

A Submission in Response to The Law Reform Commission Review of the NSW Anti-Discrimination Act



Australian Federation
of Islamic Councils

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Executive Summary

The Australian Federation of Islamic Councils (AFIC) welcomes the opportunity to contribute to the NSW Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW). As the peak representative body for Australia's Muslim communities, AFIC brings to this process both legal insight and lived experience from communities that continue to face systemic discrimination, vilification, and exclusion.

This submission identifies key areas in which the Act must be modernised to meet the standards of a diverse and democratic society. It also highlights the importance of retaining critical protections that safeguard religious freedom and autonomy, particularly for Islamic institutions and schools.

AFIC supports the overarching objectives of the review, to promote substantive equality, improve the accessibility and effectiveness of the law, and ensure that the Act reflects contemporary community standards. However, achieving these aims requires more than incremental adjustments. It demands structural reform and a renewed commitment to the dignity and inclusion of all people, including those whose religious identity is often misunderstood, marginalised, or targeted.

Key areas of focus in this submission include:

- The lack of protection for religious belief, affiliation, and practice, which leaves Muslim individuals without clear legal recourse for discrimination that is increasingly common in workplaces, education, and public services.
- The need for stronger and more accessible vilification provisions, particularly considering rising Islamophobia and other forms of religious hatred.
- The importance of retaining existing exemptions for religious bodies and religious schools, which play an essential role in allowing faith communities to live in accordance with their beliefs.
- The introduction of a positive duty on organisations to prevent discrimination and accommodate religious diversity, shifting responsibility from individuals to institutions.
- Reform of the complaints process, to make it more accessible, culturally appropriate, and responsive to the experiences of minority communities.

AFIC's recommendations are grounded in the principles of justice, pluralism, and equality under law. They reflect the lived experience of Muslim communities and the need for a legal framework that not only protects against harm but also enables all communities to contribute to public life with dignity and confidence.

1. Introduction

The Australian Federation of Islamic Councils (AFIC) welcomes the opportunity to provide a submission to the NSW Law Reform Commission in its review of the Anti-Discrimination Act 1977 (NSW). As the peak national representative body for the Australian Muslim community, AFIC is uniquely positioned to reflect the concerns, aspirations, and lived experiences of Muslims across New South Wales and the country more broadly.

Muslims in Australia continue to face widespread, persistent forms of discrimination ranging from structural barriers to social exclusion and targeted vilification. These experiences are often compounded by a lack of accessible legal protections, particularly in the state of New South Wales, where religious belief is not explicitly recognised as a protected attribute under anti-discrimination law.

This review presents a critical opportunity to both modernise the Act and ensure it meaningfully protects all members of society including those whose identity and beliefs are grounded in their faith. However, it is equally important that this reform process maintains the integrity of existing protections for religious institutions, including schools, mosques, and community organisations. These protections are essential for faith communities to sustain their identity, autonomy, and contribution to the broader social fabric.

AFIC's submission is therefore guided by two key imperatives:

1. To secure explicit and robust protection for religious identity and practice, which are essential components of the human experience and fundamental to freedom, dignity, and equality.
2. To retain and affirm the legal protections afforded to religious institutions, recognising that these are not exemptions from public responsibility but necessary enablers of pluralism in a democratic society.

In the sections that follow, this submission will outline AFIC's position on key elements of the Act and the reform proposals under consideration. These are grounded in community experience, legal principle, and a commitment to a genuinely inclusive and equitable New South Wales.

While this submission is not structured sequentially according to the Terms of Reference issued by the Commission, each of the issues raised corresponds to and informs one or more of those Terms. AFIC trusts that the Commission will consider the substance of this submission in that context and welcomes the opportunity to contribute to a review that seeks to modernise the Act, promote substantive equality, and reflect the realities of contemporary Australian society.

2. The Need for Religious Identity to Be Explicitly Protected

The current Anti-Discrimination Act 1977 (NSW) does not list religious belief, affiliation, or practice as a standalone protected attribute under its discrimination provisions. This omission leaves Muslim individuals and communities, along with other faith-based groups, without adequate protection against one of the most common and harmful forms of discrimination they face.

While the Act includes “ethno-religious origin” as a ground for racial discrimination, this is both conceptually and legally insufficient. Muslim identity is not confined to ethnicity, nor is it always perceived by others through an ethnic lens. Many Muslims are targeted *specifically* because of visible religious markers such as hijab, beard, prayer practices, or religious observance, rather than any ethnic characteristic.

