# Anti-Discrimination Act Review

## AUSTRALIAN LAW REFORM COMMISSION

Submission of the Community Restorative Centre (CRC)

***29 August 2025***

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## 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, Wiljkali, 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[1] across this continent is a national shame. We recognise 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.

## ACKNOWLEDGING THE IMBRICATION OF LAW REFORM WITH COLONISATION

Community Restorative Centre acknowledges law reform processes are inseparable from the histories and structures of colonisation, and that the legal system in Australia is a colonial construct. By engaging with this review procedure, we remain mindful of how law in Australia perpetuates inequitable power relations. Consequently, we approach this process with a critical awareness of the colonial origins of the legal system, striving to foster practices that centre First Nations rights, experiences, and voices as we pursue meaningful healing.

[1] 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. More broadly, the system criminalises people experiencing homelessness, poverty, mental illness, disability, alcohol and other drug dependency and trauma, and perpetuates cycles of marginalisation and disadvantage. In this way, the system does not deliver 'just' outcomes for individuals or communities. By using 'criminal legal system', we acknowledge the harmful effects of colonial systems and seek to validate people's lived experiences. Changing language is one part of our effort to advocate for systems that are 'just' for all communities.

First Nations communities have championed alternative systems and ways of knowing, being, and doing compared to the colonial legal system. One such practice is yarning, a relational and community-embedded method of knowledge sharing that inherently challenges Western frameworks of governance and inquiry. Recognising the legitimacy and transformative potential of these First Nations methodologies is essential for fostering meaningful and equitable engagement in legislative inquiry spaces.

## ABOUT COMMUNITY RESTORATIVE CENTRE

Community Restorative Centre (CRC) is the 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 isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma.

## EXECUTIVE SUMMARY

CRC thanks the Law Reform Commission for the opportunity to make a submission to this long-awaited review. In our submission, we focus on population groups who have been incarcerated or have a higher vulnerability to criminalisation, in addition to the current and future needs of staff in our organisation. CRC has not responded to all questions in the consultation paper and has omitted questions we have not responded to. We use pseudonyms for people in case studies and the examples we provide from CRC's work.

**Summary of recommendations**

The recommendations we make in this submission include:

- That new protected attributes be added, including irrelevant criminal record, socio-economic status, immigration status, health status, sex work and sex worker, sexual orientation, gender identity, gender, and sex characteristics.
- That the comparator test for discrimination be removed and an alternative test like 'unfavourable treatment' be employed.
- That s49PA, which permits discrimination against people who are dependent on prohibited substances, be removed.
- That the Act protect people against intersectional discrimination.
- That, in consultation with First Nations-led organisations and First Nations communities, the Commission investigate adding specific protection for First Nations communities in the Act.
- That the ground of 'sex discrimination' be changed to 'gender discrimination'.
- That the ADA protect people against discrimination based on a protected attribute they have had in the past or may have in the future.
- That the distinction between recognised and non-recognised transgender people be removed.
- That the Act be rewritten with a simplified structure and language.

# RESPONSES TO CONSULTATION PAPER QUESTIONS

## 3. Tests for discrimination

**Question 3.1: Direct discrimination**

**Could the test for direct discrimination be improved or simplified? If so, how?**

Similarly to organisations like the Aboriginal Legal Services NSW/ACT, Justice and Equity Centre (previously the Public Interest Advocacy Centre), and Unions NSW, we support removing the comparator test for discrimination and implementing an alternative test (Aboriginal Legal Service NSW/ACT, 2025; Public Interest Advocacy Centre, 2023, p. 9; Unions NSW, 2023, pp. 8–10). We recognise numerous critiques of the comparator test, including that it can be unclear who the appropriate hypothetical comparator is in a

discrimination case, and the incorrect comparator may be selected (Public Interest Advocacy Centre, 2023, p. 9; Unions NSW, 2023, p. 10). For instance, if someone we support to transition to the community after prison experiences intersectional discrimination based on their criminal record, being a domestic and family violence (DFV) victim-survivor, and being homeless, it is unclear who the appropriate comparator may be to us in this circumstance.

An alternative approach that could be adopted is demonstrating 'unfavourable treatment', which has been suggested by the Justice and Equity Centre, the Aboriginal Legal Service NSW/ACT and Unions NSW (Aboriginal Legal Service NSW/ACT, 2025; Public Interest Advocacy Centre, 2023, p. 9; Unions NSW, 2023, p. 10). As the Justice and Equity Centre has pointed out, legislation like the *Discrimination Act 1991* (ACT) simply requires that, as per s8(2) of the Act, the test for discrimination be that a person treats, or proposes to treat, another person 'unfavourably' based on one or more grounds protected by the legislation (Discrimination Act 1991 (ACT), n.d.; Public Interest Advocacy Centre, 2023, p. 9).

**Question 3.2: The comparative disproportionate impact test**

**Should the comparative disproportionate impact test for indirect discrimination be replaced? If so, what should replace it?**

Similarly to our response to question 3.1, we have concerns regarding the invocation of a comparator test (Aboriginal Legal Service NSW/ACT, 2025). We also agree with the Aboriginal Legal Service NSW/ACT about the way the comparative disproportionate test can create the heavy burden of undertaking a statistical assessment to demonstrate that a notably higher proportion of individuals without a protected attribute were able to meet a requirement or condition, in contrast to people with a protected attribute (Aboriginal Legal Service NSW/ACT, 2025).

**Question 3.8: Intersectional discrimination**

**(1) Should the ADA protect against intersectional discrimination? Why or why not?**

Yes, we often support people experiencing intersectional discrimination, which needs to be recognised. The ADA, in its current form, protects specific attributes like race, sex, and disability as separate and independent factors. However, in our experience supporting people exiting prison, discrimination occurs on grounds that are interconnected and

inseparable (such as race and disability). Recognising intersectionality is particularly significant as we know that people experiencing multiple and intersecting forms of disadvantage are overrepresented in our prison system (Baldry, 2017).

*Case study 1*

An example of someone who has accessed CRC services being discriminated against on multiple grounds was evident in a person, F, working to complete a course at a tertiary education institution. F was treated poorly in comparison to other people in the class and advised that she could not engage in particular parts of the curriculum, including a field trip to a service. F is a First Nations woman experiencing financial hardship, the effects of acquired brain injury (due to being a victim/survivor of violence), which resulted in a speech impediment. F also has a history of substance use and criminal legal system involvement. It can be difficult to disentangle one single attribute that F was being discriminated against on the basis of, and a more accurate analysis would show that she was likely discriminated against due to multiple, intersecting grounds.

