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NSW Law Reform Commission review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct

Submission by the Australia Palestine Advocacy Network
15 August 2025

Introduction

The Australia Palestine Advocacy Network (APAN) welcomes the opportunity to contribute to the NSW Anti-Discrimination Act review. Our submission focuses on ensuring comprehensive protections against all forms of racism and intersectional discrimination, including anti-Palestinian racism, and strengthening legal mechanisms to address systemic discrimination.

We call for reforms that expand protected attributes, recognise the harms of international discrimination, enhance access to justice for marginalised communities, and embed positive duties on institutions to ensure that all individuals, regardless of race, religion or other attributes can live, work, and advocate without fear of discrimination, harassment or vilification.

About the Australia Palestine Advocacy Network

The Australia Palestine Advocacy Network (APAN) is a member-based organisation formed in May 2011 to provide a national voice to the many thousands of Australians who are concerned about Israel's continuing human rights abuses against Palestinians, and the continuing effects of dispossession and displacement.

APAN's membership base is diverse, taking in grassroots human rights groups, Palestinian and anti-Zionist Jewish groups, aid and development agencies, and unions.



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Individual members come from a variety of backgrounds, including religious leaders, academics, lawyers, former politicians, diplomats and public servants, teachers, medical professionals, and many others.

Our activities and campaigns range from advocacy and political lobbying to community organising, youth training and media engagement, all of it aimed at building greater understanding amongst all Australians – including policy-makers – about the situations that Palestinians face and what can be done about it.

Our movement for Palestinian freedom and justice is founded on principles of equality and human rights. Discrimination in any form is incompatible with our pursuit of justice for Palestinians. We denounce all forms of racism, including anti-Palestinian racism, Islamophobia and racism towards First Nations people on this continent, and uphold the right of Palestinians and all Indigenous peoples to self-determination and freedom.

We acknowledge the connected struggle and strength of First Nations siblings here, and the genocide, dispossession and ongoing harm perpetrated against them as part of the colonising project on this continent. Our struggle for Palestinian self-determination, liberation, justice and rights from the river to the sea is also a struggle for First Nations recognition, rights, culture and self-determination on what was, and always will be, Aboriginal land.

Anti-Palestinian racism, and equitable and comprehensive anti-racism protections

Anti-Palestinian racism is a serious and distinct form of racial and political discrimination which has risen at alarming rates across NSW, and Australia, during the past two years.¹ In making our recommendations, we foreground anti-Palestinian racism to highlight its unique manifestations and the gaps in current NSW anti-discrimination law that leave Palestinians and their allies vulnerable to discrimination and vilification.

¹ Australian Human Rights Commission. (2025) *President's message*, <https://humanrights.gov.au/about/news/e-bulletin/presidents-message-march-2025>

Anti-Palestinian racism is a distinct but interconnected form of racial and political discrimination that targets Palestinians and their allies who publicly advocate for Palestinian rights.² While adjacent to Islamophobia and anti-Arab racism, anti-Palestinian racism specifically seeks to silence, erase, dehumanise and defame Palestinians and their allies by undermining their identity, humanity and legitimate human expression. This racism intersects with broader systems of colonialism, sexism, xenophobia and cultural appropriation, functioning to normalise Palestinian dispossession and oppression and aiming to isolate diaspora Palestinians and deter advocacy for Palestinian liberation.³

Manifestations of anti-Palestinian racism include:

- denying the Nakba and justifying violence against Palestinians;
- failing to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine;
- erasing the human rights and equal dignity and worth of Palestinians;
- excluding or pressuring others to exclude Palestinian perspectives, Palestinians and their allies;
- defaming Palestinians and their allies with slander such as being inherently antisemitic, a terrorist threat/sympathiser or opposed to democratic values.⁴

Dehumanising language and imagery, both in mainstream and online discourse, further entrench this form of racism, intensifying harm and justifying discriminatory policies and social exclusion.

