



COALITION AGAINST CASTE DISCRIMINATION

29 September 2023

NSW Law Reform Commission

Locked Bag 5000, Parramatta

NSW 2124, Australia.

By email : nsw-lrc@justice.nsw.gov.au

Subject : Enclosed Our Submission Seeking Review of the Anti-Discrimination Act 1977 (NSW) to include caste discrimination in light of AHRC-NARF Recommendations

Dear Sir / Madam

I am writing to you on behalf of the Coalition Against Caste Discrimination (**CACD**) – a committed collective that includes Ambedkar International Mission- Australia (**AIM - Australia**), Periyar Ambedkar Thoughts Circle of Australia (**PATCA**), and Sri Guru Ravidas Sabha (**SGRS**).

Our core mission is to champion dignity, respect, and equality, disregarding caste or socio-cultural background.

Building on by the *Australian Human Rights Commission National Anti Racism Framework (AHRC-NARF)* and *Federation of Ethnic Communities' Councils of Australia (FECCA)* submission to the *Australian government's Multicultural Framework Review – Draft Terms of Reference*, we seek a review of the Anti-Discrimination Act 1977, NSW (the Act) to ensure its alignment with contemporary understanding and to address caste discrimination adequately.

Our enclosed submission, titled "***Unseen Chains: Urgent Plea for Recognising Caste Discrimination in the Anti-Discrimination Act Review***," underscores sections of the Act that require amendments to adequately recognise caste discrimination as a protected attribute, aligning with the needs identified by the AHRC-NARF.

This document provides a comprehensive narrative illustrating the pervasive and subtle manifestations of caste-based discrimination faced by individuals from a spectrum of social backgrounds.

The lived experiences encapsulated in this submission were collected through a Google Survey, which was disseminated to reinforce our assertions. Selected excerpts from the testimonials obtained through the survey have been prominently highlighted within the main body to emphasise the detrimental effects of caste discrimination. We are willing to provide the Google Survey to the Commission upon request.

Beyond mere legal frameworks, the recognition of caste as a protected attribute is a paramount issue concerning human rights and equality, necessitating decisive action.

We are optimistic that, with your engagement, we can collaboratively work towards cultivating a more inclusive society. Thank you for your attention to this pressing issue.

We eagerly anticipate an invitation to engage in further dialogue with the Commission, and remain keen to provide additional insights on the urgent need to recognise caste discrimination as a protected attribute in review of the Act.

Yours Truly,

Dr. Haroon Kasim

Vice President, *PATCA*

SUBMISSION FOR THE ANTI-DISCRIMINATION ACT REVIEW

*Unseen Chains: Urgent Plea for
Recognising Caste Discrimination in the
Anti-Discrimination Act Review*



COALITION AGAINST CASTE DISCRIMINATION

The Coalition Against Caste Discrimination is a collective of individuals and organisations committed to combating caste discrimination and promoting equality and justice for all.

The Coalition includes **Ambedkar International Mission (AIM), Australia**, **Periyar Ambedkar Thoughts Circle of Australia. (PATCA)** and **Sri Guru Ravidas Sabha (SGRS)**.

The coalition works on multiple fronts, including promoting education and awareness about caste discrimination, empowering marginalised communities, advocating for legal and policy changes, and fostering dialogue and collaboration with key stakeholders.

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TABLE OF CONTENTS

Executive Summary	4
<i>Global recognition of caste discrimination</i>	4
<i>Caste Discrimination in Australia: A Real Lived Experience</i>	5
<i>The Need to Modernise Australia's Anti Discrimination Laws</i>	6
Caste Discrimination and the Anti Discrimination Act Review	10
<i>1. The Argument for Inclusion of Caste as Protected Attribute</i>	10
<i>2. Modernising the Act: Including Caste and Upholding Equality.</i>	14
<i>3. Outlawing Caste Discrimination in Public Life</i>	16
<i>4. Clear Caste Discrimination Tests and Modern Inclusivity.</i>	17
<i>5. Harmonising Caste-Based Protections with Criminal Law</i>	19
<i>6. Mandating Preventive Measures for Caste Discrimination.</i>	21
<i>7. Streamlining Complaint Mechanisms for Caste Discrimination.</i>	23
<i>8. Empowering NSW Anti-Discrimination Board</i>	25
Summary	27

Executive Summary

Caste discrimination is not just a theoretical or historical concept; it is a lived experience for many. Though rooted in South Asia and determined by ancestry or birth, the discriminatory hierarchical system of caste has found its way to the South Asian diaspora in Australia.

