
NSW LAW REFORM COMMISSION REVIEW OF THE ANTI-DISCRIMINATION ACT 1977 (NSW): UNLAWFUL CONDUCT

Joint Submissions by

Australian Muslim Advocacy Network Ltd

Alliance Against Islamophobia Ltd

Muslim Legal Network NSW

Muslim Women Australia

Periyar Ambedkar Thoughts Circle of Australia

Shia Muslim Council of Australia

The Muslim Vote

15 August 2025

1. INTRODUCTION

- (a) The NSW Attorney General has asked the Law Reform Commission to review the Anti-Discrimination Act 1977 (NSW) (ADA).

2. ABOUT THE PARTIES TO THE SUBMISSION

This joint submission is made by

- (a) The Australian Muslim Advocacy Network Ltd (AMAN) works to prevent the harms of systemic racism, online hatred and Islamophobia through policy engagement, law reform and legal action. It has led to two successful legal actions under vilification laws against the former Senator Fraser Anning and the social media company, X Corp. In its early years, AMAN has also tested the effectiveness of various complaint mechanisms, including the NSW Anti-Discrimination complaint process, by either supporting or shadowing individual community members as they make complaints. AMAN continues to draw on the experience of lawyers practising in discrimination law.
- (b) The Alliance Against Islamophobia (AAI) is dedicated to adopting a research based, data driven approach to addressing and alleviating the helplessness, suffering, marginalisation, social isolation, and sense of isolation faced by Australian South Asian Muslims in particular and Muslims in general as a direct consequence of the increasing ridicule, contempt, and anti-Muslim hate speech from far-right Hindu extremist rhetoric in Australia.
- (c) Muslim Women Australia (MWA) is a representative body for Muslim women working to enrich humanity, advocating for the rights of all women, through authentic leadership based on our Islamic principles. MWA delivers an array of holistic, integrated, culturally and religiously appropriate intervention and support services, while providing community development and capacity-building initiatives. MWA has been supporting and advocating on behalf of all women, and Muslim women in particular, for over 40 years. At the heart of the MWA is a commitment to fairness, equality and justice in all our interactions and activities that support Muslim women.

- (d) The Muslim Legal Network NSW (MLN NSW) is an Australian-based legal practitioner and law student association. It is a gateway for Australian Muslim law students and legal practitioners to both network with one another and engage with the wider legal community. MLN NSW also provides community legal education and participates in law reform and legal advocacy, as well as offering a Muslim perspective on civil liberties issues.
- (e) Periyar Ambedkar Thoughts Circle of Australia (PATCA) is Australia's leading advocacy organisation actively breaking down caste barriers and building a more equitable society for all Australians. Through our innovative advocacy, education, and community engagement, we're creating measurable progress toward a discrimination-free Australia that honours the dignity of every person.
- (f) The Shia Muslim Council of Australia (SMCA) is a national umbrella organisation that represents the Shia Muslim community in Australia. Established to represent and unify the voices of Shia Muslims, SMCA advocates for social justice, religious freedom, and community development, while engaging with government, interfaith bodies, media and civil society on matters affecting the Muslim community. The Council plays a key role in amplifying the concerns of its member organisations, addressing issues of national and international importance, and promoting values of justice and compassion. The SMCA currently has 38 members from across the 8 states and territories in Australia.
- (g) The Muslim Vote (TMV) is dedicated to empowering Australian Muslims in the electoral process. It provides essential information on voting, key election dates, and analysis of party policies impacting their communities. At its heart, TMV exists to mobilise and educate Muslims in Australia to become principled, strategic participants in the political process; not for the sake of power, but to fulfil our collective obligation to enjoin good, forbid injustice, and give voice to the voice.

