

Submission on the draft guidelines on addressing multiple and intersectional forms of discrimination against women and girls

15 October 2025

United Nations Office of the High Commissioner for Human Rights

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The NSW Young Lawyers Human Rights Sub-Committee and International Law Sub-Committee (**Sub-Committees**) make the following submission in response to the request for draft guidelines on addressing multiple and intersectional forms of discrimination against women and girls with disabilities by the United Nations Office of the High Commissioner for Human Rights.

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its multiple sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The Human Rights and International Law Sub-Committees are formed by groups of volunteers and subscribers interested in human rights and international law, including lawyers working in academia, for government, private and NGO sectors and other areas of practice that intersect with human rights and international law. The Sub-Committees aim to raise awareness and provide education about human rights and international law issues. The Sub-Committees take a keen interest in providing comment and feedback on legal and policy issues that relate to human rights and international law and their development and support.

Summary of Recommendations

1. The Sub-Committees recommend that the guidelines on addressing multiple and intersectional forms of discrimination against women and girls with disabilities (the Guidelines) should affirm that States have an obligation to recognise and address multiple and intersecting forms of discrimination.
2. The Guidelines should clarify that denial of reasonable accommodation constitutes discrimination and should ensure States embed this in their legal and policy frameworks.
3. The Guidelines should require States to integrate a gender-sensitive lens into disability inclusion strategies, action plans, policy and monitoring frameworks.
4. The Guidelines should emphasise that States must ensure the meaningful participation of women and girls with disabilities and their representative organisations, in the development and monitoring of laws and policies.
5. The Guidelines should require that complaint mechanisms, courts and tribunals are accessible (procedurally, cost-wise and physically) with supports such as easy read information, hearing loops, interpreters and advocacy services.

Background on the Guidelines on addressing multiple and intersecting forms of discrimination against women and girls with disabilities in law, policy and practice

The *Convention on the Rights of Persons with Disabilities (CRPD)* and the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* together provide the international human rights framework for advancing equality for women and girls with disabilities. While both treaties impose obligations on States to eliminate discrimination, in practice, responses have often failed to adequately address the multiple and intersecting forms of discrimination experienced by this group, for example, where Indigenous women with disabilities in rural or remote Australia confront overlapping discrimination on the basis of gender, disability and race, which may limit access to culturally safe health services;¹ or where women with psychosocial or intellectual

¹ Jennifer M Maher *et al*, *Women, Disability and Violence: Barriers to Accessing Justice: Final Report* (ANROWS Horizons, 02/2018) (Australia's National Research Organisation for Women's Safety, 2018), p 28.

disabilities face compounded barriers in exercising reproductive and bodily autonomy due to ableist assumptions and gendered stigma.² These intersectional disadvantages, which may also intersect further with poverty, location, age or migration status, lead to distinct forms of exclusion that cannot be addressed adequately through siloed approaches.³ The development of these Guidelines therefore represents an important opportunity to provide States with clear, practical direction on implementing their international obligations in law, policy and practice.

Do the anti-discrimination legislation and/or policy frameworks in force in your country recognise disability and the denial of reasonable accommodation as prohibited forms of discrimination against persons with disabilities?

Commonwealth of Australia (Federal)

At the federal level, protection against discrimination on the grounds of disability is set out in the *Disability Discrimination Act 1992* (Cth)⁴ (**DDA**). The DDA applies broadly across public life, making both direct and indirect discrimination unlawful in employment,⁵ education,⁶ access to premises,⁷ the provision of goods and services,⁸ accommodation,⁹ membership of clubs and associations,¹⁰ and the administration of Commonwealth laws and programs.¹¹

Importantly, the DDA expressly recognises the denial of reasonable adjustments as a form of discrimination, the concept of **reasonable adjustments** is defined in section 4 as any change that does not impose *unjustifiable hardship* on the duty-bearer.¹² Moreover, section 5(2) directly recognises that failing to make such adjustments may amount to discrimination, since it results in

² Ibid, p 4 and 6.