Unlike socioeconomic class, which offers prospects for mobility, the inherited caste status is rigid and unalterable for individuals.¹ Due to this oppressive system, many face unjust treatment and marginalisation based solely on their caste, leading them to be identified as caste oppressed groups called Dalits or the erstwhile untouchables.

The real-life repercussions of this discrimination are profound. Individuals are subjected to social exclusion, which robs them of equal opportunities and access to essential resources, spanning sectors such as education, employment, and healthcare.

This entrenched exclusion permeates every facet of their lives, significantly hindering their active participation in social, economic, and political spheres.

Global recognition of caste discrimination

In recent times, the issue of caste discrimination has gained significant global recognition and momentum. Seattle led the way in February 2023², becoming the first US jurisdiction to explicitly outlaw caste discrimination.

Not far behind, California introduced and passed a groundbreaking bill in March and May 2023³, respectively, marking the state's dedication to combatting caste-based prejudices.

¹ Dr. B.R.Ambedkar, Annihilation of Caste (1936) https://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/readings/aoc_print_2004.pdf; Srinivas, M. N. "Caste in Modern India." The Journal of Asian Studies 16, no. 4 (1957): 529–48. <https://doi.org/10.2307/2941637>.

² Seattle becomes the first U.S. city to ban caste discrimination. <https://www.npr.org/2023/02/22/1158687243/seattle-becomes-the-first-u-s-city-to-ban-caste-discrimination>

³ A California bill aims to explicitly ban caste discrimination in the state. <https://edition.cnn.com/2023/03/22/us/california-caste-discrimination-bill-cec/index.html>

The wave of transformation is palpably sweeping across various sectors, with academia and technology standing as notable examples. Prominent institutions such as Brandeis ⁴ and California State ⁵ Universities, along with corporations like Apple⁶, have taken progressive steps by recognising caste as a protected characteristic under their anti-discrimination policies.

On an international front, the European Parliament ⁷ has denounced the harsh consequences of caste discrimination, emphasising the urgent need to address caste's role in human rights violations. Further, the United Kingdom ⁸ has also undertaken initiatives to address caste discrimination within their legislation.

Caste Discrimination in Australia: A Real Lived Experience

The Australian Human Rights Commission released its National Anti-Racism Framework Scoping Report **(AHRC-NARF)** ⁹ underscored the significance of caste discrimination in Australian society.

For Australians from caste-oppressed backgrounds, discrimination isn't just a distant concept; it's a daily lived experience.

In Australia, caste discrimination manifests subtly, significantly affecting the lived experiences of the caste-oppressed groups across various domains, from workplaces to housing, religious observances, and educational settings.

Numerous media accounts ¹⁰ bring to light the profound ramifications of these biases in both professional and personal lives.

⁴ Adding Caste to Our Non-Discrimination and Harassment Policy. <https://www.brandeis.edu/president/letters/2019-12-17-adding-caste-to-our-nondiscrimination-harassment-policy.html>

⁵ All Cal State universities add caste to anti-discrimination policy. <https://www.nbcnews.com/news/asian-america/cal-state-schools-add-caste-anti-discrimination-policy-rcna12602>

⁶ As Big Tech grapples with caste-based discrimination, Apple explicitly bans it. <https://arstechnica.com/tech-policy/2022/08/indian-workers-allege-casteism-in-big-tech-question-discrimination-policies/>

⁷ Caste-based discrimination. https://www.europarl.europa.eu/doceo/document/O-7-2013-000091_EN.html

⁸ The Equality Act 2010: caste discrimination. <https://commonslibrary.parliament.uk/research-briefings/sn06862/>

⁹ Australian Human Rights Commission released its National Anti-Racism Framework Scoping Report. <https://humanrights.gov.au/our-work/race-discrimination/publications/national-anti-racism-framework-scoping-report>

¹⁰ Caste acts. <https://www.sbs.com.au/voices/creative/caste-acts/ca0r8vypt>

Those impacted by such discrimination often face curtailed employment opportunities, experience exclusion from community activities, are denied religious services, and wrestle with feelings of isolation on university campuses.

This entrenched bias fosters an environment of social and economic exclusion, perpetuating stark inequalities.¹¹

Tackling these deeply rooted issues is pivotal to forging a genuinely inclusive Australian society.

The Need to Modernise Australia's Anti Discrimination Laws

The global perspective on discrimination is rapidly evolving, elevating discrimination issues while emphasising the importance of intersectionality as a key analytical instrument.

