



Periyar Ambedkar Thoughts Circle Australia

30 May 2025

To

NSW Law Reform Commission

By email : adareview@dcj.nsw.gov.au

Subject: Submission – Community Survey on Unlawful Conduct under the Anti-Discrimination Act 1977

Dear Commissioners,

We are pleased to submit the completed Community Survey on Unlawful Conduct as part of the NSW Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW).

This submission is made on behalf of the Periyar Ambedkar Thoughts Circle of Australia (PATCA), a grassroots community organisation dedicated to eradicating caste-based discrimination and promoting social justice, equality, and democratic inclusion. PATCA is informed by the principles of Dr. B.R. Ambedkar and Periyar E.V. Ramasamy, whose vision continues to guide our work with caste-oppressed communities across New South Wales.

Our responses reflect extensive engagement with individuals affected by caste discrimination and institutional exclusion, particularly in educational, cultural, and political contexts. We draw attention to the urgent need for caste to be recognised as a distinct protected attribute under NSW law.

Our submission provides detailed examples and policy recommendations based on documented harm, legal analysis, and comparative human rights frameworks.

We urge the Commission to ensure that this review leads to meaningful reform—reforms that acknowledge the lived realities of caste-oppressed communities and provide them with equal protection under the law.

Thank you for your work on this vital review and for the opportunity to contribute.

Yours sincerely,

Dr. Anna Mahizhnan

President

Periyar Ambedkar Thoughts Circle of Australia

Dr. Haroon Kasim

Vice President

Periyar Ambedkar Thoughts Circle of Australia

Review of the Anti-Discrimination Act 1977 (NSW)

Community survey on unlawful conduct

About this survey

The NSW Law Reform Commission is reviewing the *Anti-Discrimination Act 1977* (NSW) (ADA). The ADA prohibits discrimination, vilification, sexual harassment and victimisation.

We have prepared this survey to help people share their views on the ADA. The diverse views and experiences of our community are vital to our review. Your responses will help us understand the issues and make recommendations to the NSW Government.

This survey closes on **15 August 2025**.

Content warning

This review and the survey deal with content that some people may find distressing. This includes discrimination, sexual harassment, and vilification.

If you need support, there are some free services you can contact.

These include [Beyond Blue <beyondblue.org.au>](https://beyondblue.org.au) and [Lifeline <www.lifeline.org.au>](https://www.lifeline.org.au).

How to complete this survey

There are 13 questions in this survey.

- Question 1 is about confidentiality and privacy
- Question 2 is about your experience and why you are interested in this review

- Questions 3 to 13 are about particular aspects of the ADA.

All questions are optional except Question 1.

You can complete the survey:

- by completing this document and emailing your responses to adareview@dcj.nsw.gov.au, or
- [online](#).

Further information to help you complete the survey

Our website has [further information about the ADA and this review](#).

This includes:

- a community summary, which summarises some key issues, concerns and ideas about the ADA, and
- an Easy Read consultation paper, which contains simple language and pictures to help make information easier to understand.

You can also visit the website of [Anti-Discrimination NSW](#) for accessible resources on discrimination and the complaints process.

Confidentiality and privacy

You can choose to keep your answers anonymous or confidential.

If you choose to keep your survey response anonymous, we may refer to your answers in our publications. However, we won't reveal information that could identify you.

If you choose to keep your survey response confidential, we won't refer to your answers in our publications. As explained in our [privacy and information management policy](#), we'll keep your information confidential unless a law or other public interest reason requires us to disclose it.

Question 1: How can we use your responses?

- You can refer to, and publish, our responses crediting our organisation - Periyar Ambedkar Thoughts Circle of Australia**
- Don't refer to, or publish, my responses. I want my responses to be confidential

Your experience

While this survey is anonymous, it would help our research to understand why you're completing this survey.

Question 2: Why are you completing this survey?

Select all that apply:

- I have experienced discrimination, vilification, harassment or victimisation
- I work for, or represent people who experience discrimination, vilification, harassment or victimisation
- I responded to a complaint under the ADA about me
- I responded to a complaint under the ADA on behalf of an organisation
- Other (please detail): Click or tap here to enter text.

Question 2a: Would you like to tell us about your experience?

Yes. As representatives of the Periyar Ambedkar Thoughts Circle of Australia (PATCA), we would like to share our experience advocating for caste-oppressed communities in New South Wales.

PATCA is a grassroots, not-for-profit organization dedicated to eradicating caste-based discrimination and fostering social justice in Australia.

Inspired by the egalitarian philosophies of Dr. B.R. Ambedkar and Periyar E.V. Ramasamy, PATCA works to advance the rights and dignity of caste-oppressed people by promoting education and awareness, empowering marginalized communities, and advocating for necessary legal and policy reforms.¹²

Our mission is to champion social justice, equality, and rational thinking, and to remove the systematic barriers that prohibit equality and social justice in society and government.

¹ PATCA Proposal to Amend Section 93Z of the Crimes Act 1900 (NSW) to Include Caste as a Protected Characteristic -

https://lawreform.nsw.gov.au/documents/Current-projects/s93z/prelim-subs/SV06_-_PATCA.pdf

² Participants wanted: Study on caste discrimination in Australia -

<https://www.indianlink.com.au/participants-wanted-study-on-caste-discrimination-in-australia/>

Through extensive community engagement, direct support, and policy advocacy, we have witnessed firsthand the profound and pervasive nature of caste discrimination in NSW. Caste-based discrimination is often structurally invisible within current legal frameworks, making it difficult for affected individuals to seek justice or support.