Recent data from the Islamophobia Register – a respected community-based monitoring body – underscores this sharp rise in anti-Palestinian racism.⁵ While the Register has, throughout its 10-year history, focused on documenting and analysing reports of Islamophobia in the Australian community, its latest report covering the period 2023-2024 included for the first time a

² Canadians for Justice and Peace in the Middle East. (2022) *Anti-Palestinian Racism*, https://www.cjpme.org/fs_227

³ Zubi, B. (2024) *Understanding Anti-Palestinian Racism*, <https://www.antipalestinianracism.com/>

⁴ Canadians for Justice and Peace in the Middle East. (2022) *Anti-Palestinian Racism*, https://www.cjpme.org/fs_227

⁵ Carland, S. Alziyadat, N., Vergani, M. & O'Brien, K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

dedicated section on anti-Palestinian racism due to the overwhelming volume, prevalence and disturbing nature of report incidents.⁶ These reports demonstrate the particularities of anti-Palestinian racism – as distinct from Islamophobia – and the lived reality of Palestinians and their allies facing escalating discrimination, harassment and vilification linked to their political identities and activism.

These trends are reflected in documented examples across multiple domains:

- **Educational settings**

Palestinian allied students and teaching staff have faced disciplinary action or faced ostracism for displaying Palestinian flags, wearing traditional clothing or engaging in advocacy,^{7 8 9} and have had Palestine-related information, educational and cultural events cancelled or shut down.¹⁰

Teachers and students of Palestinian heritage have reportedly been “asked to conceal their Palestinian identity and heritage in NSW Public Schools,”¹¹ while teaching staff have been accused of antisemitism for criticising Israeli state policy,¹² and have reported being advised by

⁶ ibid

⁷ Lai, C. (2024) *Sydney Year 12 Student Banned from His Formal For Wearing A Palestinian Scarf*, City Hub, <https://cityhub.com.au/sydney-year-12-student-was-banned-from-his-formal-for-wearing-a-palestinian-scarf/>

⁸ Breen, C. (2024) *Anti-Palestinian discrimination in NSW public schools*, Pearls and Irritations: John Menadue’s Public Policy Journal, <https://johnmenadue.com/post/2024/11/anti-palestinian-discrimination-in-nsw-public-schools/>

⁹ Open letter in support for Mr Wasim Al Haj, (no date), https://docs.google.com/document/d/1RXKzr0saU1hoqVPLFZLWMIHISAY9_gssN0pIFiDI4Dk/edit?fbclid=IwZXh0bgNhZW0CMTEAAR0re8Ezx90lbUCXlc0xjxyAyAleC9hSAXJHS1-EJO2krKBfn4fgYEILCYI_aem_ETlylLhRkifF9eloRowKxA&tab=t.z83d6g94u2f

¹⁰ People’s Inquiry into Campus Free Speech on Palestine. (2025) *Don’t talk or write about Palestine: It’s a career killer*, <https://www.palestineinquiry.com/preliminary-report>

¹¹ Breen, C. (2024) *Anti-Palestinian discrimination in NSW public schools*, Pearls and Irritations: John Menadue’s Public Policy Journal, <https://johnmenadue.com/post/2024/11/anti-palestinian-discrimination-in-nsw-public-schools/>

¹² Burton, T. (2024) *Sydney University boss Mark Scott admits he failed Jewish students*, Australian Financial Review, <https://www.afr.com/politics/federal/sydney-university-boss-mark-scott-admits-he-failed-jewish-students-20240920-p5kc2e>

school/campus leaders to avoid discussing¹³ or to “remain neutral about” Palestine in class time.¹⁴

One NSW-based Palestinian university academic has also had their research funding revoked for leading and participating in advocacy for Palestine and criticism of Israeli government policy, with their advocacy conflated with “antisemitism,” “anti-Jewish activism” and encouragement of “terrorist slogans.”¹⁵

These crackdowns have occurred in a broader social and political context where legitimate criticism of Israeli policy is frequently conflated with antisemitism, chilling free speech. Below are just two testimonials from school parents, attesting to the anti-Palestinian racism experienced by their children:

“After BTN [featuring a segment on the war on Gaza] was aired in the classroom, my son was called a “terrorist, because you support Palestine”. This was said by a child in year 5 to my son in year 5 in the classroom.” (Incident # 2657)¹⁶

“My son wore a t-shirt to school that had “Palestinian Mineral Soap” written on it. He told his school he supports the Palestinian people and is opposed to genocide. The school told him that it was ‘harmful behaviour’ to wear this, because they have Jewish students who may feel that it is hostile. I told them in an email that it is not antisemitic, and I understand they have a uniform policy but it’s not ok to call his t-shirt “harmful”. The principal then emailed me threatening to suspend my son for wearing this t-shirt, claiming again that it is ‘harmful behaviour’. This is clearly anti- Palestinian racism, I am appalled.’ (Incident # 4360)¹⁷