This transition is underscored by the AHRC-NARF, which calls for an all-encompassing approach that recognises intersectionality and delves into the complex facets of discrimination permeating diverse public arenas.

A Dalit student expressed her experience of intersectional discrimination that she faced because of her gender and religious identity alongside caste.

“Yes, I experienced discrimination based on my low caste status as well as other aspects of my identity”. I was told, “Inn logo ko to niche bithakar baat karni chahiye”

[They (the Dalits) should be made to sit on the floor while they speak to us].

“This happened when he learned that I was a scholarship recipient, and he used this derogatory term to refer to me. This highlights the intersectional discrimination I faced.”

¹¹ Caste: A challenge for equality, diversity, and inclusion. <https://www.dca.org.au/blog/caste-challenge-equality-diversity-and-inclusion>

On discrimination in religious worship places, a NSW resident mentioned that she

“Belongs to Dalit caste”. and

“If we go to Gurudwara (Sikh Worship place) or temple they don’t treat us well “

Individuals residing in other parts of Australia told us that they faced discrimination in temples and places of religious worship for Hindus, as well.

“Religion based discrimination is also very evident as when we celebrate eminent days of our social reformers, no one has wished me on those days. At work too, I had made it a point to my HR and then we had a religion based calendar made as we had ppl of 15 different nationalities in the organisation,” said one of the respondents.

“When I mention I am Buddhist, people curse even more. OK.....formerly Chamar, now Buddhist,” and

“I have visited temples in Victoria, where the priests did not treat everyone equally. People dig deeper to know your caste & your religious background.”

These lived experiences underscore the intersectional discrimination faced by lower caste oppressed communities in Australia, and in NSW in particular.

Additionally, in March 2023, the Federation of Ethnic Communities’ Councils of Australia (**FECCA**) provided their insights to the Australian government's Multicultural Framework Review – Draft Terms of Reference.¹²

Their feedback again stressed the crucial need to recognise "diversity within diversity" and ensure "intersectionality" as cornerstone principles shaping the review.

Furthermore, AHRC-NARF’s intersectional approach is guided by a human rights-based approach, which is informed by principles of participation, accountability, non-discrimination and equality, empowerment and legality, as well as being guided by Australia’s international human rights law obligations.

¹² Multicultural Framework Review – Draft Terms of Reference. https://fecca.org.au/wp-content/uploads/2023/03/Multicultural-Policy-Framework-Review_FECCA-Submission.pdf

It therefore makes it imperative to recognise and address the experiences of discrimination and exclusion faced by all marginalised groups in Australian society who faced the negative impact of multiple forms of racialisation.

International human rights law framework, in particular the mechanisms under the International Covenant on Elimination of all forms of Racism (**ICERD**) and minority rights framework recognise caste discrimination as a form of descent-based discrimination prohibited under international law; therefore, Australian federal and state governments are mandated to extend protection to people who face caste-based discrimination.¹³

In light of these evolving perspectives on discrimination, the Coalition Against Caste Discrimination (**CACD**) strongly urges the NSW Law Reform Commission (the Commission) to rigorously review the Anti-Discrimination Act 1977, NSW (the Act).

Drawing from the insights of **AHRC-NARF** and **FECCA**, we earnestly suggest that the Commission consider the following amendments during their review of the Act.

- **Modernisation:** The Act must be contemporised to mirror AHRC-NARF's intersectional insights, positioning caste discrimination at the forefront.
- **Recognising Caste Discrimination as a protected attribute:** The Act should echo AHRC-NARF Scoping Report's comprehensive discrimination understanding, integrating caste among its protected attributes.
- **Public Life Prohibition:** The Act should prohibit caste discrimination in public arenas as outlined with AHRC-NARF Scoping Report.
- **Precise Definitions:** The Act needs clear delineations for caste discrimination, mirroring AHRC-NARF Scoping Report's modern outlook.
- **Vilification Safeguards:** Provisions against caste-based vilification should be woven into the Act, harmonising with current criminal laws, as advocated by AHRC-NARF Scoping Report.