This gap in protection directly engages Term of Reference 1 (modernising the Act) and Term of Reference 2 (ensuring the Act reflects contemporary community standards), as it fails to provide for one of the most widespread forms of identity-based discrimination in modern Australia.

The consequences of this legal gap are evident. In *Ekerdami v Nine Network Australia Pty Ltd [2021] FCA 885*, the Federal Court found that the plaintiff, a Palestinian Muslim man, was not protected under the Racial Discrimination Act for the vilification he experienced, because religion was not a protected attribute. This case illustrates the practical vulnerability of Muslims under current federal and state law.

In its decision, the Tribunal stated:

“102. In conclusion, the evidence does not support a finding that Muslims living in Australia are a ‘race’ by reason of a common ethnic or ethno-religious origin. Section 20C is therefore not engaged and the application is to be dismissed. The result on this point, however, might have been different had there been different or additional, objective evidence.” ([2019] NSWCATAD 14, para 16)¹

The Tribunal in the *Ekerdami* case was presented with several precedents but to our knowledge, despite this proposition being argued in those cases, there has yet to be a finding relevant to the Australian context that Muslims, Australian or otherwise, constitute an ethno-religious group.

The consequence is clear: a Muslim person subjected to public discrimination because of their religious identity has no legal protection under the ADA. This absence of protection is not merely technical, it fundamentally undermines the principles of equality, dignity, and inclusion that anti-discrimination law is meant to uphold.

The need for reform is further supported by empirical evidence. The Islamophobia Register Australia’s *Fourth National Report (2023)*² reveals that the vast majority of reported incidents involve discrimination or abuse directly linked to perceived religious identity not race or ethnicity. These occur in workplaces, schools, public transport, and public spaces. Most go unreported due to the lack of clear legislative protection and a belief that formal complaints will be ineffective or retraumatising.

The failure to protect religious identity in its own right undermines Term of Reference 3 (promoting substantive equality and identifying discrimination that is not currently unlawful) and Term of Reference 12 (aligning the Act with Commonwealth and other state legislation). Other Australian jurisdictions, including Victoria, Queensland, Tasmania, and the ACT, already recognise religious belief as a standalone protected attribute. New South Wales is now an outlier.

¹ <https://www.caselaw.nsw.gov.au/decision/5c6481bee4b0196eea4045ea>

² <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

AFIC therefore strongly recommends that the ADA be amended to include religious belief, affiliation, and practice as protected attributes under its discrimination provisions. This would:

- Ensure legal parity with other protected attributes such as race, sex, and disability
- Provide clarity for employers, service providers, and the general public
- Offer Muslims and other faith communities a clear legal pathway to seek justice when discrimination occurs

This reform is essential if the Act is to reflect the lived reality of diverse faith communities in NSW and fulfill its purpose as a genuine instrument of equality and fairness.

AFIC supports extending protections to cover past or future possession of a protected attribute, as well as discrimination based on association with a person who holds a protected attribute (Consultation Question 4.9). Such forms of discrimination often affect Muslim families and communities, particularly in public discourse and service access.

3. Religious Vilification Protections – Welcome but Incomplete

AFIC acknowledges the NSW Government’s 2023 amendment to the Anti-Discrimination Act introducing religious vilification provisions. This development is a welcome and necessary step, particularly considering the escalating levels of anti-Muslim hostility experienced across NSW and Australia in recent years. However, while the amendment addresses a significant gap, its current scope and operation remain limited in key respects.

Under the new provisions, public acts that incite hatred towards people on the grounds of their religious belief or affiliation are now unlawful. While this aligns with the existing vilification protections for other groups, it does not adequately account for the **contemporary forms of vilification** that Muslim communities are subjected to — particularly **online, algorithmic, and indirect forms of hate**. Nor does it clearly accommodate the **intersectional forms of public abuse** that frequently target Muslim women due to both religion and gender.

This section engages **Term of Reference 3** (promoting substantive equality), **Term of Reference 5** (simplifying and clarifying provisions), and **Term of Reference 6** (assessing whether the scope of protections and prohibitions is appropriate and effective).

Despite the formal inclusion of religion, there remain **uncertainties around what constitutes a “public act”** under the Act. This is especially problematic when harmful or vilifying content is shared in **closed social media groups, messaging apps, or algorithmically pushed to targeted audiences**, which may escape the traditional definition of “public.” These digital spaces have become primary vectors for Islamophobic hate, often reinforcing systemic bias while shielding perpetrators from accountability.

