Rules*)
- the UN *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules)
- The United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules).

## ii. what effect should any such recognition have?

It would support the implementation of international human rights principles in NSW.

Incorporating human rights principles in the Act is particularly important given Australia and NSW do not have human rights acts to help enforce international human rights standards.

## Question 4: Structure

### Could the structure of the ADA be improved? If so, how?

Yes, it is necessary for the structure of the Act to be improved. We said the following in our submission to the first round of consultation on the ADA in 2025:

The Act as it stands is difficult to interpret and unnecessarily complex. For example, headings such as 49ZKA within the current document make it difficult to navigate (Public Interest Advocacy Centre, 2023, p. 5). Additionally, each protected attribute has a separate part in the Act, with its own definitions, areas of public life that are protected and exceptions (Public Interest Advocacy Centre, 2023, p. 4). The result is that the Act is difficult to navigate and challenging to understand, creating a barrier to people comprehending the rights and obligations prescribed. The inaccessibility of the Act is of particular concern for people with cognitive disabilities and low literacy skills, who are overrepresented in the prison system.

CRC recommends rewriting the Act. This would include simplifying the numbering system for easier navigation and referencing. We also recommend, similarly to the Aboriginal Legal Service (NSW/ACT) and the Justice and Equity Centre, adopting the approach taken by other Australian jurisdictions in their anti-discrimination legislation, which firstly sets out protected attributes, secondly lists areas of public life where discrimination is disallowed, and thirdly lists exceptions (Public Interest



Advocacy Centre, 2023, p. 5).<sup>2</sup> This simplified approach will enhance the accessibility of the Act (Community Restorative Centre, 2025).

### **Question 13: The time limit for complaints**

#### **a. What, if any, changes should be made to the 12-month time limit to lodge complaints with ADNSW?**

We agree with numerous other organisations that the time limit should be increased from 12 months to 6 years. We say this recognising it might take time for someone to identify that discrimination has occurred, acquire evidence to substantiate the claim, and be in a position to make a complaint. We support people who may have experienced discrimination in a prison setting, but may not be able to make a complaint about it until their engagement with prison, parole or supervision orders have ended, due to fear of reprisals. A longer period of time to make complaints may thus be needed for them.

Additionally, for some people that we support, survival after they have experienced discrimination might be the priority for them. For those who experience multiple, intersecting forms of disadvantage and discrimination, it could take years to move beyond just surviving to set themselves up to make a complaint. We say this noting that many people who access our service are navigating homelessness, cognitive disabilities, racism, complex trauma, domestic and family violence, and more. Flexibility in the amount of time they have to make complaints, given the intersecting forms of discrimination and/or disadvantage they may face, is crucial.

### **Question 28: Compensation**

#### **c. Should the ADA be changed to allow persons in custody to receive a compensation award made by NCAT against the State of NSW and its agents?**

Yes, it should. Prison is intended to deprive people of their liberty; it is not intended to strip them of rights that those outside of prison can enjoy. We note that someone may be

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<sup>2</sup> For example, see the *Anti-Discrimination Act 1998* (Tas), the *Anti-Discrimination Act 1991* (Qld), and the *Discrimination Act 1991* (ACT).



discriminated against by the state in year 1 of their 20-year prison sentence, meaning they will need the right to access compensation whilst they are still serving this sentence.

We are concerned that preventing an incarcerated person from receiving compensation could reduce the incentive to challenge discrimination in detention settings, which can stymie accountability for harm caused.

#### **Question 46: Criminal prosecutions**

##### **Should ADNSW have the power to prosecute, or refer for prosecution, breaches of the ADA? Why or why not?**

In general, we do not support criminalisation approaches for addressing discriminatory conduct. There are already offences in the *Crimes Act 1900* (NSW) that address criminal conduct. We also note that the Anti-Discrimination Board of NSW is not a criminal court. We believe that educational and non-criminalisation approaches are better suited to addressing discriminatory behaviour. We know that criminal penalties like incarceration are often ineffective at changing people's behaviour, which can be seen in high rates of recidivism, and the way prison sentences often exacerbate the social drivers behind why people are in prison (including poverty, homelessness, structural discrimination and more) (McCausland & Baldry, 2023). We recognise there are numerous ways that institutions and individuals can be held accountable for discriminatory conduct outside of criminal prosecution, such as issuing an apology, taking substantive measures to change a behaviour or process (for instance, through undertaking and implementing training), and compensation for harm caused.