¹³ Caste-based Discrimination in International Human Rights Law. <https://www.taylorfrancis.com/books/mono/10.4324/9781315570945/caste-based-discrimination-international-human-rights-law-david-keane>

- **Harassment Protections:** The Act must robustly counter caste-based harassment, upholding AHRC-NARF Scoping Report's values.
- **Proactive Measures:** AHRC-NARF Scoping Report inspires the Act to embed preventative strategies against caste-related issues, promoting equal societal participation.
- **Redress Mechanisms:** The Act, inspired by AHRC-NARF Scoping Report , should refine its grievance procedures, championing efficiency and accessibility.
- **Strengthening the Anti-Discrimination Board of NSW:** To tackle caste-related matters methodically, the Board should be reinforced with increased powers, aligning with AHRC-NARF Scoping Report insights.

Drawing from the AHRC-NARF recommendations, evidence from Australian society, coupled with the evident global momentum against caste discrimination, the necessity to modernise the Act is imperative.

It is not just about adapting to contemporary standards, but also about paving the path for a more inclusive, understanding, and equitable society.

The **CACD** remains hopeful that the NSW Law Reform Commission acknowledges the mounting evidence and unequivocally acts in favour of reforming the Act, ensuring that caste discrimination is explicitly and comprehensively addressed.

Caste Discrimination and the Anti Discrimination Act Review

In the ensuing sections, we advocate for the recognition and inclusion of caste a protected attribute within the ambit of the Act.

Furthermore, we enumerate various pertinent matters for the Commission's consideration in the review of the Act.

1. The Argument for Inclusion of Caste as Protected Attribute

Caste is an intricate socio-religious hierarchical system, defined by ideas of purity and pollution. This hereditary system stratified society and, while rooted in South Asian cultures, transcends borders through diaspora.

Casteism is not merely an abstract ideology; it permeates every sphere of life, from basic civil rights to socio-economic access. Regardless of migration, caste continues to shape an individual's experiences, even in Australia.

Instances such as the eviction of a Nepali Dalit in Brisbane due to his caste¹⁴ or the insidious caste-based filters on Australian dating apps underscore its deep-rooted impacts.¹⁰

In another occurrence, a resident of NSW noted how an upper-caste person passed casteist slurs against his caste in a social gathering commenting

“[The man hosting the party walked by and passed the comment] - “Kids, why are you sitting like Chamars ? ”

“The host belonged to the upper caste. I heard the comment and was shocked and after that we have hesitated to meet them in case they find out we are from the same community.”

¹⁴ They've left South Asia, but they can't escape the discrimination and division of its caste system. <https://www.abc.net.au/news/2021-02-11/caste-system-of-india-and-south-asia-in-australia-dalit-rights/13135622>

Additionally , they note,

“I have heard comments in the aisles of retail stores used by Indian people living in Australia such as He/she looks like a chuhra, Balmiki (i.e. derogatory terms used for individuals from the lower caste) etc.

“These comments prove that the lower caste communities are treated as low grade citizens both within and outside of India.”

The same respondent who chooses to remain anonymous shared story of his mother being asked about her caste status by random Indian couples in a local park in NSW which made her uncomfortable and made her to choose not engaging with the couple in future.

A further startling narrative of lived experience showed how upper-caste officials from Indian social organisations, present at an event hosted by the Indian High Commission in Canberra, engaged in caste-based discrimination against Dalit activists.

“When he, the Indian origin official (a Brahmin -higher caste from India), realised that was from a Dalit background, he started mistreating him initially and deliberately asked him to introduce himself every time they meet (sic).”

“These were deliberate efforts of discrimination.

.”

A student from NSW informed us of their experience of facing subtle forms of discrimination, expressing how

“While I was doing my PhD at Sydney University, one of my colleagues was telling a group (including me) that he belonged to Brahmin class and how he is superior by birth in the Indian caste system.”

“This experience of upper-castes brahmins revealing their class and caste did not impact me directly but it made a significant difference in making me uncomfortable around them. The fact that they were boasting their superiority in a country like Australia was surprising to me and also somewhat concerning. As a result, I refrained from revealing my own identity and the community I belong to.”

The student also recounts how their friend's close relationship with their manager/boss, who is from the upper-castes, faced a sudden rupture when their Dalit identity was unveiled in a social setting.

“Due to their relationship, my friend invited his manager to the birthday celebrations of his daughter. The celebration included our traditional Buddhist prayer and also had some elements that would have hinted at the caste he belongs to. A few months after the celebration, his relationship with his manager drastically and very dramatically started to change. ”

“He would tell me how his manager started to bother or harass him about trivial matters, that he usually would not have bothered by his manager.”

“The relationship and the conflict at work deteriorated eventually to such a level that my friend suffered mental imbalance and therefore was admitted to the hospital. He now has changed his job and doing much better.”