*Case study 2*

Another example of a person we have supported being discriminated against and excluded on intersecting grounds was L, a woman with a trans experience who was born overseas, had a lower socioeconomic background, had experienced violence, was diagnosed with mental health concerns, and regularly used substances. A CRC staff member reported it was difficult to find services that would support L, as women's services would not, and transgender-specific services said she was too complex due to her criminal record, in addition to her mental health and substance use support needs. L was declined from most accommodation services, so she slept rough until an individual social housing offer became available on the condition that she maintained wrap-around supports.

**(2) If so, how should this be achieved?**

By prohibiting discrimination based on the combination of two or more grounds (Aboriginal Legal Service NSW/ACT, 2025; Unions NSW, 2023, p. 8). Bodies like the Australian Human Rights Commission, the Queensland Human Rights Commission, and the Aboriginal Legal Service NSW/ACT are supportive of this approach (Aboriginal Legal Service NSW/ACT, 2025;

Australian Human Rights Commission, 2021a, p. 303; Queensland Human Rights Commission, 2022a, p. 20).

## 4. Discrimination: protected attributes

**Question 4.2: Discrimination based on carer's responsibilities**

**(1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of 'responsibilities as a carer'?**

The definition of a carer is often shaped by Western models of caregiving and is narrowly limited to family relationships. We recommend that carer responsibilities in the Act adequately recognise:

a) Kinship responsibilities – for instance, of First Nations people in Australia. We draw attention to this, recognising the high numbers of First Nations people we support in our work, which is linked to the overrepresentation of First Nations peoples in the prison system. First Nations people who make up our organisation must also be adequately protected by anti-discrimination legislation.

b) That caregiving is not necessarily confined to the nuclear family. This can be evident in LGBTQ+ communities, who can face rejection or estrangement from their biological families due to discrimination, and seek out alternative networks of caregiving. Additionally, in many culturally and linguistically diverse communities, caregiving is distributed across extended family networks, including aunts, uncles, cousins, and grandparents. This collective model of care is particularly prevalent in multigenerational households and reflects cultural norms of familial obligation and reciprocity (E. Liu & Easthope, 2017). Among newly arrived populations with migrant and refugee experiences, where close blood relatives may not be present, caregiving roles are often assumed by broader community members, sometimes under the guidance of cultural or religious leaders (Mwanri et al., 2023). These practices challenge narrow legal definitions of 'carer' that prioritise biological or legal relationships. To ensure inclusivity and cultural responsiveness, it is recommended that the definition of 'carer' in anti-discrimination legislation be broad enough to encompass

informal and community-based caregiving structures commonly found in culturally and linguistically diverse communities.

**Question 4.3 Disability discrimination**

**(1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of 'disability'?**

Similarly to the NSW Users and AIDS Association (NUAA) in their preliminary submission, we support section 49PA of the Act being removed (NUAA, 2023). Section 49PA states it is not unlawful to discriminate against a person on the ground of disability if (a) the disability relates to the person's addiction to a prohibited drug, and (b) the person is 'actually addicted' to a prohibited drug at the time of the discrimination. We recommend this section be removed, noting that the section does not require proof that the person's abilities are impaired to discriminate against them (NUAA, 2023). Similarly to NUAA, we note that measures already exist under other legislation to ensure employers can manage or terminate staff if they are concerned about their performance (NUAA, 2023). NUAA summarises some of the main concerns with s49PA thus:

> a person's job performance and ability to execute all required tasks may be of an exceptional standard, but their employment can still be terminated by the employer because of the status of a prohibited drug 'addicted' person. Additionally, the use of the term 'addiction' in section 49 PA makes it unclear how this is determined by the employer. Terms such as 'addiction' or 'addict' have no agreed definition within the AOD or medical profession (NUAA, 2023).

Removing unnecessary discrimination against people who use drugs is important to the work of our organisation in supporting people exiting prison, which includes a high percentage of people navigating alcohol and other drugs (AOD) dependence, linked to the overrepresentation of people who use AOD in prison. As NUAA state in their preliminary submission, 'access and engagement in employment significantly shapes a person's social and emotional wellbeing, including but not limited to, access to food, housing and healthcare' (NUAA, 2023). Making employment conditional on whether someone does or does not use illicit drugs does not support them in transitioning to society after prison, or

support them to create lives and identities outside of the criminal legal system. Section 49PA also fails to align with CRC's policy, in addition to the policy of the federal government, of harm reduction when it comes to supporting people navigating AOD dependence (Commonwealth of Australia, 2017, p. 1; Community Restorative Centre, 2024, p. 1; NUAA, 2023).

**(2) Should a new attribute be created to protect against genetic information discrimination? Or should this be added to the existing definition of disability?**

Yes, we support genetic information being added as a new attribute to ensure our staff and people we support are protected from discrimination on this basis. Given that discrimination based on genetic information and having a disability are not the same thing in layperson's terms, we recommend creating a new ground for genetic information. A staff member has highlighted the importance of protection against genetic discrimination, noting it can inhibit life insurance if one tests positive for a breast cancer gene, for instance.

**Question 4.4: Discrimination based on homosexuality**

**What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of 'homosexuality'?**

The attribute of homosexuality should be changed to 'sexual orientation', recognising multi-gender attracted people (such as bisexual people) are not currently protected by the Act. Sexuality diverse people are overrepresented in prison systems in Australia (Simpson et al., 2019, p. 365), and scholar Rachael Walters and others note that sexuality diverse people in prison, 'are particularly vulnerable to physical and psychological trauma, systemic discrimination and social stigmatisation, which contribute to a more perilous carceral experience' (Walters et al., 2024, p. 40). Recognising the specific vulnerability of sexuality diverse people who are incarcerated, it is particularly important for this minoritised cohort to be holistically protected under anti-discrimination legislation. We also support this legislative change to better support multi-gender attracted staff at our organisation.

**Question 4.5: Discrimination based on marital or domestic status**

**What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of 'marital or domestic status'?**

We recommend changing the language of marital or domestic status to 'relationship status or style'. Such a language shift ensures people who are not married or domestically cohabiting are adequately protected from discrimination based on their relationship. Additionally, 'relationship style' ensures people who are non-monogamous or polyamorous are protected. Such amendments would ensure staff and people we support who are polyamorous or engaged in relationships that fall outside the dated language of 'martial or domestic status' are protected via anti-discrimination legislation.