³ Disabled People's Organisations Australia and National Women's Alliances (Carolyn Frohmader), *The Status of Women and Girls with Disability in Australia: Position Statement to the Commission on the Status of Women* (2019) <https://wwda.org.au/wp-content/uploads/2020/06/The-Status-of-Women-and-Girls-with-Disability-Asutralia.pdf>.

⁴ *Disability Discrimination Act 1992* (Cth).

⁵ *Disability Discrimination Act 1992* (Cth) s 15.

⁶ *Disability Discrimination Act 1992* (Cth) s 22.

⁷ *Disability Discrimination Act 1992* (Cth) s 23.

⁸ *Disability Discrimination Act 1992* (Cth) s 24.

⁹ *Disability Discrimination Act 1992* (Cth) s 25.

¹⁰ *Disability Discrimination Act 1992* (Cth) s 27.

¹¹ *Disability Discrimination Act 1992* (Cth) s 29.

¹² *Disability Discrimination Act 1992* (Cth) s4.

the person with a disability being treated less favourably compared to someone without a disability.¹³ This imposes a positive obligation to accommodate, creating a stronger legal framework compared to jurisdictions where accommodation is only implied through indirect discrimination provisions.

While the federal framework under the DDA is comparatively strong in recognising the denial of reasonable adjustments as a form of discrimination, there remain areas for improvement.

- 1. Develop clearer guidance and practical examples of reasonable adjustments** - Although the DDA defines reasonable adjustments, there is limited authoritative guidance to support consistent interpretation. Nationally endorsed guidelines would assist both people with disabilities and duty-bearers to understand their rights and obligations in practice.

For example, guidance could illustrate reasonable adjustments in diverse settings, such as providing accessible communication formats and support persons during justice processes, flexible working arrangements or adaptive technology in employment, and accessible learning materials or modified assessment methods in education. The Australian Human Rights Commission's *Guidelines on Equal Employment Opportunity for People with Disabilities*¹⁴ and the Commonwealth's *JobAccess program*¹⁵ already provide sector-specific examples that could inform a broader, nationally consistent framework.

- 2. Strengthen proactive compliance mechanisms** - At present, enforcement of the DDA relies largely on individual complaints to the Australian Human Rights Commission. Introducing proactive monitoring or compliance measures would provide strong systemic protection, particularly for women and girls with disabilities who may face barriers in accessing complaint processes. Introducing proactive monitoring and compliance mechanisms would provide stronger systemic protection, particularly for women and girls with disabilities who may face barriers in accessing complaint-based processes.

¹³ *Disability Discrimination Act 1992* (Cth) s5(2).

¹⁴ Australian Human Rights Commission, *Guidelines for the Targeted Recruitment of People with Disability* (2022) https://humanrights.gov.au/sites/default/files/document/publication/ahrc_guidelines_for_the_targeted_recruitment_of_people_with_disability_2022.pdf

¹⁵ [Welcome to JobAccess - your guide to disability employment | Job Access](#)

Proactive measures could include the introduction of mandatory positive duties on public authorities and large organisations to take reasonable and proportionate steps to prevent discrimination and promote equality, consistent with section 15 of the *Equal Opportunity Act 2010* (Vic)¹⁶ and the positive duty framework introduced under the *Sex Discrimination Act 1984* (Cth).¹⁷ In addition, sector-based compliance reviews and public reporting obligations could assist in identifying and addressing systemic barriers in key domains such as health, education, justice and employment. These mechanisms would better align Australia's domestic framework with Article 33 of the *Convention on the Rights of Persons with Disabilities*,¹⁸ shifting the DDA towards a preventative and systemic model that enhances substantive equality for women and girls with disabilities.

State NSW

In the state of New South Wales (**NSW**), the primary piece of legislation addressing discrimination is the *Anti-Discrimination Act 1977* (NSW) (**the ADA**). Part 4A of the ADA recognises discrimination on the grounds of a disability and specifies the spheres of life in which discrimination is unlawful. Specifically, the ADA makes it unlawful to discriminate against a person on the grounds of a disability in the areas of work¹⁹, education²⁰, provision of goods and services²¹ and accommodation.²² There are also several exceptions to the ADA, most notably for the provision of superannuation²³ and insurance.²⁴ The definition of 'disability' in the ADA is outdated; it includes the use of medical

¹⁶ *Equal Opportunity Act 2010* (Vic) s 15.