“My friend explicitly stated that his relationship with his manager changed very evidently from the birthday celebration and he suspected at time that his identity might have something to do with it.”

Similar experiences can also be found in employment decisions¹⁵.

Casteism also arises interpersonally, expressed through verbal, physical, and online abuse, including violent threats and assault.¹⁰

¹⁵ Australians subject to 'caste discrimination', migrants say. <https://www.sbs.com.au/news/article/australians-subject-to-caste-discrimination-migrants-say/sdlevsaa5>

Casteism doesn't operate in isolation. Its effects are intertwined with racism, leading to complex intersectional experiences. This intersectionality means that the harms and discrimination faced by individuals are amplified, as they experience multiple layers of prejudice simultaneously.

The Anti-Discrimination Act 1977 (the Act) aims to safeguard individuals from unwarranted discrimination and promote equality. Given the evident and impactful presence of caste-based discrimination in Australia, it's vital that caste be recognised as a protected attribute in the review of the Act.

By doing so, we don't just align the Act with the current socio-cultural dynamics, but also ensure that it remains comprehensive, relevant, and effective in promoting an inclusive society. Ignoring caste would mean turning a blind eye to a significant form of discrimination that many face, undermining the very ethos of the Act.

Below, we outline the specific issues that we believe the NSW Law Reform Commission should address in their review of the Act.

2. Modernising the Act: Including Caste and Upholding Equality.

Australia, as a nation, prides itself on its evolving societal fabric, built upon values of equality, inclusivity, and respect. Yet, as we stand at this crossroads of progress, the AHRC-NARF Scoping Report uncovers a concerning lacuna in our legal framework: the widespread and deep-seated nature of caste discrimination. This omission is not just an oversight; it is a glaring contradiction to our cherished values and legal obligations.

The Act, therefore needs to be modernised to recognise caste discrimination, better promote equal enjoyment of rights and reflect contemporary community standards. We elaborate below.

- i. **Recognising the Deep Roots and Reach of Caste Discrimination:** The AHRC-NARF Scoping Report sheds light on an issue often relegated to the shadows or mistakenly presumed to be confined to particular geographic regions.

Caste discrimination is not an imported or isolated issue; it has insidiously woven itself into the fabric of Australian society. This discrimination manifests itself in various areas, from education and employment opportunities being denied, to housing and essential social services being restricted.

The emotional and psychological toll on those who suffer from such discrimination is immense, causing scars that run deep and last long.

- ii. **Breaking the Chains of Inequality and Division:** Beyond the personal, the societal implications of caste discrimination are equally worrisome. Such discrimination perpetuates divisions, creating stark division in Australian society where lower castes are discriminated against and disadvantaged, based on merit or effort, but purely on birth and perceived caste status.

It ensures that a section of our society remains 'structurally invisibilised', their struggles unseen, their voices unheard. If left unchecked, caste discrimination threatens to undermine our very social cohesion.

iii. **Upholding Modern Australian Values:** The core of modern Australian values lies in the principles of fairness, equity, and respect for every individual. As our society evolves, it is leaning more towards evaluating individuals by their skills, talent, and contributions rather than antiquated and irrelevant socio-cultural hierarchies.

Our legal frameworks, including the Act, should mirror this progressive ethos.

iv. **The Imperative of Modernising the Act:** To ensure that Australian law is truly reflective of contemporary values, it's crucial that the Act be modernised. By integrating provisions against caste discrimination, the Act would be more encompassing, addressing the complexities of intersectionality.

It is not just about preventing overt acts of discrimination but also about dismantling the deeply entrenched prejudices that perpetuate covert discrimination.

The modernisation of the Act and the explicit inclusion of caste discrimination as a protected characteristic is therefore not just a legal necessity; it's a moral imperative.

As Australia strides into the future, it is vital that no individual is left behind, ensnared in chains of discrimination. Our commitment to fairness and equality demands that we recognise, challenge, and eliminate caste discrimination, ensuring a just and inclusive society for all.

3. Outlawing Caste Discrimination in Public Life

Caste discrimination is not just an abstract concept; it manifests in tangible ways that affect individuals' lives across myriad facets. By not addressing it in the Act, we inadvertently allow the continuation of this deeply entrenched prejudice in areas where discrimination should have no place.

Insights from the AHRC - NARF scoping report on the wide-ranging and severe impacts of casteism.