**Question 4.6: Racial discrimination**

**(2) Are any new attributes required to address potential gaps in the ADA's protections against racial discrimination?**

The Act does not provide a definition of 'race'. We recommend that a definition be created that is broad enough to include not only individual-level acts of racism (related to, for instance, skin colour and hair texture) but also institutional and systemic forms of racism (see also Jumbunna Institute for Indigenous Education and Research, 2023).

At the individual level, we note that a focus is placed on race only in the Act. The Act should also protect people on the basis of ethnicity and language. Specifically:

a. Discrimination by ethnicity would include discrimination based on a person's cultural identity- for example, in relation to ancestry, nationality and language.
b. Discrimination by language, noting that the language someone speaks may not be related to their ethnicity.

Ensuring ethnicity and language are adequately protected by the Act would contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia, which the Australian government endorsed in 2009 but has not implemented. Specifically, it would strengthen UNDRIP's aim of, 'reaffirming that

Indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind' (United Nations Declaration on the Rights of Indigenous Peoples, 2007, p. 3).

Specific protection for Aboriginal and Torres Strait Islander peoples in Australia

We support the call from bodies like the First Peoples Disability Network, the Aboriginal Legal Service NSW/ACT, the Aboriginal Women's Advisory Network (AWAN), Wirringa Baiya and the NSW Greens to investigate specific protection for Aboriginal and Torres Strait Islander peoples in the Act (Aboriginal Legal Service NSW/ACT, 2025; AWAN, 2023, p. 5; NSW Greens, 2023, pp. 7–8). We say this recognising the unique racism First Nations peoples experience in Australia's settler colonial context compared to other racially minoritised communities. As highlighted by the Aboriginal Legal Service NSW/ACT in their submission, racism against First Nations peoples has increased by nearly 40% in the last 10 years, emphasising the necessity of legislative protection to address the specificity of this form of racism (Aboriginal Legal Service NSW/ACT, 2025; Morse, 2025).

We support the call by organisations and groups like the Aboriginal Legal Service NSW/ACT, AWAN and the NSW Greens for the government to comprehensively consult with Aboriginal and Torres Strait Islander led organisations, communities and individuals across the state regarding the proposed new protected ground (Aboriginal Legal Service NSW/ACT, 2025; AWAN, 2023, p. 5; NSW Greens, 2023, pp. 7–8).

**Question 4.7: Sex discrimination**

**(1) What changes, if any, should be made to the way the ADA expresses the protected attribute of 'sex'?**

We suggest that the language of 'sex' be changed to 'gender' in the legislation. We make this recommendation recognising scholarly critique that has been aimed at the sex/gender distinction for decades (Butler, 1999; Grosz, 1994; P. Liu, 2020)- a distinction that presumes that sex is a biological, unchanging reality, whereas gender is a cultural construct, and reflects a person's internal sense of their identity (Franke, 1995, p. 1). This binary fails to recognise that when children are born, the 'sex' they are assigned is always already shaped by gendered norms. For example, gendered expectations accrue to babies assigned female at birth from the day they are born, including that girls are gentle, overly emotional and

passive. Additionally, in Australia and internationally, we highlight the concerning way in which the sex/gender distinction is weaponised against trans and gender diverse communities, wherein one's 'sex' (here meaning sex assigned at birth) is distinguished from gender to exclude trans and gender diverse people from services, sports and other areas of public life. We are also concerned about the way the sex/gender distinction is used in carceral systems to house trans communities in prisons that are not in alignment with their gender.

We additionally note that the term 'sex' is incredibly vague and thus unhelpful for legislative purposes. For instance, sex can refer to a range of differential phenomena, including legal sex (for instance, the sex recorded on one's passport and birth certificate, which can differ), the sex someone was assigned at birth, external genitalia, self-reported sex, gonads and hormonal sex (Morrison et al., 2021, p. 2713). Sex cannot be reduced to a male/female binary, and there is notably no one scientifically proven way of determining whether one's 'sex' is male or female (Morrison et al., 2021, pp. 2713–2714).

We recognise case law, such as *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960, which notes that sex is not exclusively binary, that it can be changeable, and has been for a long time (*Tickle v Giggle for Girls Pty Ltd (No 2)*, 2024). However, given the vagueness of the notion of the 'sex', and its capacity to be mobilised to cause harm to trans and gender diverse communities, we recommend changing the protected attribute of sex to gender in the Act.

In recommending the shift in language from sex to gender in the Act, we recognise that the language of 'sex' is commonly used across other legislation in Australia- such as the *Births, Deaths and Marriages Act 1995* (NSW), and that shifts in language in other legislation may also be desirable to promote consistency in language use across legislation.

We note elsewhere in our submission that in addition to one's gender being protected, gender identity and sex characteristics also need to be protected attributes in the Act, which we provide definitions for in our response to question 5.2 (2).

**(2) Should the ADA prohibit discrimination based on pregnancy and breastfeeding separately from sex discrimination?**

Yes, as these practices are not inherently linked to people of a particular gender. For example, men with trans experiences and non-binary people may also get pregnant and feed their children with their bodily milk. We note, however, that the language of 'pregnancy and breastfeeding' should be amended to 'pregnancy, breastfeeding and chestfeeding', recognising men with trans experiences and non-binary people who give birth and feed children with their bodily milk may describe this practice as chestfeeding (Breastfeeding Public Health Partners, 2024, p. 8). Referring to a bodily part as 'breast' rather than 'chest' can be inaccurate and cause dysphoria for men with trans experiences and non-binary people.

**Question 4.8: Discrimination on transgender grounds**

**What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of "transgender grounds"?**

The distinction between recognised and non-recognised transgender people in the Act should be abolished, recognising transgender people are transgender irrespective of whether they have undertaken the step of updating their legal documentation (Inner City Legal Centre, 2023, p. 2).

The protected ground of transgender status in the Act should be replaced with 'gender identity'. Such a replacement is endorsed by organisations and groups like the Sydney Bi+ Network, Trans Justice Sydney, Equality Australia and Inner City Legal Centre (Equality Australia, 2023, p. 5). 'Gender identity' is more inclusive of people with non-binary genders, particularly recognising the binary gender framing of transgender people in the current Act. We also note that some people who are gender diverse will not describe themselves as transgender, recognising 'transgender' is a Western term, and culturally specific terms for gender diverse people exist locally and globally (ACON, 2021; Gill-Peterson, 2024; Moon, 2020).