¹⁷ *Sex Discrimination Act 1984* (Cth) s 47C.

¹⁸ Committee on the Rights of Persons with Disabilities, *General Comment No 7: Participation of Persons with Disabilities, Including Children with Disabilities, through Their Representative Organisations, in the Implementation and Monitoring of the Convention*, 19th sess, UN Doc CRPD/C/GC/7 (9 November 2018).

¹⁹ *Anti-Discrimination Act 1977* (NSW) ss 49D 49E 49F 49G 49H 49I 49J 49K.

²⁰ *Anti-Discrimination Act 1977* (NSW) s 49L.

²¹ *Anti-Discrimination Act 1977* (NSW) s 49M.

²² *Anti-Discrimination Act 1977* (NSW) s 49N.

²³ Superannuation is an Australian scheme designed to provide savings for retirement. Employers are legally required to contribute a percentage of an employee's salary, currently 12%, on behalf of employees to a superannuation fund. This money grows over time through investment returns and is generally accessible once you reach retirement age, currently 67.

²⁴ *Anti-Discrimination Act 1977* (NSW) s 49Q.

terminology such as “malfunction”, “malformation”, “disfigurement” and “disorder”²⁵ which does not align with contemporary ‘social’ or ‘human rights’ models of disability.²⁶

At the time of writing, the ADA does not expressly refer to “reasonable accommodation”. Rather, this concept is implied through protections against indirect discrimination, and the test becomes whether a requirement for a person with a disability is “reasonable” in the circumstances.²⁷ This means that practically in NSW the test is framed negatively (was the condition unreasonable) rather than positively (was a reasonable accommodation provided). Without the explicit recognition of reasonable accommodation in the ADA, many cases fall into a grey area, as the law in NSW does not affirmatively impose a duty to make adjustments. The Sub-Committees note that the ADA is currently the subject of statutory review by the NSW Law Reform Commission, which may result in significant reform to strengthen protections and clarify obligations in this area.²⁸

²⁵ *Anti-Discrimination Act 1977* (NSW) s 4.

²⁶ The 'social' model of disability views disability as the product of societal barriers to a person with disability's participation in society, rather than as an inherent difference, malfunction, or inability of that person. The 'human rights' model of disability recognises that disability is a natural part of human diversity that must be respected and supported in all its forms, that people with disability have the same rights as everyone else in society, and that impairment must not be used as an excuse to deny or restrict people's rights.

²⁷ *Anti-Discrimination Act 1977* (NSW) s 49B(2).

²⁸ NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977 (NSW)* (Current Project, 2024) <https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review.html>.

Do the anti-discrimination legislation and/or policy frameworks in force in your country recognise the multiple and interesting forms of discrimination affecting women with disabilities on account of their disability and other factors, such as sex, gender, ethnicity, migration status, origin, socio-economic status, religious beliefs, etc?

Commonwealth of Australia (federal)

At the federal level, Australia addresses discrimination through a suite of statutes; the DDA,²⁹ the *Sex Discrimination Act 1984* (Cth),³⁰ the *Racial Discrimination Act 1975* (Cth)³¹ and the *Age Discrimination Act 2004* (Cth).³²

These acts provide strong protections on each individual ground but do not explicitly recognise intersectional discrimination, the compounded harm experienced by, for example women with disabilities who are also migrants or from racialised communities. Legal scholarship and the Australian Human Rights Commission have observed that the current framework treats each attribute separately, limiting the ability to capture the lived experience of overlapping discrimination.³³

In practice, this means that complainants must usually pursue claims under multiple statutes, with each attribute considered in isolation. This fragmented approach can obscure the cumulative disadvantage faced by women with disabilities and may discourage complainants from seeking remedies. While the Australian Human Rights Commission has on occasion acknowledged intersectional experiences in its reports and submissions, and while courts can take context into account, the lack of an explicit statutory basis leaves intersectionality underdeveloped at the federal level.

²⁹ *Disability Discrimination Act 1992* (Cth).

³⁰ *Sex Discrimination Act 1984*(Cth).

