



NEW SOUTH WALES JEWISH BOARD OF DEPUTIES

The Representative Voice of NSW Jewry

ועד הקהילה היהודית ב.נ.ס.וו.

ABN 26 635 942 255

President: David Ossip
Chief Executive Officer: Michele Goldman



22 August 2025

Anti-Discrimination Act Review
NSW Law Reform Commission
Department of Communities and Justice
By email: ADAReview@dcj.nsw.gov.au

Dear Commissioner

Please find attached the NSW Jewish Board of Deputies' submission to the NSW Law Reform Commission's review of the Anti-Discrimination Act 1977 (NSW).

We look forward to working with the Commission as it completes this vital work.

Please do not hesitate to contact us should you have any further questions or require any clarification.

Yours sincerely,

David Ossip
President

Michele Goldman
Chief Executive Officer



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NSW Jewish Board of Deputies

Review of Anti-Discrimination Act 1977 (NSW)

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Introduction

The NSW Jewish Board of Deputies (NSW JBD) is the peak roof body of the NSW Jewish community, representing 56 major communal organisations and tens of thousands of Jewish individuals across the state. We work to protect the interests, rights, and safety of the Jewish community and to promote social cohesion for all communities in NSW.

As a community which is frequently subjected to antisemitic discrimination, we welcome this review of the Anti-Discrimination Act 1977 (ADA) as an opportunity to ensure that NSW has a modern, accessible, and effective anti-discrimination regime.

While the ADA was pioneering at its inception, decades of piecemeal amendment have left it structurally complex and out of step with community expectations, developments in other jurisdictions and international best practice.

Our submission addresses reforms needed to strengthen protections against antisemitic discrimination, uphold freedom of religion, and ensure the Act responds effectively to contemporary and emerging challenges, including those posed by digital platforms and artificial intelligence.

Antisemitism in NSW

Antisemitism is well recognised as one of the oldest hatreds and most pervasive kinds of bigotry. It has been a consistent feature of many societies throughout history.

It often manifests as overt or covert discrimination in workplaces, public spaces and other spheres of life.

Regrettably, since the October 7 massacre by proscribed terrorist organisation Hamas in southern Israel, and the ensuing conflict, antisemitic attitudes and conduct have increasingly become normalised in NSW.

This shift has translated into real-world consequences and discrimination in multiple jurisdictions – Jewish academics have been disinvited from conferences¹, Jewish cultural performances have been cancelled or not publicised², Jews have been targeted online and doxed,³ and Jewish students have been forced into concealing their identities on university campuses⁴.

These recent developments, along with the persistence of antisemitic hatred through the course of history, makes an accessible and comprehensive antidiscrimination regime in NSW a priority for our community.

Anti-Israel racism in NSW

Less talked about or recognised is the phenomenon of anti-Israel racism, which appears to have become more prevalent since the October 7 massacre by proscribed terrorist organisation Hamas in southern Israel. While many instances of anti-Israel racism are also antisemitic, not all are. The anti-discrimination provisions in the ADA apply to discrimination on the ground of race, where race is defined as including 'colour, nationality, descent and ethnic, ethno-religious or national origin'. Jews are both an ethnic and religious group, whereas Israelis are a national group. We note that only about 70% of Israelis are Jewish, but any Israeli, regardless of their ethnicity, may be at risk of anti-Israel racism.