¹³ Poets, Essayists and Novelists (PEN) Sydney. (2025) *Palestine and Gaza banned in NSW schools*, <https://pen.org.au/palestine-and-gaza-banned-in-nsw-schools/>

¹⁴ Al-Natour, R., Windle, J. and McDonald, S. (2024) *Palestine: Is it possible for teachers to be neutral?* EduResearch Matters, <https://blog.aare.edu.au/palestine-is-it-possible-for-teachers-to-be-neutral/>

¹⁵ Henderson, S. (2025) *Grant suspension a start but more needed to stamp out antisemitism*, Senator the Hon Sarah Henderson, <https://sarahhenderson.com.au/grant-suspension-a-start-but-more-needed-to-stamp-out-antisemitism/>

¹⁶ Carland, S. Alziyadat, N., Vergani, M. & O'Brien. K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

¹⁷ Carland, S. Alziyadat, N., Vergani, M. & O'Brien. K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

- **Workplace discrimination**

Palestinians and their allies have reported marginalisation, threats of dismissal, work terminations,¹⁸ loss of career progression opportunities related to their identities and political positions on Palestine.

The below testimonial illustrates an example of vilification levelled at an individual in the workplace:

“The incident occurred in our staff room during lunch. The perpetrator regularly makes comments about hating Arabs/ makes jokes about Islam and Ramadan etc. He is disgusting. On this day, someone said, “Tell her (meaning me) - she’s a pro-Palestine supporter”. To which I turned around and said, “Tell me what?” The perpetrator said, “I hope all the Palestinians die. I hope ALL ARABS die. Let them die.” And then I obviously went off at him. It was right after the tent massacre in Rafah. Everyone else stayed silent. I left crying. I am white Australian with no ties to Palestine.” (Incident # 3524)¹⁹

- **Online and public vilification**

Coordinated online campaigns have disseminated misinformation, dehumanising language, and calls for job terminations, social exclusion or violence against Palestinians and their supporters, legitimising discrimination and fostering social fear.²⁰

We saw just one example of how this played out in “real life” in late 2023, when three actors at the Sydney Theatre Company wore *keffiyehs* (Palestinian scarves) onstage as a gesture of solidarity with Palestinians amid Israel’s escalating genocide in Gaza. The public and institutional backlash that followed, including public condemnation, resignations from board

¹⁸ Al-Khouri, C. (2025) Antoinette Lattouf wins unlawful termination case against the ABC, awarded \$70,000 compensation, ABC News, <https://www.abc.net.au/news/2025-06-25/antoinette-lattouf-v-abc-in-unlawful-termination-case-decision/105450816>

¹⁹ Ibid

²⁰ Australia Palestine Advocacy Network and Australia Muslim Advocacy Network. (2024) *Observations of Anti-Palestinian and Anti-Muslim Racism: November 2023 - March 2024*, Australia Palestine Advocacy Network, <https://apan.org.au/wp-content/uploads/AMAN-APAN-Anti-Racism-Report.pdf>

members, withdrawal of funding and widespread media vilification, demonstrates how expressions of Palestinian identity and advocacy are met with disproportionate hostility.²¹

This response functioned to delegitimise Palestinian solidarity, contributing to a broader climate of vilification where political expression linked to Palestinian identity is publicly shamed and penalised. This incident exemplifies how anti-Palestinian racism manifests as public vilification, silencing marginalised voices and reinforcing systemic discrimination.

- **Policing and public institutions**

The NSW Police's attempt to block the March for Humanity for Gaza, in early August 2025, exemplifies how public institutions can engage in discriminatory practices that suppress Palestinian political expression. Despite the peaceful nature of the project and broad community support, police efforts to prevent the march under the pretext of public safety act as a form of institutional censorship and repression.

This conduct disproportionately targets Palestinians and their allies, undermining fundamental rights to protest, freedom of expression and assembly. Such actions reflect systemic anti-Palestinian racism within public institutions, reinforcing marginalisation and silencing advocacy against Israel's ongoing human rights abuses in Gaza,²² preventing Palestinians and their allies from participating fully and equally in public life. This undermines democratic principles and entrenches systemic inequalities, allowing discrimination and vilification to persist unchecked.