Ensuring people who are not cisgender[2] are holistically protected under anti-discrimination legislation is significant for people in prison whose gender is different from that assigned at birth. Due to the prison system being premised on a rigid gender binary (that is, there are only men's or women's prisons, and who gets to occupy these spaces are based on cisgender norms), people who are not cisgender are regularly placed in prisons that do not align with their gender (Simpson et al., 2024, p. 388; Winter, 2024). Beyond the implications of not affirming the person's gender, this can have significant implications relating to safety (Phillips et al., 2024, p. 24), wellbeing and access to essential services. There are numerous cases of administrative segregation or solitary confinement used as a strategy for managing trans and gender diverse people's 'safety' in prison (Winter, 2024). Such acts are against the principle of solitary confinement only being used in exceptional circumstances and as a last resort- see rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules, 2015)- and of solitary confinement not posing significant risk to the person's wellbeing (Blight, 2000, p. 1,3; Lynch & Bartels, 2017, p. 194). Solitary confinement often means someone being isolated in their cell for up to 22 hours per day, and for multiple extended periods during the term of their imprisonment. If the person is placed in solitary confinement for extended periods- for example, in excess of 15 days- this is also a breach of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules, 2015). We believe the new protected ground of 'gender identity' will better protect trans and gender diverse people we support who have been incarcerated. We also argue elsewhere in this submission that police and Corrective Services need to be considered a good or service under this Act, to ensure people in custody are protected by anti-discrimination legislation.

**Question 4.9: Extending existing protections**

**(1) Should the ADA protect people against discrimination based on any protected attribute they have had in the past or may have in the future?**

Yes, recognising individuals with a history of mental illness are often subjected to police profiling, coercive treatment, and reduced access to diversion programs, even when the past condition is no longer relevant (Miles-Johnson & Morgan, 2022; Morgan, 2021). For

[2] The term cisgender refers to people whose current gender matches the gender they were presumed to be at birth.

example, people with a past psychiatric diagnosis may be denied bail, parole, or appropriate services during their time in custody (Hughes et al., 2021).

Similarly, people with a criminal record related to a past act can be discriminated against in employment, housing, and even social services (Graffam et al., 2008; Leasure et al., 2022). This can occur for decades after criminal legal system involvement and/or in circumstances where no criminal conviction was recorded. In our response to question 5.2, we also recommend that irrelevant criminal record be added as a new protected attribute to the Act.

**(2) Should the ADA include an attribute which protects against discrimination based on being a relative or associate of someone with any other protected attribute?**

Yes, recognising people can be discriminated against based on their association with criminalised communities. For example, we see families serve a silent sentence alongside people in the prison system in our work. Like those who have been imprisoned, family members also face the stigma associated with criminalisation and imprisonment (Condry & Minson, 2020, pp. 3–4; Evans et al., 2023). We see family members experience secondary stigma, discrimination and vilification due to having a family member with a criminal record, and this can vary in intensity depending on the type of crime. An example of a family member experiencing differential treatment was a child being treated differently at school. Here, repeated public negative remarks were made by school staff, in addition to other parents, in relation to the parent's criminal record and period of incarceration. The parent, who had recently exited custody, also experienced similar treatment from some of the school employees and parents when attempting to actively engage in their child's school life, and advocate for their child's educational and wellbeing needs. We thus support protection from discrimination by association, in addition to irrelevant criminal record being protected by the Act.

## 5. Discrimination: potential new protected attributes

**Question 5.2: Potential new attributes**

**(1) Should any protected attributes be added to the prohibition on discrimination in the ADA? If so, which what should be added and why?**

Yes, there are attributes we suggest adding or altering, which we have detailed below.

New attribute: sex work and sex workers

CRC supports sex work and sex workers being protected in the Act, recognising the specific way stigma and discrimination associated with doing sex work can negatively impact sex workers in all facets of life. The new protected attribute protects people against discrimination on both the ground of identity (being a sex worker) and the acts or experiences one engages in for work (sex work). Inner City Legal Centre, which supports many sex workers in their legal support work stated in their preliminary submission to this review that sex workers, 'experience amongst the worst stigma and discrimination that we see in our casework, however more often than not they are able to pursue a remedy under discrimination laws' (Inner City Legal Centre, 2023, p. 2). People who perform sex work experience discrimination when it comes to acquiring accommodation, including in relation to securing leases and mortgages, which can subject sex workers to a higher incidence of homelessness (Inner City Legal Centre, 2023, p. 2). Sex workers can also have trouble accessing a bank account due to their profession. It is thus necessary for this cohort to be adequately protected against discrimination via the Act.

New attribute: sexual orientation

Sexual orientation should be added as a protected ground, replacing the 'homosexual' ground, which would broaden the range of sexuality diverse communities protected.

New attribute: gender identity

In our response to question 4.8, we recommend that the protected attribute of transgender grounds be changed to 'gender identity'.

New attribute: gender

As stated in our response to question 4.7, we recommend that the ground of 'sex discrimination' be changed to 'gender discrimination'.

New attribute: sex characteristics

We support the call by InterAction (previously Intersex Human Rights Australia) in their

preliminary submission for the Act to include a new protected attribute of 'sex characteristics' (Intersex Human Rights Australia, 2022b, p. 9). The inclusion of sex characteristics would ensure people with variations in sex characteristics, also sometimes referred to as people with intersex variations, are adequately protected by the Act. People who have variations in sex characteristics are people who have, 'sex characteristics (including genitals, gonads and chromosomal patterns) that do not fit typical medical notions of male or female bodies'(Hart & Shakespeare-Finch, 2022, p. 912). NSW notably lags behind other jurisdictions in ensuring people with variations in sex characteristics are protected by anti-discrimination legislation, and the NSW Greens highlight that people with variations in sex characteristics, 'are covered by equivalent legislation in Tasmania, the ACT, and South Australia, in addition to the Sex Discrimination Act 1984 (Cth)' (NSW Greens, 2023, p. 3). Ensuring people are protected from discrimination based on variations in sex characteristics is particularly important for ensuring the people we support are adequately protected from discrimination inside carceral settings. InterAction, a lead organisation in Australia advocating for the rights of people with variations in sex characteristics, state that:

> people with observable variations in sex characteristics may face harassment and stigma in places of detention, and may be vulnerable to harm. Internationally, few published cases exist of intersex people in places of detention, but those that do exist are alarming in their depictions of harm and vulnerability (Carpenter, 2019).

Outside of carceral settings specifically, we recognise that people with variations in sex characteristics can be subject to non-consensual, traumatising and unnecessary surgeries on their bodies from young ages (Hart & Shakespeare-Finch, 2022, p. 912).