AHRC - NARF scoping report has highlighted the pervasive nature of casteism, underlining its impact on all aspects of life. It's not limited to personal biases but extends to institutional and structural forms that are often unseen but deeply impactful. Such a widespread and nuanced form of discrimination cannot be left out of anti-discrimination measures.

As per the AHRC - NARF report , the consequences of caste discrimination aren't isolated. ***It permeates basic civil, political, social, economic, and cultural rights. From housing, access to services, education to labour and employment, it has a cascading effect, perpetuating social and economic exclusion.***¹⁶

Entrenching social and economic exclusion and inequalities, this includes impacts on housing access, denied or restricted access to services and education, as well as exclusion from community and religious activities.¹⁷

Its ramifications therefore aren't just limited to an individual but resonate across communities, making its redressal even more crucial.

In light of the above, it becomes clear that the Act should be reformed to prohibit caste discrimination explicitly in all public domains where discrimination is deemed unlawful. Not doing so would mean turning a blind eye to the structural inequalities and injustices that a significant portion of the population might face, thus compromising the very essence of the Act.

¹⁶ Nishant Upadhyay, 'Making of "Model" South Asians on the Tar Sands: Intersections of Race, Caste, and Indigeneity' (2019) 5(1-2) Journal of the Critical Ethnic Studies Association 152, 161. <https://doi.org/10.5749/jcritethnstud.5.1-2.0152>

¹⁷ International Dalit Solidarity Network, Caste-based Discrimination in South Asia: Situational Overview, Responses and Ways Forward (Report, June 2009) 1, 3-4

4. Clear Caste Discrimination Tests and Modern Inclusivity.

Armed with insights from the AHRC-NARF scoping report and previous deliberations, there's a pressing need to re-evaluate and modify the Anti-Discrimination Act.

This revision should introduce clear criteria for identifying caste discrimination, embrace broader inclusivity, and align with contemporary interpretations of discrimination. Crucially, caste must be included as a protected attribute within the Act.

We detail our reasons below.

- i. **Clarity is Key:** Caste-based discrimination, while deeply entrenched in societies, can manifest in nuanced and sometimes subtle ways. To effectively combat this, the Act should delineate clear criteria and tests to identify and address instances of caste discrimination.

Ambiguity in law can be a hurdle to its effective implementation, and thus clarity ensures that those affected can seek redressal confidently and those in breach can be held accountable without room for debate on technicalities.

- ii. **Reflecting Modern Understandings:** As our society evolves, so do our understandings of complex issues like discrimination. The Act, in its current form, may not encapsulate the multifaceted and evolving nature of discrimination, particularly when addressing inter-sectionalities.

Incorporating contemporary perspectives on discrimination will ensure that the Act remains relevant and effective.

- iii. **Inclusivity Matters:** The AHRC - NARF has already underscored the pervasive nature of casteism in various facets of life. To truly represent and protect all members of society, the Act needs to be more inclusive.

By deliberately incorporating caste discrimination within its ambit, the Act will ensure that a broader section of the population feels seen, heard, and protected.

iv. **Precedence from AHRC - NARF:** Drawing from the comprehensive analysis by the Australian Human Rights Commission National Anti Racism Framework, it's evident that casteism isn't just an individual or isolated issue; it's systemic and structural. Leveraging insights and recommendations from such respected bodies ensures that the Act is built upon a solid foundation of research and understanding.

In conclusion, it's essential for the Act to evolve with the times, understanding the intricate layers of societal dynamics.

To be truly effective and ensure justice, it should be thorough in its definitions, all-encompassing in its protections, and reflect modern perspectives on discrimination, especially concerning caste.

5. Harmonising Caste-Based Protections with Criminal Law

The tangible impact of caste discrimination is undeniable and widespread. In the realm of education, individuals from lower castes often confront prejudice, limiting their academic potential. Employment prospects are similarly marred by hidden biases, reducing opportunities and career advancements.

Everyday interactions, which many take for granted, are tainted by caste prejudices for some, relegating them to a lower societal status. Ignoring the demonstrable repercussions of such biases in legislation would be an inexcusable error.

- i. **Harassment's Deep-Rooted Scars in Daily Encounters:** The lived experiences of those facing caste-based harassment are seldom visible on the surface.

Beyond blatant acts, this discrimination is often insidious. Individuals recount moments in service sectors, such as banking or health care, where they've felt the sting of prejudice. They describe the unspoken, yet palpable, caste-driven divides in community gatherings, which should be places of unity.

The Act must tackle not only blatant offences but also these nuanced forms of discrimination that deeply affect an individual's psyche and well-being.