These examples are the tip of a disturbing iceberg of discrimination, revealing something of the scope and systemic nature of anti-Palestinian racism in NSW, which remains insufficiently addressed by the current protections under the ADA.

²¹ Brancatisano, E. (2023) *Sparked by Palestinian scarves: The Sydney Theatre Company controversy, explained*, SBS News, <https://www.sbs.com.au/news/article/the-sydney-theatre-company-controversy-explained/wh4qwxn5>

²² Amnesty International Australia. (2025) *NSW Police push to block Palestine march across Sydney Harbour Bridge is a grave threat on the right to protest against genocide*, Amnesty International Australia, <https://www.amnesty.org.au/nsw-police-push-to-block-palestine-march-across-sydney-harbour-bridge-is-a-grave-threat-on-the-right-to-protest-against-genocide/>

While we foreground this pervasive form of discrimination throughout this submission, APAN rejects any approach that prioritises one form of racism over another. History has shown that government approaches that elevate one form of racism over others create harmful hierarchies that entrench systemic injustice and marginalise communities.

APAN firmly opposes any hierarchy that elevates one form of racism above another. All forms of racism and discrimination must be confronted with equal seriousness to uphold justice, fairness and human rights.

The reforms APAN proposes seek to ensure that the NSW Anti-Discrimination Act comprehensively and equitably protects all people against discrimination. Addressing anti-Palestinian racism is a critical part of this holistic commitment to dismantling systemic racism and fostering an inclusive society where everyone's dignity and rights are upheld.

Recommendations

APAN recommends that the NSW Law Reform Commission propose the following reforms:

1. Recognise and prohibit intersectional discrimination where two or more attributes combine to produce distinct harm.
2. Replace the comparator test with a more accessible “unfavourable treatment” or “detriment” test.
3. Introduce a reverse onus of proof, so that:
 - In instances of direct discrimination, the onus is on respondents to prove treatment was not for a prohibited reason;
 - In instances of indirect discrimination, the onus is on respondents to prove the requirement, condition or practice was reasonable.

4. Expand areas of public life covered by the Act to include:
 - All government-funded services;
 - Law enforcement, youth justice and correctional settings;
 - Online platforms, including foreign-based social media companies accessed in NSW.
5. Strengthen protections against vilification by extending coverage to digital and online spaces.
6. Introduce positive duties on employers, service providers and public authorities to prevent and eliminate discrimination, vilification, harassment and victimisation.
7. Grant representative standing so that community organisations can bring discrimination and vilification complaints on behalf of affected individuals.
8. Provide the Anti-Discrimination Board with systemic investigation powers, akin to those held by the Australian Human Rights Commission, to inquire into discrimination without an individual complaint.
9. Enact a NSW Human Rights Act that binds all public authorities and incorporates equity, freedom of expression and anti-discrimination principles into all government decision-making.

Discussion

1. Recognise and prohibit intersectional discrimination

Intersectional discrimination occurs when multiple protected attributes combine or intersect, creating forms of harm and disadvantage that are distinct from discrimination based on a single attribute and serve to increase a person's marginalisation.²³ For Palestinians and their allies, this intersectional experience is a critical reality often overlooked by anti-discrimination frameworks that treat protected attributes in isolation.

²³ Diversity Council Australia. (2025) *Intersectionality*, Diversity Council Australia, <https://www.dca.org.au/resources/di-planning/intersectionality>

Anti-Palestinian racism can intersect with Islamophobia, anti-Arab racism, xenophobia, sexism, homophobia and other systemic oppressions.²⁴ For example, Muslim Palestinian women may face compounded discrimination that stems not only from their religious, racial or ethnic identity, but also from their gender and political advocacy:

“I was at the encampment helping with a bake sale and drawing on our chalkboard. A group of people, men and women, approached our camp. The woman held phones to our faces and asked us if we believed in October 7th, if we don’t support Jewish women’s rights, and if we condemn Hamas. To the visibly Muslim women, a man then proceeded to make the statement, “It seems as though the men are silencing and oppressing the women here. Women, we believe in your freedom of speech and we believe in all of your rights’. This video was then uploaded to Instagram and we were labelled as “a Taliban group”.” (Incident # 3432)²⁵

Similarly, LGBTIQ+ individuals advocating for Palestinian rights may face targeted harassment that simultaneously attacks their sexual and gender identities alongside their political beliefs. This intersectional vilification manifests in demeaning language, threats, and attempts to delegitimise or silence their advocacy by weaponising stereotypes related to both their identities.