The *Islamophobia in Australia Fourth National Report* (2023) found that:

- 78% of online incidents occurred on Facebook & other online social media platforms³
- 62% involved hate speech targeted at visibly Muslim women
- Many incidents were shared widely without triggering platform or legal intervention

In addition, vilification provisions across jurisdictions vary significantly in thresholds and enforceability. The NSW standard requires that conduct must “incite hatred, serious contempt, or severe ridicule”, a high bar that many harmful expressions fall short of, even while causing real and lasting harm to Muslim communities. AFIC is concerned that this standard may offer symbolic reassurance without practical remedy.

AFIC notes that harassment based on religious identity, distinct from vilification or discrimination, is a serious and under-recognised issue. We support the inclusion of attribute-based harassment protections, including for religion, in the revised Act (Consultation Question 9.7).

AFIC therefore recommends that the Commission:

1. Clarify and expand the definition of “public act” to ensure it includes digital spaces, private social media groups, and online content with wide distribution or algorithmic reach.
2. Lower the threshold for unlawful vilification where the speech or conduct clearly contributes to a climate of fear or exclusion particularly for communities already experiencing systemic discrimination.
3. Ensure consistency and accessibility of remedies so that victims of religious vilification are not required to meet excessively high legal thresholds or navigate overly legalistic complaints processes.
4. Support proactive education and prevention measures, including public campaigns and engagement with tech platforms, to reduce vilification and improve public understanding of the harm caused by religious hate.

These reforms are not about limiting free speech but about ensuring all people in NSW can live free from hate, harassment, and exclusion, and that the law protects those who are most vulnerable to targeted abuse.

4. Strong Support for Maintaining Religious Body and School Exemptions

AFIC affirms its strong support for maintaining the current legal exemptions provided to religious bodies and religious schools under the Anti-Discrimination Act 1977 (NSW). These provisions are not loopholes, nor are they mechanisms for harm, they are essential legal protections that uphold the rights of religious communities to practice, organise, and educate in accordance with their faith traditions.

³ <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf> p.31

This position engages Term of Reference 8 (reviewing the appropriateness and operation of existing exceptions and exemptions), Term of Reference 3 (promoting substantive equality), and Term of Reference 10 (ensuring the Act respects and accommodates religious freedom).

Why These Exemptions Matter

For Muslim communities in NSW, these exemptions are foundational to:

- The operation of Islamic schools that incorporate religious teaching, values, and identity formation
- The employment of faith-aligned staff in religious institutions, including mosques, schools, and charities
- The provision of services that meet religious requirements, such as halal certification, chaplaincy, and gender-specific services
- The ability to organise communal religious life in a way that is consistent with Islamic principles

The repeal or dilution of these exemptions would undermine the ability of Muslim institutions to function with integrity and would effectively subject faith-based organisations to standards that ignore their theological and community mandates.

Religious Freedom Is Not Discrimination

It is important to distinguish between legitimate religious practice and unlawful discrimination. Religious exemptions do not permit arbitrary exclusion or mistreatment but rather protect the right of religious communities to organise their internal affairs and service delivery in a way that aligns with their core beliefs.

This principle is recognised internationally. Article 18 of the *International Covenant on Civil and Political Rights*⁴, to which Australia is a signatory, affirms that:

- “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2...
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others...”

In Australia, similar exemptions exist under Commonwealth law (e.g. the *Sex Discrimination Act 1984* and *Fair Work Act 2009*) and have been consistently upheld as necessary for pluralism.

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

This provides the appropriate framework for assessing exemptions: limitations on religious practice must be lawful, necessary, and proportionate. They cannot be imposed simply on the basis of discomfort with difference, nor as a way of enforcing uniformity across a diverse society. In other words, a pluralist society must accommodate deeply held religious practices, especially when they are not harming others, but rather sustaining a minority community's identity and dignity.

AFIC therefore holds that existing religious exemptions in the ADA are fully consistent with international human rights standards. They are not blanket defences against accountability but carefully circumscribed protections for religious autonomy, a necessity for any democratic society that values diversity.

Balancing Protection and Freedom

AFIC recognises that exemptions must not become a shield for harm. However, the solution is not to eliminate these protections, but to ensure clear guidance and community accountability mechanisms. A pluralist society does not impose uniformity it ensures space for distinct communities to flourish within the law.

In practice, these exemptions allow:

- Islamic schools to prioritise staff who model and support the school's religious ethos
- Religious charities to serve communities in culturally and spiritually safe ways
- Mosques and Islamic centres to maintain religious leadership roles consistent with doctrinal teachings

The removal or curtailment of these exemptions would disproportionately affect minority faith communities, who rely on these provisions to establish services that reflect and support their unique identities particularly where mainstream institutions fail to do so.