As is evident from the definition of sex characteristics, it is not just people with variations in sex characteristics who would be protected by the attribute of sex characteristics; endosex people (that is, people who do not have variations in sex characteristics) would also be protected from discrimination on the basis of their sex characteristics. For instance, an endosex woman staff member would be protected from discrimination for having breasts in the context of workplace uniform provisions or equipment provided. We support sex characteristics being added to the Act to better protect staff and people we support from

discrimination.

New attribute: health status

Similarly to NUAA in their preliminary submission to this review, we support the introduction of a new protected ground of 'health status' (NUAA, 2023). We recommend this to widen the communities of people who may be discriminated against because of their health status beyond HIV/AIDS in the Act. Health status protection should include protection for:

a) Lived or living experience of alcohol and other drug use.
b) Current or previous mental health status.

   Notably, many of the people CRC supports are placed into temporary accommodation post-release from prison, and it is a frequent concern that somebody can be removed from their accommodation due to emotional dysregulation. This situation is problematic, as the 'one rule for everybody' approach impacts people with mental health issues disproportionately.
c) blood-borne virus status.
d) Sexually transmitted infection (STI) status.

We also comment that the language of 'HIV/AIDS infected people' in the Act is stigmatising, and we recommend a shift to person-first, non-stigmatising language such as 'people living with HIV/AIDS'.

New attribute: irrelevant criminal record

We recommend people be protected against discrimination on the basis of irrelevant criminal record, particularly in the arenas of:

a) employment, including volunteer work

b) education and training

b) Access to services- for example, in accessing housing, health services, alcohol and other drugs services, and DFV services.

We support irrelevant criminal record being a new protected attribute in the Act, recognising the way discrimination against someone based on their criminal record and /or

involvement with the criminal legal system negatively impacts their capacity to reintegrate into society after prison, can negatively impact them many years after incarceration, and can impact people who have not been incarcerated but involved in the criminal legal system. As one CRC staff member, Damien, who has lived experience of the prison system explained: 'when you get out of prison you have enough challenges- for instance, it is hard finding a rental without employment or rental history, and being discriminated against is another thing you don't need – it won't help stop recidivism'.

Protection from discrimination on the basis of irrelevant criminal record is necessary as it can safeguard against people being discriminated against due to past experiences, where a criminal record does not relate to the service being provided or the direct duties of the role in employment contexts. People who have been to prison have already served their sentence and should not be perpetually punished if the crime has no relevance to the employment or service they are seeking. The irrelevant criminal record ground can also still protect an employer, service provider and /or the community in instances where the criminal record provides direct evidence that a person does not have the skillset or attributes to enable them to fulfil service requirements, job selection criteria or inherent requirements of a job.

Notably, other jurisdictions like Tasmania, the Northern Territory and ACT all make it unlawful to discriminate against someone on the basis of an irrelevant criminal record (Noakes & Aftab, 2024, p. 55), and NSW should follow suit to ensure people with criminal records are not unnecessarily barred from the ability to support themselves through employment and via accessing services. We note Western Australia and Victoria also have protections for people with spent convictions. Failing to ensure that someone with an irrelevant criminal record is protected via the Act means less avenues for addressing discrimination in NSW. For instance, in NSW, the only recourse for protection is via the Australian Human Rights Commission (AHRC) . This is flawed, as this recourse only covers matters related to employment, and while the AHRC can make recommendations, they cannot impose a penalty or direct a required action.

We highlight that people who come into contact with the criminal legal system experience

social stigma due to their criminalisation and criminal record (Keene et al., 2018), which is manifest in staff workplace experiences. One CRC employee who has a history of criminal legal system involvement noted that once another service provider found out they had a criminal record, the service made a degrading remark about their skillset, their capacity for the assessment of client needs and their qualifications. The worker was fully qualified and had been working effectively with that client for some time. The CRC staff member had a client referred to them for advice prior, and as such, it was clear that the differential treatment by the external worker related to that person learning of the CRC employee's historic involvement with the criminal legal system.

*The importance of understanding the social determinants of criminalisation in addressing irrelevant criminal record discrimination*

A lack of understanding about the social determinants of criminal legal system involvement, including incarceration, informs the discrimination and stigma people face around having a criminal record, which, beyond just legislative change, also needs to be addressed by government, services and the community. We know from CRC's work and literature that the social determinants of criminalisation, and factors that lead to imprisonment, are rooted in the, 'role of structural racism, discrimination and the unequal distribution of power, income, wealth and services' (McCausland & Baldry, 2023). This is often not routinely known or understood in the general population and service systems, which often make unfounded assumptions about people involved in the criminal legal system. People involved in the criminal legal system have a significant overrepresentation of diagnoses of unmet health needs, disabilities, being victims-survivors of violence, being unhoused and being of lower socioeconomic status (AIHW, 2023b), creating barriers to accessing essential services, which can then be a driver for their imprisonment. Often, once supports and interventions are in place, the relevance of a criminal record is significantly reduced, due to the underlying factors being addressed. This is particularly evident in situations related to survival crimes for people who are rough sleeping, people without access to funds, victim-survivors of violence and people who use substances.

We emphasise that barriers to accessing services based on a criminal record exacerbate and perpetuate social drivers of incarceration, which not only impact a person's ability to access

employment, housing and basic needs, but in turn increase the risk of further criminal legal system involvement.

*When is a criminal record relevant or irrelevant?*

Examples of when someone's criminal record could be considered 'relevant', and thus justify discrimination, include:

- a criminal record showing sexualised violence in the context of applying to childcare work, where a worker may be left unattended with young children, particularly if a person's record shows sexual violence against a young child.
- If someone's criminal record relates to financial crime, and a job involves financial work.
- Where someone's job requires that they can enter a public correctional facility, and the result of their criminal record check bars them from this.
- Someone is using substances to a degree that impacts their ability to drive, has received charges related to this, has not addressed the substance use, but is seeking employment to drive a community bus. This would be grounds to exclude a person from employment until the circumstances around the inability to drive are sufficiently addressed.

While suggesting examples of where a criminal record would be relevant and justify discrimination, one should also consider the circumstances that surround the criminal record or involvement with criminal legal system. If a person has addressed the underlying circumstances around the offence- such as substance use for mental health- then they should not continue to be discriminated against for this. This is particularly the case in instances of spent convictions and minor offences.

Examples of when someone's criminal record may be identified as irrelevant, making discrimination unjustified, include:

- when an offence is historical, and the context and circumstances have changed that drove the behaviour that was criminalised.