For example, APAN has heard, firsthand, rhetoric originally used by figures such as Israeli Prime Minister Benjamin Netanyahu – such as claims that “gays are hanged” in the Middle East²⁶ – echoed at the highest levels in Australia to vilify queer Palestinian advocates. This harmful messaging compounds discrimination by weaponising queer identities to undermine and marginalise Palestinian voices, thus also intensifying barriers to equality and justice, and deepening the marginalisation experienced by these people.

The ADA’s failure to recognise and prohibit intersectional discrimination allows for the unique harms experienced by Palestinians and their allies – such as gendered racial profiling, cultural erasure combined with religious discrimination, or political silencing entangled with racial

²⁴ Zubi, B. (2024) *Intersectional Connections*, Anti-Palestinian Racism 101, <https://www.antipalestinianracism.com/intersectional-connections>

²⁵ Carland, S. Alziyadat, N., Vergani, M. & O’Brien. K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/IsIamophobia-in-Australia-Report-5.pdf>

²⁶ Youngblood Gregory, S. (2024) *No Pride in Genocide: Calling Out Israel’s Pinkwashing*, YES Magazine, <https://www.yesmagazine.org/social-justice/2024/02/05/israel-palestine-gaza-genocide-queer>

stereotyping – to go unaddressed by the legal system. This gap perpetuates systemic injustice by obscuring the nuanced realities of those subjected to intersecting forms of oppression.

Furthermore, intersectional discrimination contributes to the normalisation and entrenchment of anti-Palestinian racism by masking how racism interacts with other axes of identity to exclude, dehumanise and silence. Without explicit legal recognition, these compounded harms remain invisible and unremedied.

To foster a truly equitable and inclusive society, the ADA must explicitly recognise and prohibit intersectional discrimination. This would ensure that people facing compounded harms can seek protection and redress, aligning the Act with contemporary understandings of discrimination and with international human rights principles that call for the full protection of complex identities.

2. Replace the comparator test with a more accessible “unfavourable treatment” test.

The current ADA relies on the comparator test to determine whether discrimination has occurred, requiring complainants to show they were treated less favourably than a hypothetical person without the protected attribute in otherwise similar circumstances. This approach has been described as legally complex and inaccessible for many individuals, especially those facing subtle, intersectional or systemic discrimination.²⁷

For Palestinians and their allies, who – as demonstrated above – often experience intersectional discrimination, the comparator test may obscure the reality of their lived experiences. The requirement to identify a precise comparator can be impractical or impossible, especially when discrimination manifests through an overlapping of identities, political beliefs, ethnicity, religion or activism.

Replacing the comparator test with an “unfavourable treatment” or “detriment” test – widely considered to be both more practical and accessible – would shift focus to whether the individual was treated detrimentally because of a protected attribute or combination of

²⁷ Blackham, A. and Temple, J. (2020) *Intersectional discrimination in Australia: An empirical critique of the legal framework*, UNSW Law Journal, p779, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/09/02-BLACKHAM-AND-TEMPLE.pdf>

attributes.²⁸ This would better capture the nuanced ways discrimination occurs, including through systemic and intersectional mechanisms, and aligns with contemporary understandings of discrimination.

Such reform would lower barriers to justice for those subjected to intersecting forms of discrimination, including anti-Palestinian racism, ensuring the law is more inclusive, equitable and reflective of community realities.

3. Introducing a reverse onus of proof to enhance access to justice.

Under the current ADA, complainants bear the burden of proving that discrimination occurred. This requirement can present significant challenges, particularly for individuals experiencing anti-Palestinian racism, where discrimination may be subtle, systemic or intertwined with complex political and social factors.

Furthermore, many members of affected communities are reluctant to report discrimination, harassment or vilification due to systemic racism and a longstanding distrust of legal and public institutions.²⁹ This reluctance is reinforced by fears of reprisal, disbelief by authorities, and re-traumatisation, which creates significant barriers to seeking justice. We have only seen this distrust and fear of reprisal increase during the past two years.