Since October 7, we and our national counterpart, the Executive Council of Australian Jewry, have received many reports from members of our community about incidents or discourse that are best characterised as

¹ <https://www.australianjewishnews.com/israeli-speaker-disinvited-from-conference/>

² <https://www.skynews.com.au/australia-news/jewish-comedians-claim-antisemitism-behind-theatre-chains-move-to-cancel-their-performances-in-melbourne-and-sydney-costing-duo-up-to-100000-in-ticket-sales/news-story/5b047d9a1d9e2e41b18b746a4ea0029a>

³ <https://www.abc.net.au/religion/zionism-anti-zionism-doxing-and-whatsapp-zio600-group/103472344>

⁴ <https://www.theaustralian.com.au/nation/1/news-story/d6fd3d4f1c555a3fc1a723f84a4ecf19>

anti-Israel racism, with such incidents including the refusal of establishments to provide services to people of Israeli nationality, verbal abuse of individuals on the basis of their nationality and discrimination in the workplace against people of Israeli nationality. Sometimes such discrimination can be subtle and by way of omission. For example, the 'ABC Votes 2025: your vote your say' survey, when initially published, listed every nationality in the drop down under 'ethnic or cultural origin', including Palestinian, but omitted 'Israeli'. This was subsequently corrected but had the effect of dissuading many Israelis from participating in the survey.

Guiding Principles

In considering reforms to the ADA the NSW Jewish Board of Deputies urges policymakers to adopt clear, guiding principles to ensure that any new or amended legislation provides fair, effective and accessible protection.

The approach adopted should consider the following:

Comprehensive protections

The anti-discrimination framework should protect people in NSW from discrimination based on their immutable or fundamental characteristics across all spheres of public life.

These protections are critical to ensuring that citizens can go about their daily lives with a sense of safety and security which is fundamental to the enjoyment of democratic rights.

Balancing freedom of religion and freedom of speech

While protecting individuals from discrimination is paramount, the law must also safeguard freedom of religion and freedom of expression.

Consistent with Australia's commitment to the International Covenant on Civil and Political Rights⁵, religious organisations must maintain the freedom to manifest their religion or belief either individually or in a community with others⁶.

To this end, faith-based organisations must retain the ability to maintain their ethos, identity and traditions in staffing, governance, service delivery, and ceremonial practice. These protections must not be eroded in ways that force faith-based institutions to act contrary to their core beliefs.

Reducing the burden on individuals

Currently, the onus to enforce rights often falls disproportionately on individuals who have experienced discrimination⁷ - many of whom lack the resources, knowledge or emotional capacity to pursue legal remedies.

Reforms should aim to:

- Enhance the investigative and enforcement powers of Anti-Discrimination NSW to initiate action where there is evidence of systemic breaches.
- Expand representative complaint provisions so that organisations (such as the NSW JBD) can bring forward matters affecting their communities without having to obtain the consent of every individual affected.
- Provide alternative, low-cost and timely pathways for resolution outside of protracted litigation.

⁵ <https://humanrights.gov.au/our-work/education/human-rights-explained-australia-and-human-rights-treaties>

⁶ <https://www.refworld.org/legal/general/hrc/1993/en/13375>

⁷ https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD83.pdf pg17

Clarity and accessibility

For anti-discrimination law to be effective, it must be clear, consistent, and accessible to the public. To achieve this:

- The legislation should be drafted in plain English wherever possible, minimising unnecessary legal complexity.
- The responsibilities of employers, service providers, and individuals must be expressed in unambiguous terms.
- Agencies responsible for administering the Act should be properly resourced to deliver education, guidance, and enforcement.

Effective enforcement and remedies

Reform should ensure that enforcement mechanisms are both credible and accessible:

- Penalties and remedies should be sufficient to deter unlawful conduct.
- Victims of discrimination should have access to timely and meaningful remedies.

Recommendations

Maintenance of existing exemption

Training and Appointment of Religious Personnel

We urge the retention of full exemptions under section 56 of the ADA for ordaining, appointing and educating religious ministers and leaders.

These are foundational to maintaining religious continuity and respecting the doctrinal integrity of faith communities and must remain inviolate.

Employment in Religious Institutions

Religious organisations must continue to benefit from exemptions for selecting employees whose role requires adherence to the organisation's religious beliefs—a "genuine occupational requirement."

This ensures institutions can authentically uphold and enact their faith in service delivery.