- when the criminal record relates to a survival crime (such as stealing food from a grocery store to feed oneself, when one has no other means to do so), and the person's circumstances have changed.
- In cases where victim-survivors of DFV (particularly women) are misidentified as the perpetrators of the violence by law enforcement, and consequently receive a criminal record.
- A person resists arrest at a protest out of fear of potential violence and a lack of safety in police custody. They receive a criminal record in relation to this. The person works as a high school teacher, and their criminal record does not impact their capacity to fulfil the inherent requirements of the job.
- A person is barred from a bartender job due to having a criminal record for stealing 2 bottles of alcohol 8 years prior (Australian Human Rights Commission, n.d.a). The offence occurred when the person was 15. The criminal record is not relevant to the person's capacity to carry out the bartender role as: a) the person has worked in many hospitality jobs successfully since, which involved handling large amounts of money, and has positive references from these jobs, b) the conviction is from 8 years ago, and c) she committed the offence when she was a child.

Further details on instances where a criminal record may be relevant

CRC employs people with lived experience of the criminal legal system, and in direct service provision to people exiting prison, we need to assess relevant criminal records by asking if a person has a criminal record that would impact their ability to complete their role during the intake process. Roles that require people to access prisons need to meet the means test set out by Corrective Services NSW to be eligible to obtain an Authority to Enter a Correctional Facility, and if a person is unable to enter a prison, they will be unable to fulfil a substantive component of their role.

Further details on instances where a criminal record may be irrelevant

Criminal records may be irrelevant when they are related to violence being misidentified (which can result in the criminalisation of women's resistance to violence) and people committing survival crimes. We highlight that police and the courts are blunt instruments in

understanding the complex and nuanced nature of DFV. As a result, we are noticing an increasing number of women criminalised for their resistance to DFV, as police and the court can mischaracterise and misunderstand the nature of the DFV and women's use of defence (ANROWS, 2020). This misidentification or misunderstanding in DFV cases disproportionally impacts First Nations women (Nancarrow et al., 2020), who are navigating the intersection of racial and gendered norms around violence- including whether it has occurred and how they should respond to it. The misidentification of resistance to violence has deleterious impacts for First Nations women in accessing essential services like refuges, women's shelters, DFV services and residential AOD centres, despite being victim-survivors and in need of such services. The potential criminalisation of women's resistance to violence, and of women trying to protect themselves, is an important consideration that can make a criminal record irrelevant in employment or service settings.

*The importance of irrelevant criminal record protection for First Nations people*

First Nations people are overrepresented in prisons (Australian Bureau of Statistics, Corrective Services, 2025) due to systemic inequality, colonisation, racial profiling and racial targeting (Cunneen & Tauri, 2016), making irrelevant criminal record protection particularly important for protecting the rights and freedoms of First Nations peoples in realms like employment, education and services. Protection for people with irrelevant criminal records is also necessary to support the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in NSW. An irrelevant criminal record protection would support the implementation of Article 3 of the Declaration, which states, 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' (United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007). Irrelevant criminal record protection would also support the implementation of Article 20, which states that Indigenous peoples shall not be deprived of their means of subsistence and development (United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007). Both articles relate to the irrelevant criminal record protection in that irrelevant criminal records can inhibit First Nations people's access to employment and education, and thus their subsistence and economic development. As can be seen, an irrelevant criminal

record protection has specific significance for supporting the rights and freedoms of First Nations communities.

*Case studies of discrimination based on irrelevant criminal records (from CRC's work)*

Case study 1: exclusion from services and anticipated workplace discrimination
X is a 33-year-old First Nations woman and mother of three. She lives with the intergenerational trauma of colonisation, violence and abuse since childhood, and more recently endured a decade of DFV. X has used substances as a coping mechanism, finding herself in prison for charges related to this. Since exiting prison, X has worked to get her life back on track and is stable on pharmacotherapy treatment; however, she has continued to experience violence from her ex-partner, who has threatened her with weapons, harassed her at work, gone to her children's schools, and so on. X was fearful of seeking help from the police- she didn't think they would believe her or properly support her, and she also worried it might escalate the violence, so she stayed silent. One day, the violence from her ex-partner escalated to the point where she used physical force to protect herself and her children. Despite X being the victim-survivor of long-term violence, her ex-partner told police she injured him, she was misidentified as the primary aggressor, given an apprehended violence order (AVO) and a grievous bodily harm charge. X was advised that she was not eligible to access a refuge for herself and her children, and she was not accepted into a DFV service as she was listed as the primary aggressor, placing her and her children at greater risk. Once the matter went to trial, CRC were able to provide enough evidence that X was found not guilty. However, for the 2 years in which the court process occurred, the involvement with the criminal legal system resulted in great difficulty in X accessing services, safety measures and getting her and her children's needs met. X was in good standing with her employer, so she was able to retain her employment as a valued worker. However, X was unable to access a promotion that she had been working towards with her employer and did not feel confident seeking out more senior positions in other companies until the legal matter was resolved, as she feared discrimination.

Case study 2: applying for jobs

M was accessing an employment agency as a requirement of Centrelink. The worker from the agency would constantly dismiss M's previous work experience, and they were repetitively told that there were limited options outside of manual labour, despite M previously holding various skilled positions. When the agency worker went on leave, the replacement at the agency had experience working with criminalised people and was able to assess M's skills more accurately. The replacement worker advocated to prospective employers to reduce stigma and discrimination, and to request a trial to assess M's skillset, after which M was able to acquire an administration role in a company where they continued working. This example shows the compounding barriers of not only access to employment but also to services designed to support people in accessing employment.

Case study 3: attending a theatre production

T had completed parole, and some years later went to watch a theatre production. As this production was on at a location which had an adjacent casino, T was identified via facial recognition, approached by security and asked to leave the theatre. T was advised that they were not permitted to access the venue. When T questioned why this was the case, T was told that the staff did not need to disclose reasoning. T was direct and asked if being told to leave was related to their criminal record, which the security officers confirmed. In this case, the crime was a historic misuse of company funds and had no impact on other patrons or the service by T viewing a performance and eating at one of their restaurants. T lodged a complaint and requested a refund of the theatre tickets; however, their request to refund the cost of tickets to the show and parking at the premises (which were already paid) was refused. T had previously attended the theatre and related services on site on multiple occasions without issue before facial recognition was implemented.

Overall, we recognise that adding the protected attribute of irrelevant criminal record to the Act is not a silver bullet, and broader social transformation needs to occur beyond legislative change to address the criminalisation of minoritised communities and inequality, in addition to challenging the stigma associated with criminal legal system involvement. Notably, stigma and discrimination operate on a more hidden and pervasive level than just a criminal record, and can include court system involvement, records of arrests, police questioning where no

charges are laid, criminal proceedings where the person was found not guilty or where a conviction was annulled/ not recorded. However, protection under the Act for irrelevant criminal records would help challenge the normalisation of discrimination that people face on the basis of their irrelevant criminal records.