²⁸ Wainwright, I. (2021) *Pushing Australia's federal discrimination laws into the 21st Century: Time for a practical and intersectional approach*, UNSW Australian Human Rights Institute, <https://www.humanrights.unsw.edu.au/students/blogs/australia-federal-discrimination-laws-practical-intersectional-approach>

²⁹ Carland, S. Alziyadat, N., Vergani, M. & O'Brien. K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

To improve fairness and accessibility, a reverse onus of proof should be introduced, akin to that of the Fair Work Act 2009 (Cth):³⁰

- In cases of direct discrimination, respondents would be required to demonstrate that the treatment in question was not based on a prohibited reason, shifting the burden of evidence away from the complainant.
- In cases of indirect discrimination, respondents would need to prove that the relevant requirement, condition or practice was reasonable in all circumstances.

This shift aligns with provisions in other jurisdictions and international best practices. It recognises the inherent difficulties faced by complainants in uncovering the intent or justification behind discriminatory acts, particularly when systemic or institutional biases are involved.

For Palestinians and their allies, this reform would provide a more equitable legal framework to challenge discrimination rooted in political belief, ethnicity, or advocacy/activism, addressing power imbalances that currently hinder access to justice and support.

4. Expand areas of public life covered by the Act.

The current scope of the ADA limits protections in critical areas where discrimination frequently occurs, notably excluding many government-funded services, law enforcement, youth justice, correctional facilities and online spaces. This narrow coverage disproportionately impacts Palestinians and their allies, who encounter systemic discrimination and vilification in sites of institutional power.

Government-funded services are central to community wellbeing and social participation. Ensuring that all such services are explicitly covered by the Act is essential to guaranteeing equitable access and protection against discrimination, especially for marginalised groups facing compounded disadvantages.

³⁰ Attorney-General's Department, Department of Employment and Workplace Relations. (2009) *Fair Work Act, Volume 2: Section 361*, <https://www.legislation.gov.au/C2009A00028/latest/text/2>

Law enforcement, youth justice and correctional settings are high-risk environments for discriminatory conduct, with numerous academic and media reports highlighting racial profiling,^{31 32} harassment, violence and abuse by police disproportionately affecting marginalised communities, including Palestinians, First Nations people³³ and their allies.

Clarifying that these institutions operate as “service providers” under the Act will enable victims to seek legal redress for discriminatory treatment, and hold authorities accountable.

Likewise, online platforms, including foreign-based social media companies accessible in NSW, have become primary spaces where anti-Palestinian racism and other forms of hate speech have been allowed to proliferate.

The Australian Muslim Advocacy Network analysed more than 100 instance of anti-Palestinian and anti-Muslim racism in a Facebook group of 8,900 members in the five month from November 2023 to March 2024, noting expressions of the above-mentioned “forms” of anti-Palestinian racism including:

- A failure to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine;

³¹ Yussuf, A. (2025) *First Nations and diverse communities disproportionately stopped and searched in NSW*, ABC News, <https://www.abc.net.au/news/2025-02-14/first-nations-cald-disproportionately-searched-nsw-police/104642914>

³² Gregoire, P. (2024) *New South Wales Police Accused of Racial Profiling Students*, Sydney Criminal Lawyers, <https://www.sydneycriminallawyers.com.au/blog/new-south-wales-police-accused-of-racial-profiling-students/>

³³ Harris, L. (2024) *Former NSW Police officers say racist culture leading to higher Indigenous incarceration rates*, ABC News, <https://www.abc.net.au/news/2024-11-26/former-nsw-police-officers-indigenous-racism-incarceration/104635852>

- The justification or denial of Israeli violence against Palestinians;
- The erasure of human rights of equal dignity and worth of Palestinians;
- Anti-Muslim conspiracy theories;
- The defamation of Palestinians and their allies as “terroristic” and a “danger to democracy.”³⁵

These racist comments were shared, unchallenged, with current legal frameworks inadequate for regulating this type of racism on these platforms. Expanding the Act to cover these environments will acknowledge their centrality to public life, and provide mechanisms to combat online vilification and discrimination.

Such expansion aligns the ADA with contemporary community realities and needs, reflects modern standards for anti-discrimination protections, and addresses critical gaps that undermine equity and justice for vulnerable communities.