AFIC therefore recommends that the Commission:

1. Retain the existing exemptions for religious bodies and religious schools under the ADA.
2. Ensure any future amendments are developed in consultation with faith-based communities, particularly those representing religious minorities.
3. Promote greater public understanding of the role and value of these exemptions in maintaining a diverse, inclusive, and genuinely pluralist society.

5. Strengthening Institutional Protections – Positive Duty and Accommodation

One of the critical gaps in the current Anti-Discrimination Act 1977 (NSW) is its predominantly reactive orientation. While the Act prohibits certain forms of discrimination, it does not establish a positive duty on institutions such as schools, workplaces, and service providers, to take proactive steps to prevent discrimination or to accommodate religious diversity in practice.

This omission places the burden on individual victims to identify discrimination, navigate complex complaint systems, and initiate legal action, an approach that is not only

inequitable, but also ineffective in addressing systemic barriers. This section engages Term of Reference 3 (promoting substantive equality), Term of Reference 6 (ensuring scope of protections and prohibitions is effective), and Term of Reference 9 (evaluating provisions dealing with complaints and dispute resolution).

What Positive Duty Could Look Like

A positive duty would require organisations to actively consider and implement reasonable measures that ensure people of faith, including Muslims, can fully participate in public life without being forced to compromise their religious beliefs or practices.

For example, such a duty could include:

- Accommodating daily prayer times or Friday congregational prayers in workplaces or schools
- Allowing for religious dress (such as hijab, beard, or modest uniforms) without penalisation
- Providing access to halal food options or respecting fasting periods like Ramadan
- Recognising religious public holidays in rostering or assessment schedules

These are not onerous obligations, they are practical expressions of dignity, inclusion, and equal opportunity. In many cases, Muslim individuals do not ask for privilege, but simply for space to live their lives without disadvantage.

National consultations conducted by the Australian Human Rights Commission in 2019–2020 revealed that people of faith in Australia frequently experience discrimination, hostility, and exclusion in both public and institutional settings. Submissions highlighted barriers to religious expression in workplaces, schools, and public services including restrictions on religious dress, prayer, and dietary needs. For many, these barriers contributed to a sense of isolation, exclusion, and, in some cases, physical danger. Incidents of discrimination and vilification were reported across a range of religious communities, with visibly religious individuals, particularly women, often the most targeted. The Islamophobia in Australia national report cited in the Commission’s review documented 349 verified incidents, including verbal abuse, physical assault, and social media threats, the vast majority targeting Muslim women.⁵

Closing the Gap Between Law and Practice

The inclusion of a positive duty would also help shift the focus from individual grievance to organisational responsibility. This is especially important for Muslim communities, where many forms of exclusion are subtle, culturally normalised, or hidden behind policy.

For example:

- A Muslim job applicant may be told they are “not a good cultural fit.”

⁵ https://humanrights.gov.au/sites/default/files/document/publication/ahrc_freedom_of_religion_2020.pdf

- A school may quietly discourage students from wearing religious dress or observing prayer.
- A local council may approve public events that exclude visibly Muslim vendors or performers.

None of these may trigger legal complaints individually, but together they erode belonging and reinforce systemic inequality.

Introducing a positive duty aligns with established legislative models in other jurisdictions. For example, Part 3 of the Equal Opportunity Act 2010 (Vic) imposes a statutory positive duty on organisations to proactively address discrimination. Under Section 15, the Act states:

“A person must take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible.”

This duty applies to employers and service providers across sectors, requiring not just passive compliance, but active steps to prevent discrimination before it occurs. The factors for determining what is “reasonable and proportionate” include the size, resources, and nature of the organisation, as well as the practicability of the measures taken (s15(2)).

The positive duty in Victoria shifts responsibility from individual complainants to institutions, creating a proactive and preventive model of equality law. It promotes cultural and structural change by requiring policies, staff training, inclusive procedures, and demonstrable leadership commitment. Importantly, it also provides a compliance and enforcement mechanism through the Victorian Equal Opportunity and Human Rights Commission.

AFIC recommends that NSW adopt a comparable statutory duty in its Anti-Discrimination Act. Doing so would address current gaps where Muslim individuals, particularly women, face systemic disadvantage in employment, education, and service delivery, often without clear pathways for redress. A positive duty would embed organisational accountability and reduce reliance on individual complaints as the sole means of enforcement.

AFIC supports expanding the scope of the Act to apply to all areas of public life, consistent with a rights-based model that affirms equal participation and dignity for all (Consultation Question 6.12).