New attribute: victim-survivors of domestic and family violence (DFV)

Similarly to the NSW Aboriginal Women's Advisory Network (AWAN), Wirringa Baiya and other bodies, we recommend victim-survivors of DFV are protected in the Act (AWAN, 2023, p. 3). Such protection is particularly necessary for people's access to goods and services. We highlight that victim-survivors can face discrimination in the area of housing as a result of breached rental contracts when escaping DFV (Flanagan et al., 2019). In our work, we see tenants receiving bad references or being evicted from housing because of DFV-related noise complaints or damage to property. We also see people we support who have experienced DFV accruing debt and poor references from social housing for the same reasons. In one instance, a person we were supporting- X- was unable to get a new housing property unless X accepted prior damage due to being a victim-survivor of DFV and begin paying off this debt. X was essentially forced to accept the debt to be housed, even though they did not create the damage. In another instance, CRC had evidence that damage to housing occurred while the person we supported was in custody, yet they were still held liable.

When considering means testing what qualifies as being a victim-survivor of DFV, we urge the Commission to consider people who have been misidentified as the primary aggressor in a DFV situation. This means that factors apart from what is listed on an AVO need to be considered.

New attribute: immigration status

We recommend that the Act protect people from discrimination based on immigration status, particularly in areas like:

a) Employment, including workplace harassment

b) Access to goods and services

We note that failure to include immigration status as a protected ground perpetuates systemic barriers that marginalise vulnerable populations, including people seeking asylum and temporary visa holders. These groups often face unique challenges, including fear of disclosure, stigmatisation, and exclusion from vital services.

An example of the need to protect people on the ground of immigration status is evident in access to healthcare services, such as opioid dependence treatment (ODPT). Recent reforms in 2023 introduced eligibility criteria requiring a valid Medicare card to access ODPT, effectively excluding many migrants without permanent residency or Medicare eligibility from receiving lifesaving treatment. This policy shift illustrates the tangible harm caused by the lack of protection against discrimination based on immigration status, even when the consequences of an individual's harmful use of opioids affect those who are not using opioids too.

In workplace settings, temporary visa holders and immigrants are disproportionately subject to workplace exploitation, harassment, and discrimination due to precarious visa conditions and a lack of legal protections, emphasising the urgent need for explicit anti-discrimination safeguards (Unions NSW, n.d.; Ziersch et al., 2021). A recent report by Unions NSW on the experiences of migrant women in the NSW workforce, for instance, showed many were worried about raising complaints of sexual harassment at work due to their visa status. CRC supports protection for immigration status in areas like employment and access to goods and services, particularly recognising the role that access to employment and health services play in supporting people to break free from criminal legal system involvement.

<u>New protected ground: socio-economic status</u>

The invisibility of protection for socio-economic and class inequity in anti-discrimination legislation has been widely critiqued (Ringelheim & Ganty, 2023, p. 3; Van Bueren, 2021). Protection on socio-economic grounds could be mobilised to protect people against harmful discrimination in relation to:

- Homelessness. Protection against discrimination based on homelessness is particularly relevant to people exiting prison, given they are overrepresented when it comes to homelessness (AIHW, 2023a). One example of how socio-economic

discrimination plays out in our work is through the phenomenon of people being denied bail due to not having housing. This unfairly privileges people who have the socio-economic means or support to attain housing. Being denied bail based on not having housing also entrenches people in cycles of criminal legal system involvement.

- The inability to access proper legal support due to socio-economic disadvantage.
- The inability to access quality, timely healthcare due to socio-economic status (Ringelheim & Ganty, 2023).
- The workplace. One example of this may be when a person's clothing, styling or branding does not align with the image expectations of the employer or colleagues, while still being appropriate to the role. A person may subsequently experience disparaging remarks and not be promoted due to styling and appearance, despite having the skillset. Another example of potential socio-economic discrimination in the workplace is someone not financially being able to participate in a team lunch or activity where employees cover their own costs, or the expense is divided amongst the group. The person is subsequently characterised as not being a team player or participating in team building, despite the only reason the person is not participating is financial. The perception of the person not being a team player could be used to make less favourable decisions about contract extensions or promotions.

We recommend the Commission consider how the Act can better protect people from discrimination based on class and socio-economic inequality- for instance, through a new protected attribute (Ringelheim & Ganty, 2023, p. 3).

As is suggested in the consultation paper for this review, we recognise there will be some reasonable exceptions to this ground. We defer to legal and other organisations that have expertise in addressing socio-economic disadvantage in their work for necessary exceptions.

**(2) How should each of the new attributes that you have identified above be defined and expressed?**

We have provided definitions or guidance on the scope of some of the suggested new attributes below.

Irrelevant criminal record

We provided examples and case studies of what we believe constitutes discrimination on the basis of irrelevant criminal records in our response to question 5.2(1).

Sexual orientation

Our suggested definition of sexual orientation is a modified version of the definition of sexual orientation in s4(1) of the *Equal Opportunity Act 2010* (Vic):

> Sexual orientation means a person's emotional, affectional and/or sexual attraction to, or intimate or sexual relations with, persons of a different gender, the same gender or more than one gender. Sexual orientation also encapsulates no or little emotional, affectional, and/or sexual attraction to others.

We have added that sexual orientation can include a lack of emotional, affectional and sexual attraction to others to ensure the Act protects people who are asexual (that is, people who may not experience sexual attraction) and people who are aromantic (that is, people who experience little or no romantic feelings for others) (Queensland Human Rights Commission, 2022b, pp. 282–283). Ensuring asexual people are protected by anti-discrimination legislation was highlighted in community feedback on Queensland's anti-discrimination legislation (Queensland Human Rights Commission, 2022b, pp. 282–283).

Gender

A potential definition of gender is: 'The way individuals understand and define themselves in relation to being a man, woman, non-binary person, other culturally specific term, or as not having a gender'. Such a definition recognises that culturally specific gendered terms exist outside of being a man, woman or non-binary person, and also that some people describe themselves as being agender- that is, as not having a gender. Whilst we have

included a possible definition of gender here, we encourage the Commission to consult with LGBTQ+ groups such as BlaQ Aboriginal Corporation and ACON to ensure the suggested definition respectfully recognises Brotherboys, Sistergirls (First Nations gender diverse community members) and agender people.