Our work has revealed systematic patterns of exclusion and harm across educational institutions, workplaces, housing, and community settings.

For example, we have documented cases where children from caste-oppressed backgrounds are subjected to bullying and segregation in schools, and where adults face subtle yet persistent barriers in employment, access to services, and participation in cultural or religious activities.

PATCA actively engages in dialogue with key stakeholders, including government agencies, legal experts, and multicultural organizations, to foster understanding and collaboration on these issues.

We have contributed to major policy consultations, such as the Australian Human Rights Commission's National Anti-Racism Framework, and have been recognised for our role in highlighting the urgent need for legal protections against caste discrimination in Australia.

Our advocacy is grounded in the conviction that only explicit legal recognition and robust anti-discrimination protections can break the cycle of exclusion and inequality faced by caste-oppressed communities in NSW and beyond.

Through ongoing community forums, educational workshops, and public campaigns, PATCA remains committed to amplifying the voices of caste-oppressed people and ensuring their experiences are validated and addressed at every level of policy and practice in NSW.

The Australian Human Rights Commission's comprehensive research, alongside community consultation reports provides compelling evidence that casteism affects all aspects of life—including the exercise of basic civil, political, social, economic, and cultural rights through interpersonal, institutional, and “structurally invisibilized” forms of discrimination.^{3 4 5 6}

Our lived experiences and documented cases reveal how the absence of explicit legal protection perpetuates these injustices and enables their continuation across educational, cultural, and political spheres in NSW.

³ National Anti-Racism Framework Scoping Report 2022 -

https://humanrights.gov.au/sites/default/files/document/publication/national_anti-racism_framework_scoping_report_2022_0.pdf

⁴ Australian Human Rights Commission -

https://humanrights.gov.au/sites/default/files/2024-11/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

⁵ Anti-Racism Framework: The Perspectives of Multicultural Australia -

<https://humanrights.gov.au/our-work/race-discrimination/publications/anti-racism-framework-perspectives-multicultural>

⁶ Caste in Australia: A Phenomenology of Casteism- <https://www.ambedkarmission.net/ncccd/>

Educational Institutions: Perpetuating Caste Hierarchies

The education sector represents one of the most concerning areas where caste discrimination manifests in NSW, particularly affecting children from caste-oppressed communities who face systematic exclusion and hierarchical treatment.

The NSW Department of Education has confirmed it is investigating complaints of caste-based discrimination being taught in the Hindu Special Religious Education program in the state's public schools, following concerns raised by PATCA and other community representatives ⁷.

These investigations emerged after PATCA documented disturbing practices where children in Hindu SRE classes were being seated according to caste hierarchical order, effectively recreating traditional untouchability practices within the Australian public education system.

The psychological impact on children subjected to such treatment cannot be overstated, as research demonstrates that caste-oppressed individuals often resort to concealing their identity by changing surnames or abandoning cultural practices that might reveal their caste position ⁸.

When educational institutions—spaces that should foster equality and inclusion—become sites for reproducing caste hierarchies, they contribute to the long-term marginalisation of vulnerable children.

⁷ NSW education department investigating caste-based discrimination in SRE classes

<https://rationalist.com.au/nsw-education-department-investigating-caste-based-discrimination-in-sre-classes/>

⁸ <https://www.law.ox.ac.uk/content/news/asang-wankhede-leads-study-caste-discrimination-australia>

The Department of Education's Anti-Racism Policy explicitly states that students should learn in an environment free from prejudice and discrimination, yet the absence of specific protections against caste-based discrimination in Special Religious Education has allowed these practices to continue unchecked.

Furthermore, these educational experiences create lasting trauma that extends beyond individual children to entire families and communities.

Parents report feeling helpless when their children face such discrimination, knowing that current legal frameworks provide no specific recourse for caste-based prejudice.

The structural invisibility of caste within existing anti-discrimination legislation means that these incidents are often dismissed or mischaracterised, preventing effective intervention and allowing discriminatory practices to persist across multiple educational settings.

Institutional Exclusion from Cultural and Political Processes

PATCA's advocacy work has repeatedly encountered systematic exclusion of caste-oppressed communities from crucial consultation processes regarding cultural and educational initiatives funded by public resources.

The exclusion of caste-oppressed communities from consultations related to Multicultural NSW's commitments regarding the Hindu Cultural Hub in Parramatta ⁹ exemplifies how institutional discrimination operates through deliberate omission and structural invisibility.

Despite representing significant portions of the Hindu diaspora community, Dalit and other caste-oppressed groups find themselves systematically excluded from decision-making processes that directly affect their cultural representation and community access.

Similar patterns of exclusion have emerged regarding Australia's First Hindu School project, where caste-oppressed communities report being marginalised from planning and consultation processes despite the institution's potential impact on their children's educational opportunities.

