



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

22 August 2025

Dear Commissioner,

We write in relation to the NSW Law Reform Commission's (the Commission) review of the **Anti-Discrimination Act 1977 (NSW)** (the ADA review),

The Executive Council of Australian Jewry (the ECAJ) is the peak, elected, representative body of the Australian Jewish community. It was established for that purpose in 1944 by Australian Jewish organisations and their elected leaders. The ECAJ's constituent organisations are the roof bodies of the Jewish community in each State and Territory.¹ Other Jewish organisations which operate nationally are Affiliates of the ECAJ.² Altogether, the ECAJ's constituent and affiliated organisations, and their respective constituent and affiliated organisations, number approximately 200 major Jewish organisations across Australia.

The ECAJ has long been advocating for stronger laws to prohibit discrimination, vilification and victimisation, and to hold perpetrators of such conduct to account. In 2013, the ECAJ was instrumental in persuading then Prime Minister Julia Gillard, on behalf of the Australian Government, to sign the London Declaration on Combating Antisemitism (the Declaration), which, among other things, committed Australia to combating any manifestations of antisemitism and discrimination.³ The Declaration also committed Australia to legislating against hate crimes and incitement to racial hatred.⁴ While there have been changes at the

¹ Namely, the NSW Jewish Board of Deputies, the Jewish Community Council of Victoria Inc, the Jewish Community Council of Western Australia Inc, the Queensland Jewish Board of Deputies, the Jewish Community Council of South Australia, the Hobart Hebrew Congregation and the ACT Jewish Community Inc.

² Namely, Australasian Union of Jewish Students, Union for Progressive Judaism, Australian Federation of WIZO, Maccabi Australia Inc, National Council of Jewish Women of Australia, B'nai B'rith District 21 of Australia and New Zealand, Jewish National Fund of Australia Inc, Joint Distribution Committee Australia.

³ Antisemitism Policy Trust, The London Declaration on Combating Antisemitism, 17 February 2009, available at: <https://antisemitism.org.uk/wp-content/uploads/2020/06/londondeclaration.pdf>

⁴ 'Australian PM signs London Declaration', *The Executive Council of Australian Jewry*, 26 April 2013: <https://www.ecaj.org.au/australian-pm-signs-london-declaration/>

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NSW Jewish Board of Deputies
Jewish Community Council of Victoria
Jewish Community Council of WA
Queensland Jewish Board of Deputies
Jewish Community Council of SA
Hobart Hebrew Congregation
ACT Jewish Community

AFFILIATES

Australasian Union of Jewish Students
Australian Federation of WIZO
Union for Progressive Judaism
Federation of Jewish Aged Car Services
Maccabi Australia
National Council of Jewish Women
B'nai B'rith of Australia/ NZ
Jewish National Fund of Australia
Joint Distribution Committee Australia

OBSERVERS

Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Zionist Federation of Australia
Council of Orthodox Synagogues
of Australia

Commonwealth and state levels over the years – both to civil and criminal protections - and significant developments internationally, our current ADA has remained static and requires reform to reflect our changing society and to address the impediments to the attainment of substantive equality for all.

Although the ECAJ is a national organisation, changes to anti-discrimination laws in any State or Territory may have significant implications for the rights and security of their respective Jewish communities and may shape the direction of reforms to equivalent Federal laws.

We have had the benefit of reading the submission of the NSW Jewish Board of Deputies (NSW JBD) and the recommendations contained therein, which we endorse. We also make the following further recommendations for consideration by the Commission:

1. The importance of considering international approaches to indirect discrimination

It is the ECAJ's observation that an assessment as to whether a requirement or condition is a proportionate way for the duty holder to achieve a legitimate goal may be an appropriate way to strike the balance between genuine considerations of organisations and the rights of those with protected attributes who may be disproportionately impacted by the imposition of particular requirements or conditions. To that end, we encourage the Commission to continue to explore the approach adopted:

- under international law⁵;
- under the *Siracusa Principles*⁶
- by the European Union and the United Kingdom;
- by the *Equal Opportunity Act 2010* (Vic) s 9(3);

We also note that the Australian Human Rights Commission has supported consideration of a “legitimate and proportionate” test⁷ with respect to indirect discrimination.

2. The need for the ADA to address online conduct that discriminates, vilifies or victimises on the basis of protected attributes

As Human Rights Commissioner Lorraine Finlay noted in an opinion piece in August 2023,

⁵ OHCHR and the Equal Rights Trust, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, 51.

⁶ *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex (1985): <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

⁷ *Free and Equal: A Reform Agenda for Federal Discrimination Laws* (2021) 296.