A protected ground of gender would, as Equality Australia puts it, 'address gender-based discrimination (including characteristics appertaining or imputed to gender)' (Equality Australia, 2023, pp. 7–8). Such discrimination might, for instance, be related to whether somebody is a non-binary person or woman. By contrast, the separate ground of *gender identity* would address discrimination based on whether a person's gender is different to that presumed of them at birth, and in instances where someone's gender expression might be stigmatised because it is not in alignment with expected social norms.

Gender identity

We suggest a similar definition for gender identity to that stipulated in the Yogyakarta Principles. We suggest the following wording:

> Gender identity refers to a person's deeply felt, individual experience of gender, which may or may not correspond with their gender presumed at birth, including one's personal sense of the body (which may involve modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

This slightly altered definition from the Yogyakarta Principles ensures the ground of "gender identity" is definitionally inclusive of "gender expression". Ensuring people are protected on the basis of gender expression is important for, say, a cisgender[3] person who may have a stigmatised gender expression, such as a cisgender man who may have a feminine gender expression.

[3] The term cisgender refers to people whose gender aligns with the gender they were presumed at birth.

Sex characteristics

We support the suggested definition of sex characteristics provided by InterAction, previously Intersex Human Rights Australia, in their preliminary submission (Intersex Human Rights Australia, 2022b, pp. 8–9). InterAction draws on a definition from a births, deaths and marriages bill that has, without alteration, since passed into law in Queensland[4] (Intersex Human Rights Australia, 2022a, pp. 8–9). The definition is thus:

> sex characteristics, of a person, means the person's physical features and development related to the person's sex, and includes—
> (a) genitalia, gonads and other sexual and reproductive parts of the person's anatomy; and
> (b) the person's chromosomes, genes and hormones that are related to the person's sex; and
> (c) the person's secondary physical emerging as a result of puberty (Births, Deaths and Marriages Legislation Bill, 2022, p. 115).

**(3) If any of new attributes were to be added to the ADA, would any new attribute-specific exceptions be required?**

Yes, we support an exception for the suggested new attribute of health status, stating that if the person's health status puts others at risk, this is a legitimate exception.

## 6. Discrimination: Areas of public life

**Question 6.1: Discrimination at work — coverage**

**(1) Should the definition of employment include voluntary workers? Why or why not?**

Yes, the definition of employment should cover voluntary workers. We say this recognising our organisation relies on a large number of volunteers to support people navigating the court system through our program called the Court Support Scheme. We recognise that voluntary work is still work, and that individuals that we support who are exiting prison, and people who volunteer for our organisation, should be protected against discrimination. CRC

[4] See s157(2) of *Births, Deaths and Marriages Registration Act 2023* (QLD)

is grateful for our workforce of volunteers, for volunteers across NSW in other organisations and the vital role they play in many organisations, including our own. We therefore recommend that the rights of voluntary workers be brought in line with that of paid workers.

**Question 6.4: The provision of goods and services — coverage**

**What changes, if any, should be made to the definition and coverage of the protected area of "the provision of goods and services"?**

CRC recommends ensuring Corrective Services, detention centres and police are included as goods and services under the Act. This inclusion is vital to protect the rights of people involved with the criminal legal system, and to enable them to be free from discrimination, vilification, victimisation and harassment whilst in custodial environments. One reason for our position is the lack of recourse for people who experience victimisation and harassment by Corrective Service staff, which was detailed in a recent report by UNSW on experiences of sexual violence by women in prison (Survivor Leadership Group et al., 2025, p. 4). The report highlights that women who have experienced sexual violence by Corrective Services staff are often victimised by staff when they attempt to speak up about the violence.

Another reason for our suggestion has developed through our work advocating for trans communities and people with disabilities in carceral settings. We would like carceral settings to be included as a good or service to promote better disability protection and access to services for people with disabilities in prison. Ensuring people in detention centres are covered by anti-discrimination is also relevant to our trans advocacy work. Through our collaborative work on a campaign by the organisation Scarlett Alliance, which is about ensuring the safety, freedom and dignity of trans migrant people in detention centres (Scarlett Alliance, n.d.), we regularly learn of instances where trans women are being incarcerated in men's detention facilities. This is a clear instance of discrimination on the basis of these women being trans, recognising such treatment does not occur to cisgender women. Ensuring detention centres, prisons and police are covered by the legislation would better support the rights of people we serve and advocate for. The Australian Human Rights Commission asserts that "no matter who we are, or what our situations are, we all have the right to be treated with respect and dignity" (Australian Human Rights Commission, n.d.).

However, under current legislation, this human right is not enjoyed equally by people who are incarcerated.

## 11. Promoting substantive equality

**Question 11.3: A positive duty to prevent or eliminate unlawful conduct**

**(1) Should the ADA include a duty to take reasonable and proportionate measures to prevent or eliminate unlawful conduct? Why or why not?**

In principle, we support workplaces, services and educational institutions being encouraged to take reasonable measures to promote inclusive and non-discriminatory environments, recognising that anti-discrimination legislation can be inaccessible to people because of the onus placed on individuals to prove discrimination is occurring. We support the Commission considering how to make anti-discrimination complaints less burdensome on the person who has been harmed, and how to make discrimination less likely to occur in the first place. We highlight a recommendation from yarning circles of LGBTQASB+ First Nations communities regarding their workplace experiences in recent research for Pride in Diversity by Alison Whittaker, a Gomeroi legal researcher. The yarning circles highlighted the need for, 'education, from early ages, on LGBTQSAB+ mob identities, worlds and experiences' (Whittaker, 2024, p. 49), to make workplaces more inclusive for LGBTQASB+ First Nations people. In principle, we support workplaces, educational institutions and services being encouraged to take on more responsibility for creating equitable and non-discriminatory environments, including through training and self-education.

# FURTHER FEEDBACK ON THE ACT

In addition to our responses to the consultation paper questions, we wish to respond to point 1 of the terms of reference in the consultation paper- namely, "whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards". Our position is in alignment with that of the Justice and Equity Centre, previously the Public Interest Advocacy Centre, to overhaul and rewrite the Act (Public Interest Advocacy Centre, 2023, p. 3). 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).[5] This simplified approach will enhance the accessibility of the Act.

## CONCLUSION

We thank the Law Reform Commission for considering our submission, which highlights ways the Act could be improved to better protect criminalised communities and staff who work with criminalised communities. CRC would welcome the opportunity for further consultation or clarification about this submission.

[5] For example, see the *Anti-Discrimination Act 1998* (Tas), the *Anti-Discrimination Act 1991* (Qld), and the *Discrimination Act 1991* (ACT).

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