AFIC therefore recommends that the Commission:

1. Introduce a positive duty in the NSW Anti-Discrimination Act requiring organisations to take reasonable and proportionate steps to eliminate discrimination and accommodate religious diversity.
2. Use the Equal Opportunity Act 2010 (Vic), particularly Section 15, as a model for structuring and applying this duty in practice.
3. Ensure the duty is supported by practical guidance, compliance mechanisms, and community consultation to promote cultural change and organisational accountability.

6. Access to Justice and Complaint Processes

For legal protections to be meaningful, they must be supported by accessible, fair, and culturally competent complaint mechanisms. Under the current Anti-Discrimination Act 1977 (NSW), the process for lodging and resolving complaints remains overly legalistic, under-resourced, and unfamiliar to many in the community particularly among marginalised or minority groups. This undermines the Act's effectiveness and compounds the harm of discrimination by adding institutional barriers to accountability.

This section engages Term of Reference 5 (vilification protections), Term of Reference 9 (complaints procedures and remedies), and Term of Reference 3 (promoting substantive equality).

Structural and Cultural Barriers to Justice

Muslim community members routinely report a lack of confidence in formal complaint pathways. There is limited awareness of the Act, limited visibility of Anti-Discrimination NSW as a recourse body, and an absence of targeted outreach or liaison programs that could support people through the process. Even where awareness exists, the perceived complexity of the system, including time delays, legalistic procedures, and the emotional burden of reliving harm, often deters complainants from coming forward.

In addition, many forms of discrimination experienced by Muslims are subtle, cumulative, or culturally coded, making them difficult to capture through complaint thresholds that rely on overt or singular acts. Without reform, this gap between lived experience and legal recognition will persist.

The Need for Procedural Reform

The current system depends on individual victims taking initiative to lodge complaints and follow through a lengthy process that may include conciliation, referral to NSW Civil & Administrative Tribunal, and potential appeals. For many Muslim complainants, particularly women, young people, or those with limited English or legal familiarity, this burden is unreasonable and incompatible with genuine access to justice.

AFIC acknowledges the importance of procedural fairness and safeguards for all parties but also stresses the need for reforms that reflect the realities of structural discrimination and cultural exclusion.

AFIC therefore recommends that the Commission:

1. Simplify and streamline the complaint process to reduce procedural burdens and timeframes.
2. Establish community liaison roles within Anti-Discrimination NSW to support culturally diverse complainants through the process.
3. Increase public education and outreach, particularly to religious minority communities, about rights and complaint mechanisms under the Act.

4. Improve the threshold and assessment criteria to ensure that cumulative or subtle forms of discrimination are not excluded from consideration.
5. Ensure that any reforms centre the experiences of those most likely to face systemic or identity-based discrimination, including Muslim Australians.

7. Conclusion and Final Recommendations

The current review of the NSW Anti-Discrimination Act represents a critical opportunity to modernise outdated legislation, embed meaningful protections for all communities, and ensure that equality in New South Wales is not merely symbolic but substantive and lived.

For Muslim communities, the stakes are particularly high. The persistence of discrimination, vilification, and institutional exclusion, combined with a lack of adequate legal protection, has eroded confidence in the law as a tool for justice and belonging. Addressing these concerns is not only a matter of principle but of practical necessity.

Throughout this submission, AFIC has outlined a number of areas where reform is urgently required, as well as areas where existing provisions, particularly those relating to religious exemptions, must be retained. These recommendations are grounded in community experience, legal coherence, and a commitment to pluralism as a democratic ideal.

AFIC Recommends that the Commission:

1. **Explicitly include religious belief, affiliation, and practice as protected attributes** under the Act's anti-discrimination provisions.
2. **Ensure robust and enforceable religious vilification protections**, including a broader definition of "public act" and a lowered threshold for harm that reflects contemporary forms of hate and abuse.
3. **Retain current exemptions for religious bodies and religious schools**, recognising their essential role in enabling faith communities to maintain integrity, autonomy, and service to their members.
4. **Introduce a positive duty** requiring organisations to take reasonable and proportionate steps to prevent discrimination and accommodate religious diversity, drawing on the model set out in the Equal Opportunity Act 2010 (Vic).
5. **Reform the complaints process** to improve accessibility, cultural responsiveness, and procedural fairness—particularly for communities who experience systemic disadvantage.

AFIC appreciates the opportunity to contribute to this vital review and urges the Commission to adopt reforms that both strengthen protections and uphold the freedoms essential to a truly inclusive, pluralist society.