

22 August 2025

Anti-Discrimination Act review  
NSW Law Reform Commission and Sentencing Council Secretariat  
Department of Communities and Justice  
By email: [ADAreview@dcj.nsw.gov.au](mailto:ADAreview@dcj.nsw.gov.au)

Dear Commissioner

**Anti-Discrimination Act review: Consultation paper – Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct**

The Office of Australia's Special Envoy to Combat Antisemitism (**ASECA**) has had the benefit of reviewing a draft of the submission made by the NSW Jewish Board of Deputies (**NSW JBD Submission**) and the Executive Council of Australian Jewry (**ECAJ Submission**). ASECA endorses each submission, and commends them to the Commission for its consideration.

**1. NSW JBD Submission**

**1.1 Guiding principles**

The NSW JBD Submission recommends that the Commission consider several guiding principles in forming its recommendations for reform of the *Anti-Discrimination Act 1977 (NSW) (Act)*:

1. **Comprehensive protections**: The anti-discrimination framework should provide comprehensive protection from discrimination on the basis of immutable characteristics.
2. **Balancing freedom of religion and freedom of speech**: Faith-based organisations must retain the ability to maintain their ethos, identity and traditions, including in staffing, governance, service delivery, and ceremonial practice.
3. **Reducing the burden on individuals**: Reforms to the anti-discrimination legislative framework should strengthen investigative and enforcement powers of Anti-Discrimination NSW, and importantly, expand representative complaint provisions so that peak representative organisations such as the NSW JBD can bring forward matters on behalf of affected individuals without having to obtain the consent of every individual affected. Further, the framework should provide alternative, low cost pathways for resolution outside of litigation.
4. **Clarity and accessibility**: Anti-discrimination law must be accessible to the public—written in plain English and in terms which clearly set out the responsibilities of employers, service providers, and individuals.
5. **Effective enforcement and remedies**: Enforcement mechanisms must be credible and accessible—remedies must be sufficient to deter unlawful conduct, and accessible in a timely manner.

**1.2 Recommendations**

In addition to the guiding principles, the NSW JBD submission makes the following recommendations:

**Recommendation 1**: Retain exemptions for ordaining, appointing, and educating religious ministers and leaders, with respect to religious institutions and religious schools.

Recommendation 2: Restructure the Act to reduce complexity and provide clarity concerning protections against unlawful conduct.

Recommendation 3: Rebalance the burden of proof in discrimination cases, including with respect to the tests for direct and indirect discrimination, to enhance access to justice.

Recommendation 4: Remove unnecessary complexity from the procedure for bringing representative complaints, to facilitate timely access to justice for affected groups.

Recommendation 5: Recast the burden of enforcement of protections against unlawful conduct, including by introduction of a positive duty to prevent and eliminate unlawful conduct.

Recommendation 6: Refresh the drafting of anti-vilification protections to reflect the modern day context; for instance, update the definition of “*public act*” to expressly cover dissemination of material via social media.

Recommendation 7: Equip the anti-discrimination framework to address the role of new and emerging technologies in unlawful conduct.

Recommendation 8: Promote best practice standards, and harmonisation, of anti-discrimination legislation at Commonwealth, state and territory level.

ASECA commends these guiding principles and recommendations to the Commission for its consideration.

## **2. ECAJ Submission**

The ECAJ Submission endorses the NSW JBD Submission, and makes the following further recommendations:

Recommendation 1: Consider international approaches to indirect discrimination, in particular as to the assessment of whether a requirement or condition is a proportionate way for the duty holder to achieve a legitimate goal. In particular, consider the approach taken under international law, by the *Siracusa Principles*, the European Union and the United Kingdom. Consider also the *Equal Opportunity Act 2010* (Vic) and recommendations of the Australian Human Rights Commission.

Recommendation 2: Revise the definition of ‘*public act*’ within the prohibition of vilification to include acts done in cyberspace, noting the serious harm that results from the dissemination of misinformation or disinformation on digital services.

Recommendation 3: Include an overarching statement of principle, and a qualification of discrimination provisions, to ensure that faith-based organisations retain the ability to maintain their ethos, identity and traditions. In particular, ensure that within the anti-discrimination framework, faith-based schools, clubs, youth groups, aged care facilities, hospitals and other communal institutions are able to operate in accordance with their ethos in matters of governance, employment and manner of service provision. Further, give careful consideration to the question of whether statements of religious belief might contravene prohibitions against discrimination (a distinct question from vilification).