- ii. **Modern Discrimination in a Changing Society:** As society evolves, so does the nature of discrimination. The stories of many show a disturbing trend where caste intersects with other identities, leading to compounded biases. In housing applications, education institution enrolments, or job interviews, caste often plays an unseen, yet potent role.

The Act must reflect these complexities, ensuring that caste, a salient part of many individuals' lived experiences, isn't overshadowed.

- iii. **Legislation as a Reflection of Real-world Values:** The Act is more than mere words on paper; it's a manifestation of the society we strive to build. By ensuring that caste-based discrimination is robustly addressed, we aren't only providing legal protection.

We're echoing the voices of countless individuals who've felt the weight of caste prejudice in securing housing, accessing essential services, or simply living their daily lives.

- iv. **Embracing Recommendations from Real Stories:** When entities such as AHRC-NARF highlight the importance of acknowledging caste discrimination, they're amplifying innumerable real-life stories.

These aren't mere academic observations; they're reflections of genuine challenges individuals face, offering a path that our legal apparatus must heed.

The Anti-Discrimination Act isn't merely a legal instrument; it's a testament to the real-world experiences of countless individuals. Amid a tapestry rich with stories tainted by caste-based prejudices, it's essential to acknowledge emerging forms of discrimination.

With the significant influx of the South Asian diaspora, it's imperative that Australia recognises and addresses these novel challenges. Every Australian, irrespective of caste, deserves unhindered access to employment, services, housing, and education, free from the weight of discrimination.

6. Mandating Preventive Measures for Caste Discrimination.

There's a compelling argument for the Act to evolve in the following ways:

- i. **Recognising the Deep-Seated Nature of Caste Discrimination:** The pervasive and entrenched nature of caste discrimination underscores the need to address it not just reactively, but proactively. By merely addressing incidents after they occur, we miss the chance to foster a culture of inclusivity and prevent harm.
- ii. **Beyond Passive Protections:** Adequate protections against caste-based harassment, discrimination, and vilification are essential, mirroring measures taken against other forms of discrimination.

However, passive protection isn't sufficient. The Act should mandate positive obligations on organisations and institutions to proactively prevent such instances, fostering an environment that is safe, inclusive, and devoid of prejudice.

- iii. **Promoting Full and Equal Participation:** True equality isn't just the absence of overt discrimination; it involves actively dismantling barriers to participation. By mandating reasonable adjustments, the Act can ensure that individuals from all caste backgrounds can partake fully and equally in public life, thereby enriching our shared societal tapestry.
- iv. **Setting Normative Standards:** Laws not only redress but also set normative standards for society. By imposing positive obligations, the Act would send a strong message about Australia's commitment to eradicating caste-based prejudices, thereby shaping both institutional policies and societal attitudes.
- v. **Drawing from AHRC - NARF Recommendations:** The Australian Human Rights Commission National Anti Racism Framework provides a roadmap for understanding and tackling various facets of caste-based discrimination. Incorporating its recommendations into the Act would ensure that legislation is both informed and effective.

vi. **Facilitating Systemic Change:** Imposing positive obligations would push institutions to introspect, evaluate, and reform their internal practices and cultures, thereby facilitating systemic change.

Instead of merely penalising after the fact, organisations would be encouraged to adopt preventive measures, fostering a proactive approach to inclusivity.

For the Act to truly champion the cause of equity and justice, it must not only penalise prejudice but also promote proactive measures that prevent caste-based discrimination and foster genuine inclusivity.

By embracing both protective and positive obligations, the Act can provide a comprehensive framework that not only rectifies but uplifts, ensuring that every individual, regardless of their caste background, can fully and equally participate in public life.

7. Streamlining Complaint Mechanisms for Caste Discrimination.

There is a compelling case for refining the Act in ways that make it not only comprehensive but also accessible:

The deep-rooted nature of caste discrimination makes it a unique form of prejudice that spans across various facets of life, from workplaces to educational institutions. To address such an embedded issue, the Act's mechanisms to combat caste discrimination must be both robust and accessible.

- i. **The Significance of Accessibility:** Caste Discrimination's insidious nature means that victims often find it challenging to come forward, especially if they perceive the process as daunting or unapproachable.

Making the complaints procedure accessible ensures that more individuals feel empowered to report instances of caste discrimination, leading to a broader understanding and addressing of the issue.

- ii. **Comprehensive Remedies:** Adequately addressing caste discrimination goes beyond just acknowledging its existence. The remedies offered should be holistic, offering not just redress but also support.

