

SUBMISSION

REVIEW OF THE ANTI-DISCRIMINATION ACT

AUGUST 2025

The Australian Retailers Association (ARA) and the National Retail Association (NRA) welcome the opportunity to provide feedback on the Review of the Anti-Discrimination Act.

Together, the ARA and the NRA represent a \$430 billion sector that employs 1.4 million Australians - one in ten workers - making retail the nation's largest private sector employer and a cornerstone of the Australian economy.

Our organisations' membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95% of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

EXECUTIVE SUMMARY

In our October 2023 preliminary submission, the ARA urged the NSW Law Reform Commission to amend the *Anti-Discrimination Act 1977* (ADA) to incorporate "special measures" or "positive discrimination" provisions, allowing targeted recruitment of historically disadvantaged groups without the need for organisations to apply for a formal exemption under section 126. That proposal reflected the retail industry's status as a major employer in NSW and our commitment to fostering workforce diversity and inclusion.

In this consultation, we reiterate our strong support for removing the exemption requirement. Embedding special measures within the ADA would align NSW with other Australian jurisdictions, reduce unnecessary administrative burden, and enable retail employers to implement targeted hiring initiatives that promote substantive equality and deliver tangible benefits for underrepresented groups.

BODY OF SUBMISSION

1. Alignment with our previous submission

In our October 2023 submission to the NSW Law Reform Commission, the ARA recommended that the ADA be amended to include provisions enabling targeted recruitment and employment programs for historically disadvantaged groups without requiring an exemption. This remains a priority for our members, particularly large multi-jurisdictional retailers who are disadvantaged by NSW's current framework compared to other states and territories.

2. Current challenges under the ADA

The existing requirement to apply for an exemption under section 126 to implement targeted recruitment creates an unnecessary administrative burden. This requirement is:

- Underutilised - Fewer than 300 organisations currently hold exemptions, compared to more than 890,000 businesses in NSW.
- Misaligned - Other jurisdictions allow "special measures" within legislation, enabling immediate action without exemptions.
- Discouraging - The process can be resource-intensive and deter employers from implementing legitimate diversity initiatives.

3. Impact on the retail sector

Retail is one of NSW's largest employers, with a workforce that spans metropolitan, regional, and remote areas. Our members are committed to building diverse and inclusive teams and often run programs designed to address underrepresentation of certain groups, such as women in leadership, Aboriginal and Torres Strait Islander peoples, people with disabilities, and culturally and linguistically diverse candidates.

In other jurisdictions, these initiatives can be implemented immediately if they meet legislative "special measures" criteria. In NSW, the exemption requirement adds time, cost, and uncertainty, reducing the likelihood that such programs are rolled out at scale.

4. Evidence of effective targeted recruitment

Targeted recruitment programs have been shown to achieve tangible results in promoting substantive equality. For example, a retail sector disability employment pilot in Victoria increased workforce participation for people with disabilities without the delays of an exemption process. Such initiatives, if implemented in NSW, would be slowed or potentially abandoned under the current ADA framework.

5. Criteria for special measures

We support adopting criteria similar to those in Victoria's Equal Opportunity Act, where a measure must be:

- Undertaken in good faith to achieve substantive equality.
- Reasonably likely to achieve substantive equality.
- A proportionate means of achieving that purpose.
- Justified by the particular need for assistance for members of the group.

6. The case for legislative reform

The exemption process was initially intended as a transitional safeguard but has instead become a permanent obstacle. NSW should embed a general "special measures" provision directly into the ADA, applicable to all protected attributes, ensuring employers can act swiftly and lawfully to address inequities in the workplace. Oversight can still be maintained through legislative safeguards, without requiring case-by-case approval.

Another difficulty with the legislative framework is that it is open to a retailer operating in NSW to apply to the Australian Human Rights Commission (AHRC) for exemption(s) of overlapping Commonwealth anti-discrimination legislation, e.g. the *Age Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth) or the *Sex Discrimination Act 1984* (Cth). For a business in this situation, it is unclear whether an exemption granted by the AHRC negates the need to also apply for an exemption under section 126 and vice versa. The ambiguity about the State and Commonwealth exemption mechanisms is a significant impediment to retail businesses seeking to comply with their statutory obligations in the running of important programs to address underrepresentation of historically disadvantaged groups.

CONCLUSION

The retail sector has both the scale and the commitment to drive meaningful change in workforce diversity and inclusion. Removing the exemption requirement for targeted recruitment will remove an unnecessary barrier, align NSW with the rest of Australia, and enable employers to take timely, proportionate action to promote substantive equality. We urge the Commission to prioritise this reform in its final recommendations.

The ARA appreciate the opportunity to contribute to this important discussion.

We encourage the Government to continue collaborating with business groups and service providers to ensure reforms to the ADA are practical, reduce administrative burden, and enable employers to take timely and lawful action to improve diversity and inclusion in the workplace.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.