

29 September 2023

Proper Officer
Law Reform Commission
NSW Department of Communities and Justice
Email only: nsw-lrc@justice.nsw.gov.au

Dear Officer,

Kingsford Legal Centre () welcomes the opportunity to make this preliminary submission on the NSW Law Reform Commission's review into the *Anti-Discrimination Act 1977* (NSW) (the).

- x language (including signed language);
- x employment activity;
- x industrial activity;
- x lawful sexual activity;
- x genetic characteristics;
- x physical features;
- x political belief or activity;
- x profession, trade, or occupation;
- x religious belief or activity (including lack of religious belief or activity),
- x irrelevant criminal record;
- x irrelevant medical history;
- x sex work;
- x personal association;
- x subjection to family and domestic violence, or other forms of gender-based violence;
and
- x accommodation status.

However, we note that this list is non-exhaustive

We recommend broad consider

because they do not hold the requisite evidence – for example in employment matters



x

- x the need for increased and sustained funding for ADNSW, including the need for more conciliators and information services

- x providing ADNSW with a new function (and appropriate funding) to inquire into, and report on, issues of systemic unlawful discrimination, or suspected unlawful systemic discrimination.²⁷

We support this term of reference for its ability to provide helpful insight into best practice approaches to protections, processes, and enforcement mechanisms in discrimination law.

Key areas that we encourage particular consultation on are:

- x whether the ADA should be reformed to enable complainants to apply directly to NCAT.²⁸ This could provide a quicker mechanism for some complainants to have their matters resolved and could be particularly useful where respondents are unwilling to conciliate.
- x broadening the ability for representative complaints under the ADA, including through enabling organisations to bring representative complaints about systemic discrimination on behalf of groups (without needing the complaint to be about fixed individuals who have all consented to the complaint being made).²⁹

Australian discrimination law is jurisdictionally complex. It includes 13 pieces of legislation – some at the federal level and some at the State and Territory level. There are both significant overlaps and differences, raising difficult questions as to the most appropriate jurisdiction in which to make a discrimination complaint.

Due to the complexity of discrimination law, complainants often need specialist legal advice at an early stage in their case to make sure that they make a discrimination complaint in the most appropriate jurisdiction. The complexity of discrimination law and underfunding of the legal assistance sector are significant factors in discrimination complaints being made in less appropriate jurisdictions. This is especially the case for vulnerable people who often face greater barriers when accessing the complaints process.

In KLC's experience, many complaints are made in the "wrong" or multiple jurisdictions because the complainant has been unable to access legal help and does not understand the system. This is exacerbated by the existence of Commonwealth and NSW jurisdictions. It has also been historically impacted by short time limits in discrimination law, and complainants may take a scatter gun approach for fear they may lose a right. These issues go to both the inaccessibility of the law in this area and the limited access to legal services for people who want discrimination law advice.

As a result, KLC recommends further consultation and research on:

²⁷ For example, see the *Australian Human Rights Commission Act 1986* (Cth), Part 2, Division 4B (functions relating to systemic discrimination).

²⁸ We note that this process is currently available in Victoria. See section 122 of the *Equal Opportunity Act 2010* (Vic).

²⁹ See *Anti-Discrimination Act 1977* (NSW), s87C.

- x Establishing a clear pathway for people to easily withdraw complaints and lodge in other complaint jurisdictions without penalty.
- x The ADA providing more guidance on when a complaint may be found to have been "dealt with" in another jurisdiction.³⁰
- x Removal of the provision that provides that parties have no right to representation. However, where respondent(s) are represented, ADNSW should be better funded to assist complainants with accessing legal advice and representation.
- x Accessibility of legal information and advice about jurisdictional choice in discrimination matters.
- x Creating an appeal pathway for applicants to NCAT who do not have their matters accepted for investigation at ADNSW. At present, complainants can only require the President to refer their matter to NCAT in limited circumstances, such as when the