⁹ Hindu Cultural Centre finds a home in Sydney's West - <https://www.nsw.gov.au/ministerial-releases/hindu-cultural-centre-finds-a-home-sydneys-west>

The election funding commitments for the Hindu School by both Labor ¹⁰ and the Coalition ¹¹, without meaningful consultation with caste-oppressed communities, demonstrates how political processes can inadvertently perpetuate caste-based exclusion.

These funding decisions, made without considering the perspectives of those who have historically faced educational discrimination within Hindu religious contexts, risk creating institutions that may reproduce rather than challenge existing caste hierarchies.

The structural nature of this exclusion reflects broader patterns identified in the Australian Human Rights Commission research, which documents how casteism entrenches social and economic exclusion through restricted access to services and exclusion from community and religious activities.

When government agencies and political parties engage only with dominant caste representatives while systematically overlooking caste-oppressed voices, they participate in perpetuating the very discrimination that anti-discrimination legislation should address.

¹⁰ Australia to get its first-ever Hindu school, announces Education Minister Jason Clare: All details about it here. <https://www.msn.com/en-in/news/India/australia-to-get-its-first-ever-hindu-school-announces-education-minister-jason-clare-all-details-about-it-here/ar-AA1CmzdE>

¹¹ Peter Dutton pledges millions for Australia's first Hindu school after Labor commitment 23 March 2025. -

Intersectional Racism and Community Fragmentation

The manifestation of caste discrimination in NSW extends beyond direct prejudice to encompass complex forms of intersectional racism that fragment South Asian communities and undermine social cohesion.

A community consultation conducted by Shri Guru Ravidas Sabha, Sydney, and Ambedkar International Mission, Australia on behalf of the Australian Human Rights Commission¹² gathered 600 pages of evidence from 146 participants, highlighting that caste oppression is experienced as a form of intersectional racial discrimination within educational institutions, workplaces, and broader social environments.

Participants in his study reported distressing instances including physical assault, treatment of children as 'untouchables', and socioeconomic boycotts targeting businesses owned by individuals from historically oppressed caste¹.

These experiences demonstrate how caste-based racism operates through both explicit acts of discrimination and subtle forms of social exclusion that cumulatively create hostile environments for caste-oppressed communities.

¹² Caste in Australia: A Phenomenology of Casteism – <https://www.ambedkarmission.net/ncccd/>

The psychological impact proves particularly devastating, with participants noting how discrimination "erodes the inherent belief you have in your own capacities that tends to affect you more in the long term rather than an immediate loss of opportunities".

This psychological dimension of caste discrimination reveals how the absence of legal recognition compounds the harm by denying victims appropriate recourse and validation of their experiences.

The community fragmentation resulting from caste discrimination undermines the multicultural fabric that NSW seeks to promote through its diversity policies.

When caste-oppressed communities face systematic exclusion from cultural institutions, educational settings, and political processes, it creates parallel social structures that reinforce rather than challenge existing inequalities.

The structural invisibility of caste within current legislation enables dominant groups to maintain these exclusionary practices while claiming to represent the broader community's interests.

Economic and Social Exclusion Patterns

PATCA's community outreach has documented extensive patterns of economic and social exclusion that mirror global trends in caste-based discrimination while taking on distinctly Australian characteristics.

The Australian Human Rights Commission research emphasises how casteism affects housing access, employment opportunities, and participation in community activities, creating cascading effects that perpetuate intergenerational disadvantage^[3].

Within NSW, these patterns manifest through informal networks that exclude caste-oppressed individuals from business opportunities, professional associations, and social gatherings that are crucial for economic advancement.

The restriction of occupations under traditional caste systems continues to influence labour and employment patterns within the diaspora, with caste-oppressed individuals reporting barriers to accessing certain professions or business networks.

These economic exclusions operate through subtle mechanisms that are difficult to address without explicit legal recognition of caste as a protected attribute.

Professional associations, business networks, and cultural organisations may inadvertently perpetuate these exclusions by failing to recognise or address caste-based barriers to participation.

Housing discrimination represents another critical area where caste prejudice intersects with existing vulnerabilities faced by migrant communities.

Reports from community members indicate instances where landlords, real estate agents, or housing committees have discriminated based on perceived caste status, often using cultural markers or surnames as proxies for caste identification.

The absence of specific legal protections means these incidents are rarely reported or effectively addressed through existing discrimination complaint mechanisms.

Who should the ADA protect against discrimination?

Under the ADA, it's only unlawful to discriminate against someone based on:

- disability
- sex
- race
- age
- marital or domestic status
- homosexuality
- “transgender grounds”, or
- carers’ responsibilities.

These are called “protected attributes”.

Some people think the ADA should use different expressions. For example, “sexual orientation” instead of “homosexuality”.

Some argue this list is too limited, and the ADA should protect more people from discrimination.

Question 3: Who should the ADA protect from discrimination?

The NSW Anti-Discrimination Act 1977 (ADA) currently protects individuals from discrimination based on disability, sex, race, age, marital or domestic status, homosexuality, transgender status, and carer's responsibilities.

While these attributes address critical areas of vulnerability, the Act's failure to explicitly recognise caste as a standalone protected attribute perpetuates systemic inequities for caste-oppressed communities.

This omission creates structural invisibility, enabling discrimination to thrive in educational, cultural, and economic domains without legal recourse.