Religious Schools

Faith-based schools should retain the capacity to enrol students and employ staff in line with their religious ethos, and to deliver education grounded in their beliefs.

These exemptions are essential for preserving the identity, mission, and character of religious education institutions, in harmony with the freedoms protected under the ADA.

RECOMMENDATION 1: MAINTAIN PRACTICAL AND NECESSARY EXEMPTIONS FOR RELIGIOUS ORGANISATIONS

Reducing barriers to access

Modernised drafting

The ADA's current structure is difficult to navigate, especially for self-represented complainants, due to its fragmented treatment of each attribute in separate Parts, each with different areas of public life and exceptions⁸.

⁸ <https://jec.org.au/wp-content/uploads/2021/08/PIAC-Leader-to-Laggard-The-case-for-modernising-the-NSW-Anti-Discrimination-Act.pdf>

Since its inception, the ADA has been subject to more than 800 amendments, insertions and deletions⁹ to recognise new protections, exemptions or adjustments that reflect community expectations.

While legislators should be commended for acting to modernise the law when required, this long history of amendments has resulted in duplication, inconsistencies, and barriers to understanding and enforcement.

While in most instances, complex drafting is a matter of concern primarily for legal professionals, it presents a particular challenge for the ADA which must be “user-friendly” to allow individuals to use complaints mechanisms.

Legislative approaches in other jurisdictions including Victoria¹⁰ and the ACT¹¹ establish a definitive list of protected attributes followed by a clear set of prohibitions and exceptions that may apply in each circumstance.

Such an approach should be considered to reforms designed at enhancing the operation of this framework.

RECOMMENDATION 2: RESTRUCTURE THE ADA TO ENHANCE ACCESSIBILITY FOR THOSE SEEKING PROTECTION

Rebalancing burden of proof

The NSW JBD supports reforms to ensure the burden of proof in discrimination cases is fair and balanced.

At present, complainants are required to prove each element of their case on the balance of probabilities. This is a substantial challenge for self-represented victims who may have no legal expertise and limited resources to find and produce substantive proof.

As suggested in preliminary submissions by the NSW Law Society and the Public Interest Advocacy Centre, this could mirror recent recommendations from the Western Australian Law Reform Commission¹² which significantly reduces the threshold for complainants while offering each party an opportunity to present its case.

For direct discrimination, the Act should impose an initial evidentiary burden on the complainant to establish a prima facie case that they were treated unfavourably in circumstances that suggest discrimination.

Once this *threshold* is met, the onus should shift to the respondent to demonstrate that their conduct did not constitute unlawful discrimination.

For indirect discrimination, the complainant should be required to show that:

- they have a protected attribute;
- the respondent imposed a rule, requirement, practice or condition on them; and
- the rule, requirement, practice or condition had, or was likely to have, the effect of, or the potential of, disadvantaging them, on account of their protected attribute.

This balanced approach would reduce the unreasonable evidentiary burden currently placed on victims of discrimination, while still ensuring respondents have the opportunity to present legitimate defences.

RECOMMENDATION 3: REBALANCE BURDEN OF PROOF REQUIREMENTS TO ENSURE RECOURSE IS ACCESSIBLE TO COMPLAINTS

⁹ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1977-048>

¹⁰ <https://content.legislation.vic.gov.au/sites/default/files/2022-12/10-16aa030%20authorised.pdf>

¹¹ https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/act/consol_act/da1991164/

¹² https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD31.pdf pg16

Accessible representative complaints processes

The current approach to representative complaints under section 87C of the Anti-Discrimination Act is unnecessarily restrictive.

Even where an organisation is acting on behalf of a clearly defined demographic group, it must obtain individual consent from every affected person and satisfy the President of Anti-Discrimination NSW that the matter is of “*genuine concern*” because it adversely affects — or has the potential to adversely affect — the body itself or those it represents¹³.

This process creates unreasonable barriers to addressing systemic discrimination in a timely and coordinated way.