Recommendation 4: Introduce a positive duty on organisations to take reasonable and proportionate measures to eliminate or prevent discrimination, vilification and victimisation based on protected attributes, subject to the protection of freedom of religion and belief. Whilst the scope of this duty requires careful consideration, at a minimum it ought to be imposed on public authorities, reflecting the approach in the United Kingdom. Further, consider the approach taken in several Australian states and territories, and that recommended by the Australian Human Rights Commission.

Recommendation 5: Reform the ‘incitement-based’ test for vilification to a ‘promotion of hatred’ based test for vilification. See further, the ECAJ reply to questions on notice within the Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth) and ASECA’s submission to the review of the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW) conducted by the Hon John Sackar AM KC.

ASECA commends these recommendations to the Commission for its consideration.

### **3. Further observations and recommendations**

In addition to the matters set out in the NSW JBD and ECAJ submissions, ASECA makes the following observations and recommendations.

#### **3.1 *Rising antisemitism and the importance of civil human rights protections***

Civil protections against discrimination and vilification are important safeguards of a harmonious society. Australian democracy, and our national identity, are founded on values of freedom, tolerance, mutual respect and common decency, where all are welcomed and treated equally before the law. Regrettably, that equality is diminished where the law does not provide adequate safeguards against unlawful conduct, including discrimination and vilification on the basis of a protected attribute. Further, the Australian legislative framework should not merely safeguard, but promote the enjoyment of equal rights by all Australians.

In the two years since the terrorist attacks in Israel on 7 October 2023,<sup>1</sup> antisemitism has surged across Australia. For instance, in the two months after 7 October 2023, there was a 738 per cent rise in antisemitic incidents (excluding online antisemitism).<sup>2</sup> In the year following October 2023, there was a 316 per cent rise compared to the year prior.<sup>3</sup> In this environment of heightened antisemitism, it is especially important that civil protections provide effective safeguards and promote substantive equality for all Australians.

#### **3.2 *Civil protections against vilification***

Civil protections against vilification in New South Wales are an important part of the legislative framework which safeguards and promotes equality, tolerance and mutual respect. The operation of these provisions would be enhanced by replacing the ‘incitement-based’ test for vilification with a ‘promotion of hatred based’ test, amending the definition of a ‘*public act*’ to specifically include conduct occurring online, and ensuring that faith-based organisations retain the ability to maintain their ethos, identity and traditions.

##### **The ‘incitement-based’ test for vilification [Question 8.2]**

The ‘incitement-based’ test for vilification should be replaced with a prohibition of the promotion of hatred, to provide a clear, operational threshold for liability. The practical difficulties of proof of ‘incitement’ is discussed in ASECA’s submission to the review of criminal law protections against the incitement of hatred. A potential framework for a prohibition of the promotion of hatred is set out in ECAJ’s reply to questions on notice in the Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth). ASECA commends this to the Commission for its consideration.

##### **The definition of a ‘public act’ [Question 8.3]**

The definition of a ‘public act’ should be amended to specifically include conduct occurring online. The online arena is now a primary means of communication, and in recent years, there has been a proliferation of antisemitic conduct online.<sup>4</sup> In this context, it is of particular importance that the legislative framework provide unequivocal, clear protection against vilification occurring online.

The definition should also include conduct occurring amongst a limited number of persons, for instance the context of meetings open only to a particular section of the community.<sup>5</sup> Vilification in this context can undermine social harmony, albeit that it is not directed toward the public at large. It is a very different setting to a private or domestic setting, and this difference might be reflected in the definition. For this

<sup>1</sup> For an overview of the terrorist attacks on 7 October 2023, see the All Party UK-Israel Parliamentary Group, ‘[7 October Parliamentary Commission Report](#)’, Chaired by Lord Roberts of Belgravia, March 2025.

<sup>2</sup> That is, in the period October – November 2023, as compared to the same period the year prior. See, Julie Nathan, Executive Council of Australian Jewry, ‘[Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023](#)’, p 2.