5. Strengthen protections against vilification

Vilification – public acts that incite hatred, serious contempt, or severe ridicule against individuals and groups – remains a pervasive and damaging form of discrimination. For Palestinians and their allies, it is often politically charged and deeply racialised, targeting both ethnic identities and advocacy for Palestinian rights.

Current protections under the ADA do not explicitly cover vilification based on political opinion or activity, which is a critical gap. Given that anti-Palestinian racism frequently intersects with political expression, where advocacy is met with hate and dehumanising speech/acts, this omission leaves impacted individuals and communities vulnerable.

Vilification increasingly occurs in digital and online spaces, including on foreign-based social media platforms accessible within NSW.³⁶ These platforms facilitate rapid dissemination of hate

³⁵ Australia Palestine Advocacy Network and Australia Muslim Advocacy Network. (2024) *Observations of Anti-Palestinian and Anti-Muslim Racism: November 2023 - March 2024*, Australia Palestine Advocacy Network, <https://apan.org.au/wp-content/uploads/AMAN-APAN-Anti-Racism-Report.pdf>

³⁶ Australia Palestine Advocacy Network and Australia Muslim Advocacy Network. (2024) *Observations of Anti-Palestinian and Anti-Muslim Racism: November 2023 - March 2024*, Australia Palestine Advocacy Network, <https://apan.org.au/wp-content/uploads/AMAN-APAN-Anti-Racism-Report.pdf>

speech and racist propaganda, often without accountability or effective legal remedies. Without explicit inclusion of online environments in vilification laws, those experiencing online vilification face limited recourse against campaigns of harassment and incitement.

Strengthening the ADA with regards to its vilification protections is critical, as it will acknowledge the intertwined nature of race, identity and politics in contemporary discrimination. And extending coverage to digital and online platforms aligns legal protections with the realities of contemporary communications and public discourse, ensuring that vilification cannot be outsourced to unregulated online spaces.

6. Introduce positive duties on employers, service providers and public authorities to prevent and eliminate discrimination, vilification, harassment and victimisation.

The ADA currently focuses primarily on reactive measures, addressing discrimination, harassment and vilification after they occur. However, to achieve meaningful social change and protect vulnerable communities such as Palestinians and their allies, proactive obligations are essential.

Introducing positive duties on employers, service providers and public authorities would require that these entities take reasonable and proactive steps to prevent and eliminate discrimination, harassment and vilification within their operations and spheres of influence. This includes implementing policies, training, complaint mechanisms, and cultural reforms to identify and address discriminatory behaviours and practices before they cause harm.

For communities impacted by anti-Palestinian racism, such duties would help dismantle systemic barriers and create safer, more inclusive environments. Positive duties also shift the onus onto institutions to foster equality and accountability, rather than relying solely on individuals to initiate legal claims after harm has already occurred.

Such positive duties already exist as part of the federal Anti-Discrimination and Human Rights Legislation (Respect at Work) Bill in relation to the prevention of sexual harassment, sex discrimination and hostile work environments.³⁷ This approach aligns with

³⁷ Australian Human Rights Commission. (2023) *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*. Australian Human Rights Commission,

contemporary international best practices, including obligations laid out in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³⁸ and the UN Convention on the Rights of Persons with Disabilities (CRPD),³⁹ which emphasises proactive measures to eliminate discrimination.

Embedding positive duties within the ADA would demonstrate a commitment to structural change, enhance the effectiveness of anti-discrimination laws, and promote genuine equity in public life.

7. Grant representative standing so that community organisations can bring discrimination and vilification complaints on behalf of affected individuals.

One significant barrier to addressing systemic discrimination, vilification and harassment is the burden placed on individuals to initiate complaints and legal actions. Many affected people, particularly from marginalised communities, including Palestinians and their allies, face fear, intimidation, or practical barriers that discourage reporting.⁴⁰

Granting representative standing to community organisations would empower these groups to bring discrimination and vilification complaints on behalf of affected individuals or communities.