Through our work, we witness how elements of the criminal legal system associated with criminal prosecution, like policing and prisons, themselves exhibit discriminatory behaviours towards people we support. This can occur, for instance, through racialised police profiling, the hyperincarceration of First Nations people, and the lack of accountability from the state when First Nations people die in custody. The fact that parties integral to criminal prosecution process themselves exhibit discriminatory behaviour to many people we support is another reason we cannot confidently support criminal prosecutions via ADNSW.



### **Further feedback on processes and procedure with respect to the ADA**

We support work to make anti-discrimination processes and remedies more culturally appropriate for First Nations communities- including through First Nations-led dispute resolution, such as yarning circles. First Nations people would need to lead this work, such as through First Nations conciliators. The Walama list, which foregrounds Aboriginal cultural expertise, therapeutic and holistic approaches in the sentencing process for eligible First Nations community members in the NSW District Court (Department of Communities and Justice, 2026), is one example of a more culturally appropriate process for First Nations communities.

The necessity of culturally appropriate dispute resolution processes is evident in the fact that criminal legal system responses can be inaccessible and undesirable when addressing issues like racist conduct against First Nations communities. For instance, the Call it Out Register report by the Jumbunna Institute, which tracks and analyses incidents of racism against First Nations people, showed only 1% of people who witnessed or experienced racism reported it to the police (Jumbunna Institute, 2025, p. 72). This statistic highlights the need for accessible processes outside of the criminal legal system to address discrimination that people face.

## **CONCLUSION**

Thank you for considering our submission, which focused on the need for remedies, processes and procedures in the ADA to be accessible to people impacted by the prison system, and those who are at risk of prison system involvement. We welcome any further engagement from the Commission with respect to this submission if it is useful.



## REFERENCES

- Community Restorative Centre. (2025, August 29). *Anti-Discrimination Act Review*.  
*Australian Law Reform Commission. Submission of the Community Restorative  
Centre (CRC)*. [https://crcnsw.s3.ap-southeast-2.amazonaws.com/wp-  
content/uploads/2025/09/ADA-submission-CRC.pdf](https://crcnsw.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2025/09/ADA-submission-CRC.pdf)
- Department of Communities and Justice. (2026). [https://dcj.nsw.gov.au/legal-and-  
justice/legal-assistance-and-representation/aboriginal-services-unit/walama-  
list.html](https://dcj.nsw.gov.au/legal-and-justice/legal-assistance-and-representation/aboriginal-services-unit/walama-list.html)
- Jumbunna Institute. (2025). *‘Everywhere I go no matter where, if it’s around non-Indigenous  
people I feel a hate vibe. It feels like I’m being watched’. The call it out racism register  
2024-2025*. [https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-  
It-Out-Annual-Report-2024-2025.pdf](https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf)
- McCausland, R., & Baldry, E. (2023). Who does Australia Lock Up? The Social Determinants  
of Justice. *International Journal for Crime, Justice and Social Democracy*, 12(3),  
Article 3. <https://doi.org/10.5204/ijcjsd.2504>
- Public Interest Advocacy Centre. (2023). *Preliminary submission to NSW Law Reform  
Commission review of Anti-Discrimination Act 1977*. Australian Law Reform  
Commission. [https://lawreform.nsw.gov.au/content/dam/dcj/law-reform-  
commission/documents/Current-projects/ada/preliminary\\_submissions/PAD82.pdf](https://lawreform.nsw.gov.au/content/dam/dcj/law-reform-commission/documents/Current-projects/ada/preliminary_submissions/PAD82.pdf)
- Walters, R., Antojado, D., Maycock, M., & Bartels, L. (2024). LGBT people in prison in  
Australia and human rights: A critical reflection. *Alternative Law Journal*, 49(1), 40–  
46. <https://doi.org/10.1177/1037969X241231007>