Reform is needed to simplify the test by amending section 87C to allow representative bodies to demonstrate a legitimate interest in the matter without the requirement to identify each individual on whose behalf a complaint is made.

This would bring NSW into line with more practical and effective approaches used in other jurisdictions and empower roof bodies with greater resource than individuals, such as the NSW JBD, to act swiftly when discriminatory events occur.

RECOMMENDATION 4: REMOVE RESTRICTIONS THAT PREVENT ORGANISATIONS TAKING ACTION ON BEHALF OF THEIR CONSTITUENTS

Positive duty to prevent discrimination

A modern anti-discrimination regime should not rely solely on individuals experiencing harm to enforce the law. The current complaints-based model places the burden on those least resourced to act and only addresses discrimination after the fact.

The NSW JBD would support a positive duty on organisations to take reasonable and proportionate measures to eliminate or prevent discrimination based on protected attributes.

Other jurisdictions have instituted reforms to place a positive duty on organisations to take reasonable and proportionate measures to eliminate discrimination¹⁴. Notably the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth)*, enacted this positive duty on workplaces with respect to sex discrimination.¹⁵

A positive duty would need to apply to all organisations operating in areas of public life covered by the Act, including government, business, education, and service providers.

This approach would significantly expand the remit of Anti-Discrimination NSW to monitor compliance, provide guidance, and conduct investigations.

We note that a positive duty to prevent discrimination is gaining momentum internationally. For example, the European Union has directives and legal frameworks that require member states to implement measures to promote gender equality and combat discrimination, which often necessitates proactive steps. In the United Kingdom, the Worker Protection Act, introduced in October 2024, established a positive duty for UK employers to prevent workplace sexual harassment. This proactive duty requires employers to identify potential risks and implement reasonable measures to mitigate them, shifting the focus from

¹³ https://classic.austlii.edu.au/au/legis/nsw/consol_act/aa1977204/s87c.html

¹⁴ For example, <https://www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010/030>

¹⁵ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024981/toc_pdf/Anti-DiscriminationandHumanRightsLegislationAmendment\(RespectatWork\)Bill2022\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024981/toc_pdf/Anti-DiscriminationandHumanRightsLegislationAmendment(RespectatWork)Bill2022[Provisions].pdf;fileType=application%2Fpdf)

reactive responses to preventive strategies.¹⁶ Enforcement of this duty falls under the Equality and Human Rights Commission, which can investigate suspected breaches and impose penalties. In Canada, human rights law and occupational health and safety law requires employers to take reasonable and proportionate steps to eliminate discrimination, sexual harassment, and unlawful vilification.

Based on our experience of the uptick of direct and indirect discrimination cases against members of the Jewish community, and the difficulty for complainants in proving they have been discriminated against, we believe that a positive duty would help mitigate and prevent unlawful discrimination.

RECOMMENDATION 5: CONSIDER IMPOSING A POSITIVE DUTY ON INSTITUTIONS TO TAKE REASONABLE, PROPORTIONATE ACTION TO PREVENT HARM THROUGH DISCRIMINATION

Vilification Provisions

Definition of public act

While recent changes to include greater scope for criminal prosecution of hate speech have been welcome, the threshold for criminal prosecution remains high. In this context, a reasonable civil alternative for vilification is required.

The definition of “public act” in the ADA is unclear and differs from the equivalent definition in the Crimes Act 1900 (NSW), making complaints difficult to substantiate. Unlike the criminal law definition, the ADA definition does not expressly cover dissemination of materials via social media, now a dominant mode of communication for much of the NSW population and a significant platform for the spread of hate speech¹⁷.

The criminal law definition also clarifies that conduct may be “public” even when it occurs on private land. This broader interpretation has been recognised in case law¹⁸.

To ensure clarity and consistency, the definition of “public act” in the ADA should be updated to explicitly include online and social media communications, as well as conduct occurring in places not ordinarily open to the public but where the communication or behaviour is nonetheless observable by others.