<https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%20%282023%29.pdf>

³⁸ United Nations Office of the High Commissioner. (1979) *Convention on the Elimination of All Forms of Discrimination against Women* New York, 18 December 1979, United Nations Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

³⁹ United Nations Office of the High Commissioner. (2006) *Convention on the Rights of Persons with Disabilities*, United Nations Human Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁴⁰ Carland, S. Alziyadat, N., Vergani, M. & O'Brien. K. (2025) *Islamophobia in Australia Report V*, Sydney: Islamophobia Register Australia, <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

This approach:

- Helps to overcome individual reluctance or risk associated with lodging complaints.
- Enables systemic issues and patterns of discrimination to be addressed more effectively and efficiently.
- Supports communities with limited resources or access to legal advice in seeking redress.
- Amplifies the voices of marginalised groups and holds institutions accountable for broad, ongoing discriminatory conduct.⁴¹

This reform aligns with existing models in other Australian jurisdictions, such as the Australian Human Rights Commission Act 1986 (Cth) (AHRC Act) and to discrimination claims under the Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth), Disability Discrimination Act 1992 (Cth) and Age Discrimination Act 2004 (Cth), in recognition of the importance of collective legal action to combat systemic discrimination.⁴²

For the Palestinian community facing rising anti-Palestinian racism, this measure is vital to ensuring their experiences are acknowledged and that discrimination is challenged not only as isolated incidents, but as part of broader patterns of systemic harm.

8. Empowering the Anti-Discrimination Board with systemic investigation powers

Current complaint-driven mechanisms under the ADA limit the ability to address systemic and widespread discrimination, including anti-Palestinian racism which often manifests as continuous, repetitive, or institutionally embedded conduct impacting whole communities.

Granting the Anti-Discrimination Board powers similar to those of the Australian Human Rights Commission, specifically, the authority to initiate systemic investigations without requiring an

⁴¹ Public Interest Advocacy Centre. (2023) *Information sheet: Recent changes to federal discrimination powers and complaint processes*, https://jec.org.au/wp-content/uploads/2023/05/23.05.29-Fact-Sheet_Recent-changes-to-federal-discrimination-powers-and-complaint-processes.pdf

⁴² Public Interest Advocacy Centre. (2023) *Information sheet: Recent changes to federal discrimination powers and complaint processes*, https://jec.org.au/wp-content/uploads/2023/05/23.05.29-Fact-Sheet_Recent-changes-to-federal-discrimination-powers-and-complaint-processes.pdf

individual complaint, would enable proactive, thorough examination of discrimination patterns across sectors.⁴³

Such powers would:

- Enable early identification and intervention in systemic issues impacting marginalised groups, including Palestinians and their allies.
- Reduce the burden on individuals who may fear reprisals or face barriers to lodging complaints.
- Enhance the Board's capacity to hold public authorities, institutions and private entities accountable for ongoing discrimination.
- Foster transparency, institutional reform and public confidence in anti-discrimination enforcement.

This reform is essential to dismantle structural racism and protect communities experiencing intersecting forms of discrimination and vilification, consistent with best practices in human rights enforcement internationally.

9. The need for a NSW Human Rights Act

While the enactment of a Human Rights Act is formally outside the current review's scope, APAN strongly supports the introduction of a comprehensive NSW Human Rights Act, as also promoted by the Australian Human Rights Commission⁴⁴ and the Human Rights Law Centre.⁴⁵ Such legislation would:

- Bind all public authorities to uphold fundamental rights, including equity, freedom of expression and protection from discrimination.
- Integrate human rights principles into all government decision-making processes, promoting transparency and accountability.
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⁴³ Ibid

⁴⁴ De Kretser, H. (2024) *Human Rights Act for NSW: Speech*, Australian Human Rights Commission, <https://humanrights.gov.au/about/news/speeches/human-rights-act-nsw>

⁴⁵ Human Rights Law Centre. (No date) *101 cases of how Human Rights ACTS make our lives better*, Human Rights Act, <https://www.humanrightsact.org.au/101-cases>



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- Provide an essential framework to protect marginalised communities, including Palestinians and their allies, from systemic injustices.
- Complement and strengthen existing anti-discrimination protections by embedding human rights obligations across all sectors of public administration.
- Bring NSW in line with other jurisdictions and with international obligations.⁴⁶

We urge the NSW Government to prioritise the introduction of a Human Rights Act as a foundational step towards advancing social justice and equitable treatment for all people in NSW.

⁴⁶ Human Rights Law Centre. (No date) *Understanding the Human Rights Act*, Human Rights Act, <https://www.humanrightsact.org.au/resources/understanding-the-human-rights-actnbsp>