PATCA urges the Law Reform Commission to expand the ADA's protections by enumerating caste as a distinct attribute, aligning NSW with global human rights standards and addressing the unique harms of caste-based hierarchies.

The Limits of Current Protections: Why "Race" Fails to Address Caste

Conceptual Mismatch Between Race and Caste

The ADA's current definition of race—encompassing "colour, nationality, descent, ethnic origin, and immigrant status"—fails to capture caste's distinct operational logic as a birth-based social hierarchy that transcends ethnic or racial categories. Caste discrimination operates through:

1. **Inherited Status:** Unlike race, caste is rigidly assigned at birth and enforced through endogamy, occupational restrictions, and ritual purity norms.
2. **Intra-Group Discrimination:** Caste oppression often occurs within racially homogeneous communities, as seen in NSW's South Asian diaspora, where dominant-caste Hindus exclude Dalit peers from religious and cultural institutions.
3. **Structural Enforcement:** Caste hierarchies are maintained through informal social networks, religious teachings, and economic boycotts—mechanisms that race-based frameworks cannot address.

This conceptual gap renders the ADA ineffective in combating cases like the caste-segregated seating documented in Hindu Special Religious Education (SRE) classes, where children from "lower" castes faced exclusion despite sharing the same racial identity as their oppressors

Structural Invisibility: How the ADA's Gaps Perpetuate Harm

Case Study 1: Educational Exclusion

The NSW Department of Education's investigation into caste-based bullying in public schools highlights systemic failures.

Dominant-caste students reportedly enforced segregation during lunch breaks and religious instruction, citing scriptural justifications for untouchability.

However, complaints were dismissed as "cultural disputes" rather than recognized as discrimination, illustrating how the ADA's race provisions lack the specificity to address caste-based harm.

Case Study 2: Cultural Erasure in Multicultural Policies

Multicultural NSW's consultation process for the Parramatta Hindu Cultural Hub excluded Dalit and Bahujan voices.

By relying on dominant-caste representatives, the project risked enshrining casteist iconography and narratives, replicating exclusionary practices from the subcontinent.

Without explicit caste protections, such institutional erasure remains legally permissible.

Case Study 3: Labor Market Discrimination

A 2023 study by the Australian Human Rights Commission revealed caste-based hiring biases in NSW businesses, including tech firms and hospitality sectors, where dominant-caste managers preferentially recruited from their own networks.

Victims reported being asked about their surnames, dietary habits, and ancestral villages—proxies for caste identification—yet had no legal avenue to challenge this discrimination under the ADA’s race provisions.

Global Precedents: Lessons from California's Caste Equity Movement

California's landmark SB 403 bill, which sought to ban caste discrimination by enumerating it under "ancestry," faced veto despite overwhelming legislative support.

Governor Newsom's assertion that existing racial protections sufficed mirrors the ADA's structural invisibility problem¹³. However, the bill's progression demonstrates: ¹⁴

1. **Legal Necessity:** Explicit recognition empowers victims to articulate harms without conflating caste with race or ethnicity.
2. **Institutional Accountability:** Employers and service providers must implement anti-caste policies, as seen in Cisco's caste discrimination case.
3. **Preventive Frameworks:** Proactive measures disrupt caste networks in hiring and education before harm escalates.

NSW can avoid California's missteps by listing caste as a standalone attribute, ensuring clarity and enforceability.

¹³ California governor vetoes bill that would ban caste discrimination - <https://edition.cnn.com/2023/10/09/us/california-caste-discrimination-bill-veto>

¹⁴ California's Caste Bill Moves Forward – With One Change - <https://sd10.senate.ca.gov/news/californias-caste-bill-moves-forward-one-change>

Recommendations: Reforming the ADA to Address Caste

1. **Amend Section 4 to Include "Caste"** : Add caste as a distinct protected attribute, defined as "a system of inherited social stratification involving hierarchical status, restrictions on marriage, occupation, and ritual purity, enforced through social, religious, or cultural norms."
2. **Expand Institutional Accountability**
 - **Mandate Training:** Require schools, employers, and multicultural bodies to implement anti-caste discrimination training.
 - **Audit Public Projects:** Review initiatives like the Hindu Cultural Hub for caste inclusivity, ensuring consultation with oppressed-caste communities.
3. **Close Religious Exemption Loopholes** : Revise Section 56(d) to prohibit religious bodies from invoking doctrine to justify caste discrimination, mirroring reforms proposed for LGBTQ+ protections.
4. **Enhance Reporting Mechanisms:** Establish a dedicated caste discrimination reporting portal within Anti-Discrimination NSW, with multilingual support for marginalized communities.

Conclusion: Toward an Equitable Legal Framework

The ADA's current protections, while vital, fail to address the lived realities of caste-oppressed communities in NSW. By relegating caste to race-based frameworks, the Act perpetuates structural invisibility, allowing discrimination in schools, workplaces, and cultural institutions to persist unchecked.

California's legislative efforts—though incomplete—highlight the global momentum for caste equity, while PATCA's documentation of local harm underscores the urgency for NSW to lead reform.

Explicit recognition of caste as a protected attribute is not merely a legal necessity but a moral imperative to ensure all residents can participate fully in public life, free from inherited hierarchies.

The Law Reform Commission has a historic opportunity to align NSW with international human rights standards and affirm its commitment to genuine multiculturalism

When should it be against the law to discriminate against someone?