By ensuring that remedies are both tangible and supportive, the Act can provide genuine relief to victims and deter potential perpetrators.

- iii. **Setting a Precedent for Institutions:** An accessible and robust Act sets a standard for other institutions.

If the highest law of the land prioritises ease of access and adequate remedies, other organisations, from corporations to educational institutions, are more likely to follow suit, embedding these principles into their own anti-discrimination policies.

iv. **Amplifying Voices:** Ensuring that the complaints procedure is accessible can amplify voices that often go unheard. Given the hierarchical nature of caste discrimination, victims might already feel marginalised.

An accessible Act can provide a platform for these marginalised voices, ensuring they're heard and acted upon.

v. **Promoting Accountability:** The ease of accessibility in complaints procedures will likely result in more cases being reported. This heightened accountability can act as a deterrent for potential discriminators, leading to a reduction in caste-based prejudice over time.

For the Act to be truly effective in its mission to combat caste discrimination, it must be more than just a piece of legislation. It needs to be a living, breathing tool that is both comprehensive in its approach and readily accessible to those it seeks to protect.

By ensuring ease of accessibility in complaints procedures and offering adequate remedies, the Act can serve as a beacon of hope, justice, and change for those affected by caste-based discrimination.

8. Empowering NSW Anti-Discrimination Board

In light of the pervasive nature of caste discrimination and its deep-seated influence on various aspects of life, it becomes evident that merely acknowledging the issue isn't sufficient. **There must be robust and potential mechanisms in place to address and dismantle systemic caste discrimination at its core.**

Addressing systemic caste discrimination requires a multi-faceted approach, involving both preventive and redressal mechanisms. Herein lies the argument for enhancing the powers and functions of the Anti-Discrimination Board of NSW and its President:

- i. **Proactive Role in Identifying Systemic Issues:** Systemic caste discrimination often operates silently, becoming part of the accepted cultural or institutional fabric. By empowering the Anti-Discrimination Board of NSW with the necessary tools and resources, it can take a proactive role in identifying and addressing these deep-rooted issues before they escalate further.
- ii. **Broadening the Scope of Oversight:** By enhancing the powers of the Board, it can actively monitor and audit organisations, institutions, and other public entities for potential discriminatory practices. Regular assessments can help in early detection and remediation of systemic biases.
- iii. **Educative and Advisory Role:** The Anti-Discrimination Board of NSW can play a pivotal role in educating the public, institutions, and businesses about caste discrimination. By organising awareness campaigns, workshops, and training programs, they can change entrenched mindsets and behaviours that perpetuate such discrimination.
- iv. **Facilitate Collaboration:** The Board, with its enhanced powers, can collaborate with other agencies, civil society organisations, and community groups to share insights, data, and best practices, resulting in a coordinated effort against systemic caste discrimination.

- v. **Streamlined Redressal Mechanisms:** Empowering the Board means ensuring that they have the tools, personnel, and mechanisms in place to address complaints efficiently and provide timely remedies. This not only instils confidence in the affected parties but also deters potential discriminators.

- vi. **Setting Precedents:** Decisions made by a robust Anti-Discrimination Board can set vital precedents for lower bodies and institutions. Over time, these decisions can significantly influence public behaviour and institutional policies, gradually eradicating systemic biases.

- vii. **Feedback Loop:** An empowered Board can continuously gather feedback, study patterns, and adjust its strategies, ensuring that their approach remains relevant and effective as societal dynamics evolve.

In essence, for the Act to be truly effective in its mission to eradicate systemic caste discrimination, it is crucial to provide the Anti-Discrimination Board of NSW and its President with comprehensive powers and functions.

They must be equipped to not only address individual complaints but also to identify, address, and prevent systemic issues. Through this holistic approach, we can hope for a future where caste-based prejudices are a thing of the past.

Summary

In light of the compelling recommendations from the AHRC-NARF Scoping Report and the growing global recognition of caste discrimination as illustrated by recognition of caste discrimination within the international human rights law framework and also interventions in Seattle, California, and the European Parliament, the imperative to modernise the Anti-Discrimination Act 1977, NSW is undeniable.

Drawing inspiration from these notable shifts, it becomes crucial for NSW to echo this commitment by recalibrating its legal framework.

By doing so, NSW will not only align with current global standards but also champion the values of inclusivity and equity, ensuring that every individual, irrespective of caste, is valued and protected within its borders.