³¹ *Racial Discrimination Act 1975* (Cth).

³² *Age Discrimination Act 2004* (Cth), subsequent supporting legislation include *Age Discrimination (Consequential Provisions) Act 2004* (Cth) and *Age Discrimination Amendment Act 2006*).

³³ Alysia Blackham and Jeromey Temple, *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework* (2020) 43(3) *University of New South Wales Law Journal* 773, 773-800, 774-75; Australian Human Rights Commission, *Age Discrimination in Employment*, *Australian Human Rights Commission*.

While the federal framework provides strong protection across separate attributes through the DDA, the *Sex Discrimination Act*, the *Racial Discrimination Act* and the *Age Discrimination Act*, it does not explicitly recognise intersectional discrimination. This gap limits the ability of the law to capture the compounded disadvantage experienced by women and with disabilities who are also, for example, from migrant or racialised communities.

- 1. Introduce explicit recognition of intersectional discrimination** - clarifying in federal legislation that discrimination may arise from the interaction of multiple attributes would ensure that overlapping experiences, such as those faced by women with disabilities, can be addressed holistically rather than fragmented across separate claims. For example, an Aboriginal woman with disability may experience discrimination that is simultaneously based on her gender, race, and disability status, or a migrant woman with psychosocial disability may face compounded disadvantage arising from both cultural and disability-related stigma.³⁴
- 2. Enhance Commission guidance and data collection** - in the absence of legislative reform, the Australian Human Rights Commission could be resourced to issue stronger guidance on intersectional discrimination and prioritise data collection (in accordance with the *Privacy Act 1988*) on how overlapping grounds of discrimination are experienced and disaggregated by gender, disability, and other attributes. This would support both the development of jurisprudence and more effective policymaking in response to the lived realities of women with disabilities. Stronger data can justify stronger legal obligations.

State NSW

The protected attributes contained in the ADA are the narrowest of Australia's anti-discrimination laws. The only attributes protected by the ADA are race,³⁵ sex³⁶ (including pregnancy³⁷ and

³⁴ Committee on the Elimination of Discrimination against Women and Committee on the Rights of Persons with Disabilities, *Joint Statement: Guaranteeing the Equal Rights of Women and Girls with Disabilities* (29 August 2018) <https://www.ohchr.org/en/statements/2018/08/joint-statement-guaranteeing-equal-rights-women-and-girls-disabilities>.

³⁵ *Anti-Discrimination Act 1977* (NSW) pt 2 s 7.

³⁶ *Anti-Discrimination Act 1977* (NSW) pt 3 s 24.

³⁷ *Anti-Discrimination Act 1977* (NSW) pt 3 s24(1B).

breastfeeding³⁸), transgender and gender identity,³⁹ marital or domestic status,⁴⁰ disability,⁴¹ a person's responsibilities as a carer,⁴² homosexuality⁴³ and age.⁴⁴ The ADA's scope falls short of addressing the full spectrum of diversity within, and discrimination faced by, the NSW community, leaving a substantial portion of individuals vulnerable to discrimination without legal recourse or protection at the state level. Specifically, ethnicity, migration status, origin, socio-economic status and religious beliefs are not addressed nor protected by the ADA.

³⁸ Anti-Discrimination Act 1977 (NSW) pt 3 s 24(1C).

³⁹ *Anti-Discrimination Act 1977* (NSW) pt 3A s 38B.

⁴⁰ *Anti-Discrimination Act 1977* (NSW) pt 4 s 39.

⁴¹ *Anti-Discrimination Act 1977* (NSW) pt 4A s 49B.

⁴² *Anti-Discrimination Act 1977* (NSW) 4B s 49T.

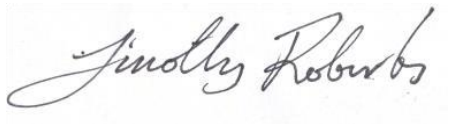
⁴³ *Anti-Discrimination Act 1977* (NSW) pt 4C s 49ZG.

⁴⁴ *Anti-Discrimination Act 1977* (NSW) pt 4G s 49ZYA.

Concluding Comments

NSW Young Lawyers and the Sub-Committees thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

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