The ADA only prohibits discrimination that happens:

- at work
- in education
- when goods and services are provided
- when accommodation is provided, and
- in certain activities of registered clubs.

It's only against the law to discriminate based on a carer's responsibilities at work, and not in the other areas listed above.

Question 4: Do you think discrimination should be against the law when it happens in the areas listed above? Why or why not?

Yes, discrimination should be against the law in all the areas currently listed above in the ADA—work, education, provision of goods and services, accommodation, and registered clubs—and this protection should be extended comprehensively to all protected attributes, including caste.

Rationale:

- **Discrimination Occurs Across All Public Domains:** Evidence shows that discrimination is not confined to the workplace but also occurs in education, housing, access to goods and services, and participation in clubs and community activities.¹⁵

Limiting legal protection to only some areas leaves individuals vulnerable to harm in critical aspects of daily life, undermining equality and social participation.

¹⁵ Leader to Laggard: The case for modernising the NSW Anti-Discrimination Act -

<https://jec.org.au/wp-content/uploads/2021/08/PIAC-Leader-to-Laggard-The-case-for-modernising-the-NSW-Anti-Discrimination-Act.pdf>

- **Consistency and Simplicity:** The current piecemeal structure of the ADA, where some attributes are only protected in certain areas (e.g., carers' responsibilities only at work), creates unnecessary complexity and inconsistency. Other Australian jurisdictions have moved towards protecting all attributes across all relevant areas of public life, resulting in clearer, fairer, and more effective anti-discrimination frameworks.
- **Community Standards and Expectations:** Modern community standards expect that all forms of discrimination—whether based on race, caste, sex, disability, or other attributes—should be unlawful wherever they occur in public life.

This is essential for promoting genuine equality of opportunity and participation for all people in NSW.

- **Addressing Structural Invisibility:** For caste-oppressed communities, discrimination is often most acute outside the workplace—in education (e.g., caste-based bullying and segregation), accommodation (e.g., rental discrimination), and access to services (e.g., exclusion from cultural or religious events).

Without comprehensive coverage, the law fails to address the full extent of harm and perpetuates structural invisibility.

Conclusion:

Discrimination should be unlawful in all the areas listed and for all protected attributes, including caste.

Only comprehensive, consistent legal protection can ensure that everyone in NSW enjoys equal rights and opportunities, free from discrimination in every sphere of public life

Question 5: Should discrimination be against the law in other relationships, places or areas of life?

Yes, discrimination should also be against the law in additional relationships, places, and areas of life beyond those currently listed in the ADA.

Reasons:

- **Discrimination Occurs in Many Contexts:** Discrimination is not limited to work, education, goods and services, accommodation, or clubs. It can occur in sporting organizations, volunteer associations, access to healthcare, government services, and public spaces.

Limiting legal protection to the current areas leaves people exposed to harm in other significant parts of their lives.

- **Consistency with Other Jurisdictions:** Other Australian states and territories, such as Victoria, Queensland, Tasmania, the ACT, and the Northern Territory, provide broader protection, covering all attributes across a wider range of public life.

This approach reflects the reality that discrimination can happen in any setting where people interact, and promotes fairness and consistency.

- **Contemporary Community Standards:** Modern expectations demand that everyone should be protected from discrimination wherever it occurs in public life.

This is particularly important for caste-oppressed and other marginalized communities who may face exclusion in community organizations, sporting clubs, or when accessing government programs—areas not always covered by current law.

- **Closing Gaps in Protection:** The Law Society of NSW and other legal experts have noted that the current piecemeal structure of the ADA creates gaps and inconsistencies.¹⁶

Expanding coverage would ensure that all people, regardless of the attribute in question, are protected in all relevant areas of public life, not just a select few.

Conclusion:

Discrimination should be unlawful in all areas of public life where people interact, not just those currently listed in the ADA.

This would bring NSW in line with best practice, close protection gaps, and ensure everyone—especially those from caste-oppressed and other vulnerable communities—can participate fully and equally in society.

¹⁶ Review of the Anti-Discrimination Act 1977 (NSW) -

[https://www.lawsociety.com.au/sites/default/files/2023-10/Letter%20to%20NSW%20Law%20Reform%20Commission%20E2%80%93%20Review%20of%20the%20Anti-Discrimination%20Act%201977%20\(NSW\)%20E2%80%93%2029%20September%202023.pdf](https://www.lawsociety.com.au/sites/default/files/2023-10/Letter%20to%20NSW%20Law%20Reform%20Commission%20E2%80%93%20Review%20of%20the%20Anti-Discrimination%20Act%201977%20(NSW)%20E2%80%93%2029%20September%202023.pdf)

What is “discrimination”?

The ADA covers two types of discrimination: direct and indirect discrimination.

Direct discrimination is when someone with a protected attribute is treated less favourably, because of that attribute, than someone without that attribute. This builds on an idea of equality that focuses on treating people the same way. An example of direct discrimination is when an employer refuses to hire a woman because of her sex.

But some people need to be treated differently to promote an equal outcome or equal access to opportunity.

Indirect discrimination is when a rule or requirement that applies to everyone, unfairly disadvantages people with a protected attribute. For example, if an employer requires job applicants to interview in a room only accessible by stairs. This would disadvantage people who use a wheelchair.