<sup>3</sup> That is, in the period 30 September 2023 to 30 September 2024. See, Julie Nathan, Executive Council of Australian Jewry, ‘[Report on Antisemitism in Australia 2024](#)’ (ECAJ, 2024 Antisemitism Report), p 1.

<sup>4</sup> See, eg, Oboler, A, Roth, E, Beinart, Jasmine and Beinart, Jesser, ‘[Online Antisemitism After 7 October 2023](#)’, Online Hate Prevention Institute, 2024.

<sup>5</sup> See, eg, See, *Wertheim v Haddad* [2025] FCA 720 at [41], [163]. In that case, the respondents maintained until after the close of evidence that speeches were not delivered “*other than in private*”, because they were delivered in a private setting to regular congregants of the Al Madina Dawah Centre, where non-Muslims would require specific permission to participate: Respondent’s [Opening Submissions](#) at pp 1-2 [4]-[5].

reason, the definition of public act might be supplemented by the words “*For the purpose of this section, a public place includes any physical place or cyberspace to which the public have access as of right or by invitation, whether express or implied, and whether or not a charge is made for admission.*”<sup>6</sup>

### **3.3 Positive duty to prevent and eliminate discrimination and vilification [Question 11.3]**

ASECA supports the introduction of a positive duty for organisations to take reasonable and proportionate measures to prevent and eliminate unlawful conduct, including discrimination, vilification and victimisation based on protected attributes. A positive duty of this kind would promote substantive equality for all Australians.

As set out in the ECAJ Submission, the scope of application of the duty requires careful consideration of comparative domestic and international regimes, and consultation with Government and industry. However, at minimum it ought to include public authorities. This would reflect a ‘*shift in focus*’ across the broader legislative framework toward preventative measures, and a ‘*shift in responsibility*’ from affected individuals to organisations who are best placed to prevent unlawful conduct. A positive duty would also be consistent with the broader Australian legislative framework,<sup>7</sup> and recommendations of the Australian Human Rights Commission.<sup>8</sup>

### **3.4 Balancing freedom of religion and other human rights [Question 7]**

Finally, and importantly, the anti-discrimination legislative framework should ensure that faith-based organisations retain the ability to maintain their ethos, identity and traditions, including with respect to matters of governance, employment and manner of service provision.

As set out in the ECAJ Submission, whilst the legislative framework provides certain exemptions for religious bodies, a statement of principle and qualification is required to ensure communal institutions are able to operate in accordance with their ethos in these matters. This is particularly important to protect the dietary, cultural and religious needs of a religious community. It will also continue to protect and promote the vibrancy of Jewish life in Australia, and that of other religious and cultural institutions.

Should you have any questions or wish to discuss the above further, please do not hesitate to contact the Office of the Special Envoy to Combat Antisemitism.

Yours Sincerely

Jillian Segal AO

Australia’s Special Envoy to Combat Antisemitism

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<sup>6</sup> This proposed amendment reflects community views set out in the NSW Jewish Board of Deputies submission of 28 June 2024 to the NSW Law Reform Inquiry ‘Serious racial and religious vilification’, and in the Executive Council of Australian Jewry Response to Questions on Notice, Inquiry into the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).

<sup>7</sup> See, eg, *Anti-Discrimination Act 1998* (TAS), s 104; *Discrimination Act 1991* (ACT), s 75; *Equal Opportunity Act 2010* (VIC), s 15; *Anti-Discrimination Act 1992* (NT), s 18B; *Respect at Work and Other Matters Amendment Act 2024* (QLD), s 25 (uncommenced). See also, *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* (Cth); *Sex Discrimination Act 1984* (Cth), s 47C.

<sup>8</sup> The AHRC has also recommended that the Act shift its focus to prevention, including by introducing a positive duty to eliminate racial discrimination in various settings. See, Australian Human Rights Commission, ‘*Preliminary Submission to the NSW Law Reform Commission Review of the Anti-Discrimination Act 1977 (NSW)*’, 4 October 2023. See also, Australian Human Rights Commission, ‘*The National Anti-Racism Framework: A roadmap to eliminating racism in Australia*’, November 2024 (AHRC, *National Anti-racism Framework, November 2024*), p 16 (Recommendation 10).