“Misinformation and disinformation can have devastating effects on human rights, social cohesion and democratic processes.”⁸

Invariably, minority groups are more likely to be exposed to serious harm as a result of misinformation or disinformation on digital services, given that digital services’ *“incentives pull heavily toward ingroup solidarity and outgroup derogation”*.⁹ In a report by the European Parliament on the impact of disinformation campaigns about migrants and minority groups in the EU, it was noted that *“Information manipulation campaigns can contribute to increasing hatred against minorities and hence they have a direct negative impact on the fundamental right to human dignity”*.¹⁰

As such, we strongly recommend that the definition of ‘public act’ contained in the ADA’s prohibition on vilification should include acts done in cyberspace.

3. Balancing freedom of religion and other human rights

The ECAJ strongly agrees with the NSW JBD’s Guiding Principal that ‘Faith-based organisations must retain the ability to maintain their ethos, identity and traditions, consistent with Australia’s commitment to the International Covenant on Civil and Political Rights’. To elaborate on this further, it is essential for faith-based schools, clubs, youth groups, aged care facilities, hospitals and other communal institutions to operate in accordance with their ethos in matters of governance, employment and manner of service provision.

Maintaining the ethos, identity and traditions of an ethnic and religious community such as the Australian Jewish community requires any anti-discrimination law to be qualified to enable a person to engage in conduct that is either *“i. intended to meet a need arising out of a religious belief or activity of a person or group of persons; or ii. intended to reduce a disadvantage experienced by a person or group of persons on the basis of the person or group’s religious beliefs or activities.”* For instance, religious institutions such as schools and hospitals may need to discriminate in the selection and provision of services in order to meet the particular needs (including dietary, cultural and religious needs) of their specific religious community.

Given the fundamental importance of freedom of religion and belief, we would recommend that the Act contain a statement of principle to the following effect:

“In accordance with the ICCPR and Siracusa Principles, this Act only limits the right to freedom of religion and other rights in circumstances where it is necessary to do so.”

⁸ [Why Misinformation Bill risks Freedoms it Aims to Protect | Australian Human Rights Commission](#)

⁹ Fisher, Max, ‘Belonging is stronger than facts: the age of misinformation’, *The New York Times*, 7 May 2021: [‘Belonging Is Stronger Than Facts’: The Age of Misinformation - The New York Times \(nytimes.com\)](#)

¹⁰ Szakacs, Judith, and Bognar, Eva, ‘The impact of disinformation campaigns about migrant and minority groups in the EU’, The EU Parliament, June 2021: [EXPO_IDA\(2021\)653641_EN.pdf \(europa.eu\)](#), p. viii

There remains the question of in what circumstances public statements of religious belief might be discriminatory. This is a separate question to statements of belief that might contravene anti-vilification laws.¹¹ The ECAJ encourages the Commission to give this issue careful consideration, in order to ensure that an appropriate balance is struck that is protective of freedom of religion.

4. Imposing a positive duty to eliminate discrimination and vilification

The ECAJ endorses the NSW JBD's position that it would support a positive duty on organisations to take reasonable and proportionate measures to eliminate or prevent discrimination based on protected attributes, subject to the protections of freedom of religion and belief that we have recommended. We would extend this positive duty to the duty to prevent and eliminate vilification and victimisation. While the scope of application of a positive duty will require careful consideration by the Commission and substantial consultation with Government and industry, at minimum we believe such a positive duty ought to be imposed on public authorities. Such a provision would be similar to Section 6 of the *Human Rights Act 1998* (UK). We note that several other states and territories in Australia have already adopted or are adopting a positive duty, the Australian Human Rights Commission has indicated support for it, and NSW should strive to achieve some uniformity with the approach elsewhere in Australia.

5. Prohibiting the promotion of hatred

The ADA has an 'incitement-based test for vilification', which we recommend be reformed to 'a promotion of hatred based test for vilification'. The ECAJ outlined in its reply to questions on notice in the Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* how this might work in the criminal context.¹² We also draw the Commission's attention to the recent submission of Australia's Special Envoy to Combat Antisemitism (ASECA) to the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (Inciting Racial Hatred Act) (the Sackar Review), which put forward promotion of hatred as an alternative to incitement, and which the ECAJ endorsed.

Please do not hesitate to contact us if you have any questions or wish to discuss any aspect of our response further.

Yours sincerely

Daniel Aghion KC
President

Peter Wertheim AM
co-CEO

Simone Abel
Head of Legal

¹¹ See for example *Nationwide News Pty Ltd v Naidu* [2007] NSWCA 377 at [378] per Basten J.

¹² Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=cbf87d37-ffa7-4edb-b64a-ababf46ea87a>