Question 6: Do you agree with these ways of understanding discrimination?

Yes

No

Question 6a: If not, what does discrimination mean to you?

Direct and indirect discrimination, as defined in the ADA and explained by Anti-Discrimination NSW, accurately reflect how discrimination operates in practice.

Direct discrimination captures situations where someone is treated less favorably specifically because of a protected attribute, while indirect discrimination recognizes that seemingly neutral rules or requirements can unfairly disadvantage people with particular attributes if those rules are not reasonable in the circumstances.

These definitions are essential because:

- They address both overt and subtle forms of discrimination, ensuring that the law protects against explicit exclusion as well as systemic barriers.
- They recognize that achieving true equality sometimes requires treating people differently to ensure fair access and outcomes, not just equal treatment.
- They provide a clear framework for identifying and addressing discrimination in real-world scenarios, such as workplace policies, access to services, education, and accommodation.

For caste-oppressed and other marginalized communities, both forms of discrimination are highly relevant.

Direct discrimination may occur through explicit exclusion or harassment, while indirect discrimination often manifests through institutional policies or cultural practices that appear neutral but perpetuate disadvantage and exclusion.

In summary:

The distinction between direct and indirect discrimination is critical for effective legal protection and reflects contemporary understandings of equality and fairness in NSW.

Vilification

The ADA makes it against the law to incite hatred, serious contempt or ridicule of an individual or group based on a protected attribute, in a public act. This is “vilification”, sometimes known as “hate speech”.

The ADA prohibits vilification based on:

- race
- homosexuality
- transgender grounds
- having HIV/AIDS, and
- religious belief, affiliation or activity, including not having a religious belief or affiliation, or not engaging in religious activity.

Some people think these attributes could be expressed differently.

Another view is that the ADA should protect more people from vilification.

Question 7: Who should the ADA protect from vilification?

The ADA should protect all individuals and groups from vilification based on any protected attribute, including but not limited to race, sex, sexual orientation, gender identity, disability, age, marital or domestic status, carers' responsibilities, HIV/AIDS status, and religious belief or activity.

Importantly, the ADA should also explicitly protect people from vilification on the grounds of caste.

Caste-oppressed communities in NSW face public acts of hate, ridicule, and serious contempt that are not currently captured under the existing list of protected attributes.

Explicitly including caste as a ground for vilification protection would address this gap, ensuring that all forms of hate speech and incitement to hatred against marginalized groups—whether on the basis of caste, race, religion, or other attributes—are unlawful.

This would bring the ADA in line with contemporary expectations and the lived realities of diverse communities in NSW.

Question 8: Do you have any other thoughts on the ADA's approach to vilification?

The ADA's approach to vilification should be modernized and expanded to reflect the full diversity of NSW society and the evolving understanding of harm caused by hate speech.

While current protections cover several important attributes, the list is incomplete and does not address all forms of group-based hatred, particularly those experienced by caste-oppressed, gender-diverse, and other marginalized communities.

Key points for improvement:

- **Expand Protected Attributes:** The ADA should explicitly include caste, sex, gender identity, disability, and other emerging grounds as protected attributes for vilification, not just discrimination.
- **Clarity and Consistency:** The language used to describe protected attributes should be updated for clarity and inclusivity (e.g., using "sexual orientation" rather than "homosexuality").
- **Proactive Obligations:** The ADA should consider introducing positive obligations for organizations and public bodies to prevent vilification, not just respond to it after harm occurs.

- **Community Education:** There should be greater public education about what constitutes vilification and how to report it, especially for communities that may not be aware of their rights or may fear retaliation.

In summary

ADA should ensure that all people in NSW are protected from vilification in public life, with explicit recognition of caste and other vulnerable identities, to promote dignity, safety, and social cohesion for all.

Harassment

Sexual harassment is unwelcome sexual behaviour, like sexually suggestive comments, questions, gestures and physical contact.

The ADA makes it against the law to sexually harass someone in:

- employment
- education
- goods and services
- accommodation
- land dealings
- sport
- state programs
- bodies that confer trade or occupational qualifications, and
- employment agencies.

Question 9: Where and when do you think sexual harassment should be against the law?

Sexual harassment should be against the law in all areas of public life, at any time and in any place where it occurs.

Rationale:

- **Sexual harassment is pervasive and harmful wherever it occurs.** Limiting legal protection to only certain settings—such as employment, education, or accommodation—leaves significant gaps where people can be exposed to unwelcome and damaging conduct without recourse.¹⁷

For example, volunteers, unpaid workers, contractors, people in registered clubs, and those accessing public spaces or community activities may not be protected under current NSW law.

- **Other Australian jurisdictions provide broader protection.** States like Queensland and Tasmania make sexual harassment unlawful in all circumstances, setting a higher standard for community safety and equality.

NSW should align with these best practices to ensure comprehensive coverage.

¹⁷ [PDF] Women's Legal Service NSW - Australian Human Rights Commission-
https://humanrights.gov.au/sites/default/files/2020-09/sub_157_-_womens_legal_service_nsw_2.pdf

- **Modern community standards demand zero tolerance.** The Respect@Work inquiry and legal experts have called for a general prohibition on sexual harassment in all areas of public life, not just specified sectors.