RECOMMENDATION 5: UPDATE THE DEFINITION OF “PUBLIC ACT” TO BETTER ALIGN WITH THE CRIMINAL LAW AND MATCH THE PROLIFERATION OF NEW TECHNOLOGIES

Addressing digital and AI-related discrimination

In seeking to modernise the ADA, managing emerging challenges around AI and digital technologies should be considered. Recent media reports have already established the risks associated with machine-based decision making¹⁹.

While these technologies have the capacity to drive new kinds of innovation and efficiency, they also introduce new challenges in both locking in unmonitored bias and discrimination and avoiding the scrutiny and transparency of traditional, human decision making.

Key risks include:

- **Algorithmic bias and proxy discrimination:** Automated decision systems can replicate and amplify existing societal biases, especially when trained on skewed or unrepresentative data.

¹⁶ [Workplace harassment in the UK: What the new Positive Duty laws mean for organizations - WORK180](#)

¹⁷ https://ohpi.org.au/wp-content/uploads/2024/03/Online_Antisemitism_After_October_7.pdf

¹⁸ *Ekermai v Commissioner of Police, NSW Police Force* [2019] NSWCATAD 79, *Wolf v Secretary, Department of Education* [2023] NSWCATAD 202

¹⁹ <https://www.abc.net.au/news/2025-05-08/ai-job-recruitment-tools-could-enable-discrimination-research/105258820>

- **Opaque systems:** The “black box” nature of many AI systems undermines transparency and accountability, making it difficult for individuals to prove discrimination or understand how decisions are made. The NSW Ombudsman has stressed that all Automated Decision-Making (ADM) systems used by government agencies must still comply with anti-discrimination and administrative law requirements²⁰.
- **Amplifying harmful stereotypes:** Generative AI tools can unintentionally propagate antisemitic or other harmful stereotypes.

To “future-proof” our anti-discrimination framework, it will need to deal with the complexity of these issues, including hybrid systems which make the distinction between human and AI decision making opaque.

Key considerations should include:

NSW’s current frameworks for the use of AI, which acknowledge these risks²¹. The Government’s AI Ethics Policy emphasises fairness, requiring that “use of AI will include safeguards to manage data bias or data quality risks”.

The legislative antidiscrimination framework should align with these aspirations.

One approach to managing these matters would be by clarifying “public act” to cover situations where a platform or AI system systematically provides similar content to users at large (as outlined above). However, an alternative (or complementary) solution is to rely on positive obligations on AI providers, rather than stretching the public act concept too far.

More work is needed to establish how the impact of AI can be mitigated and the JBD encourages reviewers examine this issue in detail given the rapid pace of its development.

RECOMMENDATION 6: CONSIDER MORE CLOSELY THE IMPACT OF AI ON DISCRIMINATION AND CONSIDER LEGISLATIVE CHANGE THAT MORE CLEARLY MANAGES THESE IMPLICATIONS

Harmonisation with other jurisdictions

Differences between NSW and Commonwealth anti-discrimination laws create confusion and gaps in protection.

NSW JBD would support harmonisation of these laws insofar as doing so does not weaken protections for citizens of NSW.

RECOMMENDATION 7: REVIEW ANTIDISCRIMINATION FRAMEWORKS ACROSS JURISDICTIONS, PARTICULARLY THE COMMONWEALTH, TO REMOVE CONFLICTS AND CONFUSION

²⁰ <https://cmsassets.ombo.nsw.gov.au/assets/Reports/Select-Committee-on-Adopting-Artificial-Intelligence.pdf>

²¹ <https://www.digital.nsw.gov.au/policy/artificial-intelligence/artificial-intelligence-ethics-policy/mandatory-ethical-principles#:~:text=Use%20of%20AI%20will%20include,bias%20or%20data%20quality%20risk>