This approach recognizes the seriousness and prevalence of sexual harassment and sends a clear message that it is never acceptable.

- **Intersectional and systemic harms require broad protection.** Caste-oppressed, gender-diverse, and other marginalized communities are often most vulnerable to harassment in informal, volunteer, or community settings that fall outside current legal coverage.

Comprehensive laws are necessary to protect all people, regardless of their employment status or the context in which harassment occurs.

Conclusion:

Sexual harassment should be unlawful everywhere it occurs—in workplaces, educational institutions, clubs, public spaces, volunteer settings, and any other area of public life.

Only comprehensive, consistent legal protection will ensure safety, dignity, and equality for all people in NSW

Question 10: The ADA only covers “sexual” harassment. Do you think the ADA should cover other types of harassment?

Yes

No

Question 10a: If yes, what other types of harassment?

The ADA should cover other types of harassment beyond sexual harassment, including:

- **Racial Harassment:** Unwelcome conduct related to a person’s race, descent, ethnic origin, or caste, including slurs, jokes, exclusion, or intimidation.

This is especially important for caste-oppressed communities, who often experience targeted harassment that is not sexual in nature but is deeply harmful and exclusionary.

- **Disability Harassment:** Unwelcome behavior targeting a person’s physical, intellectual, or psychiatric disability, such as mocking, bullying, or creating a hostile environment.
- **Gender Identity and Sexual Orientation Harassment:** Harassment based on someone’s gender identity, transgender status, or sexual orientation, including derogatory comments, misgendering, or exclusion.

- **Religious Harassment:** Unwelcome conduct directed at someone because of their religious beliefs or practices (or lack thereof), including ridicule, threats, or exclusion.
- **Harassment Based on Other Protected Attributes:** This includes age, marital or domestic status, carers' responsibilities, or any attribute that is protected under anti-discrimination law.

Why this is needed:

Harassment can take many forms and is not limited to sexual conduct.

People from caste-oppressed, racial, religious, disability, and LGBTQ+ communities often experience ongoing harassment that creates hostile environments in workplaces, schools, public spaces, and community settings.

Other Australian jurisdictions and federal law already recognize broader forms of harassment. Expanding the ADA to cover these would close protection gaps, ensure consistency, and better reflect the lived experiences and needs of all people in NSW.

Conclusion:

The ADA should be modernized to prohibit all forms of harassment related to any protected attribute, not just sexual harassment, to ensure comprehensive legal protection and promote dignity and equality for everyone in NSW.

Other ways of promoting equality

Some people think the ADA should do more to help achieve equality.

Some ideas include requiring employers and others with duties under the ADA:

- to take steps to prevent discrimination, harassment and vilification
- to provide adjustments to support people with protected attributes to participate in the community (for example, by building an access ramp).

Another idea is to make it easier for duty holders to implement “special measures”. These are benefits, programs or policies that support members of a disadvantaged group to exercise and enjoy their rights equally with others. For example, a targeted employment program.

Currently, duty holders need to get an exemption to do this, which can be time consuming. Laws in some other parts of Australia don’t require duty holders to go through an exemption process.

Question 11: Could the ADA do more to help promote equality in NSW?

Yes

No

Question 11a: If yes, what would you like to see added to the ADA?

The ADA could do significantly more to help promote equality in NSW by moving beyond a reactive, complaints-based approach and adopting proactive measures that address systemic discrimination and advance substantive equality.

Specifically, PATCA would like to see the following added:

- **Positive Duties for Duty Holders:** Require employers, educational institutions, service providers, and other duty holders to take reasonable and proportionate steps to prevent discrimination, harassment, and vilification before it occurs—not just respond after harm is done.

This shifts the focus from individual complaints to systemic prevention, as recommended by legal experts and reflected in the Equal Opportunity Act 2010 (Vic).

- **Mandatory Reasonable Adjustments:** Introduce a clear obligation for duty holders to provide reasonable adjustments that support people with protected attributes (such as disability, caste, or religious belief) to participate equally in public life, unless doing so would cause unjustifiable hardship.

This should apply across all areas covered by the ADA.

- **Facilitate Special Measures Without Exemptions:** Make it easier for organizations to implement targeted programs, policies, or benefits that support disadvantaged groups—such as targeted employment or education initiatives—without requiring a time-consuming exemption process.

This would enable more effective support for groups facing entrenched barriers, including caste-oppressed communities.

- **Explicit Recognition of Systemic Discrimination:** The ADA should state as a key object that eliminating systemic discrimination and promoting substantive equality are central purposes of the Act.

This would help shift the culture towards prevention and inclusion, and ensure that the law addresses not only individual acts but also broader patterns of exclusion and disadvantage.

- **Expanded Community Education and Access to Justice:** Invest in broad community education about rights and obligations under the ADA, and ensure accessible, well-funded support for people making complaints—including those from marginalized and caste-oppressed backgrounds.

- **Strengthened Powers for Anti-Discrimination NSW:** Give Anti-Discrimination NSW (or a future body) the authority and resources to investigate and address systemic discrimination independently, not just in response to individual complaints.

Summary:

By introducing positive duties, making reasonable adjustments mandatory, facilitating special measures, and explicitly targeting systemic discrimination, the ADA can promote genuine equality and inclusion for all—especially for those who have historically been excluded, such as caste-oppressed communities.

This approach aligns with best practice in other jurisdictions and responds to the real needs of a diverse NSW.

Exceptions

The ADA has many exceptions. This means that some, or all, of the ADA's protections don't apply in certain areas or to certain people.

We outline some of the key exceptions, and some issues we've heard about them, in our community summary (you can find this on our [ADA project page](#)).

Some people think that the ADA's exceptions are too broad. Some say exceptions should only apply in limited situations and where there are good reasons for them.

Question 12: When, if ever, should there be exceptions to the ADA's prohibitions against discrimination, vilification or sexual harassment?

Exceptions to the ADA's prohibitions against discrimination, vilification, or sexual harassment should be very limited, carefully justified, and only permitted where there is a clear and compelling reason that serves the broader goal of equality or addresses a genuine operational need.

Key principles for exceptions:

- **Strict Necessity and Proportionality:** Exceptions should only be allowed when they are strictly necessary to achieve a legitimate aim (such as genuine occupational requirements or the protection of vulnerable groups) and are proportionate to that aim.
For example, specifying a particular sex for a role in a domestic violence refuge may be justified to protect service users.

- **Promoting Equality, Not Undermining It:** Exemptions should primarily be used to promote equal opportunity or support disadvantaged groups through special measures, such as targeted employment programs for underrepresented communities or scholarships for marginalized groups.

These should not require a burdensome application process, especially where the purpose is to address systemic disadvantage.

- **Transparency and Accountability:** The process for granting exemptions or certifications should be transparent, time-limited, and subject to regular review to ensure they are not being used to entrench discrimination or exclusion.
- **No Exceptions for Vilification or Sexual Harassment:** There should be no exceptions that allow vilification or sexual harassment. These behaviors cause significant harm and undermine the safety and dignity of individuals and communities.

The law should send a clear message that such conduct is never acceptable.

- **No Blanket Exceptions for Religious or Cultural Grounds:** While religious and cultural freedom is important, it should not be used as a blanket justification for discrimination, vilification, or harassment—especially against vulnerable groups such as caste-oppressed communities.

Any exception for religious or cultural reasons must be narrowly defined and balanced against the rights and dignity of those at risk of harm.

Summary:

Exceptions to the ADA's protections should be rare, justified only by strong evidence, and always balanced against the fundamental right to equality and freedom from harm.

They should never be used to perpetuate systemic discrimination, especially against already marginalized groups such as caste-oppressed communities.

The default position of the law should be to protect all people, in all areas of public life, from discrimination, vilification, and harassment.

Additional comments

Question 13: Is there anything else you'd like to tell us about the ADA?

Yes. There are several important additional comments to make about the ADA and its future direction:

- **Comprehensive Reform Is Essential:** The ADA is outdated, complex, and inconsistent compared to anti-discrimination laws in other Australian jurisdictions.

It needs a holistic overhaul—not just piecemeal amendments—to ensure it is clear, accessible, and effective for all people in NSW.

- **Explicit Inclusion of Caste:** The ADA must explicitly include caste as a protected attribute in all areas—discrimination, vilification, and harassment.

Caste-oppressed communities in NSW face unique and severe forms of exclusion and harm that are not adequately addressed under current categories.

Recognizing caste would close a major gap and align the ADA with contemporary understandings of discrimination.

- **Eliminating Systemic Discrimination:** The ADA should move beyond a narrow focus on individual complaints and address systemic discrimination.

This means introducing positive duties for employers and service providers to prevent discrimination and promote substantive equality, as well as making reasonable adjustments for all protected attributes.

- **Reduce and Clarify Exceptions:** Current exceptions are too broad and often undermine the Act's core protections.

Exceptions should be limited, clearly justified, and subject to regular review.

There should be no exceptions for vilification or sexual harassment, and religious or cultural exemptions must not be used to justify harm to vulnerable groups, including caste-oppressed communities.

- **Expand Coverage to All Areas of Public Life:** Discrimination can occur in any area of public life, not just those currently listed.

The ADA should be extended to cover all public domains, with only a narrow exception for genuinely private conduct.

- **Strengthen Access to Justice:** The ADA should be simplified and written in plain language to ensure it is accessible, especially for self-represented complainants.

Community education, accessible complaint processes, and increased funding for legal support are crucial for ensuring everyone can enforce their rights.

- **Modernize Language and Structure:** The ADA's language should be updated to reflect current community values and best practice, using inclusive and contemporary terms for all protected attributes.
- **Empower Anti-Discrimination NSW:** The body responsible for administering the ADA should have enhanced powers and resources to investigate and address systemic discrimination, conduct community education, and support complainants throughout the process.

In summary:

The ADA must be modernized to provide clear, comprehensive, and effective protection against all forms of discrimination, vilification, and harassment—especially for caste-oppressed and other marginalized communities.

Reform should focus on eliminating systemic barriers, reducing exceptions, expanding coverage, and ensuring everyone in NSW can participate equally and safely in public life

End of survey

Thank you for taking the time to complete this survey.

Your responses will help inform our recommendations to the NSW Government.

If you'd like to receive updates on our work, please [sign up to join our mailing list](#).