3. TERMS OF REFERENCE

3.1 Matters to be considered

- (a) Whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards
- (b) Whether the range of attributes protected against discrimination requires reform
- (c) Whether the areas of public life in which discrimination is unlawful should be reformed
- (d) Whether the existing tests for discrimination are clear, inclusive and reflect modern understandings of discrimination
- (e) The adequacy of protections against vilification, including (but not limited to) whether these protections should be harmonised with the criminal law
- (f) The adequacy of the protections against sexual harassment and whether the Act should cover harassment based on other protected attributes
- (g) Whether the Act should include positive obligations to prevent harassment, discrimination and vilification, and to make reasonable adjustments to promote full and equal participation in public life
- (h) Exceptions, special measures and exemption processes
- (i) The adequacy and accessibility of complaints procedures and remedies
- (j) The powers and functions of the Anti-Discrimination Board of NSW and its President, including potential mechanisms to address systemic discrimination
- (k) The protections, processes and enforcement mechanisms that exist in other Australian and international anti-discrimination and human rights laws, and other NSW laws the interaction between the Act and Commonwealth anti-discrimination laws
- (l) Any other matters the Commission considers relevant to these Terms of Reference

4. RECOMMENDATIONS

4.1 Extend Protected Attributes

- (a) Urgently extend discrimination protections for persons based on their
 - (i) religious belief or activity,
 - (ii) caste,
 - (iii) immigrant status, and
 - (iv) political opinion.

4.2 Strengthen Investigative Powers

- (a) Systemic Discrimination Investigations

Introduce powers equivalent to those conferred on the Australian Human Rights Commission (AHRC) under *s 35L of the Australian Human Rights Commission Act 1986 (Cth)* to inquire into any matter that may relate to systemic unlawful discrimination—that is, discrimination affecting a class or group of persons which is continuous, repetitive, or forms part of a broader pattern.
- (b) General Human Rights Inquiries

Replicate the AHRC's authority under *s 11(f)* of the AHRC Act to initiate inquiries into potential human rights breaches in any policy, practice or act, irrespective of whether a complaint has been lodged.

4.3 Substantive Reform of the Discrimination Test

- (a) Replace Comparator Test

Replace the current comparator test with a more practical and accessible "unfavourable treatment" test—focusing on whether the complainant was treated detrimentally because of a protected attribute.
- (b) Shifting the Burden of Proof

Introduce a reverse onus provision whereby:

 - (i) In direct discrimination matters, the respondent must prove that the treatment was not for a prohibited reason, akin to the approach under the *Fair Work Act 2009 (Cth)*.

- (ii) In indirect discrimination cases, the respondent must demonstrate that the impugned requirement, condition, or practice was reasonable in all the circumstances.
- (c) The indirect discrimination 'inability to comply' test should recognise that religious conviction is a valid reason why a person may be unable to comply, and therefore that it would be religious discrimination to require a person to act contrary to their religious convictions.
- (d) Clarifying Reasonableness in Indirect Discrimination
Provide statutory guidance on assessing the reasonableness of requirements or conditions, including:
 - (i) The availability and feasibility of reasonable adjustments or accommodation;
 - (ii) The necessity of maximising all human rights and fundamental freedoms, including religious freedom. The indirect discrimination test should explicitly list the factors to consider in determining reasonableness, modelled on s7B(2) of the Sex Discrimination Act 1984 (Cth) as extended to recognise Siracusa Principles 10 ('in pursuit of a legitimate aim') and Principle 11 ('least restrictive means').

4.4 Positive Duties and Intersectional Discrimination

- (a) Positive Duty to Eliminate Unlawful Conduct
Introduce a positive duty on duty holders to take proactive steps to prevent or eliminate:
 - (i) Unlawful discrimination;
 - (ii) Sexual harassment;
 - (iii) Vilification;
 - (iv) Victimisation.
- (b) Intersectional Discrimination
Expressly prohibit discrimination arising from the combined effect of two or more protected attributes (intersectional discrimination).

4.5 Safeguard religious freedoms

- (a) The object clause should reference the 'equal status and indivisibility' of human rights as a means to ensure religious freedom is not placed as a second order right.
- (b) The current exception in s56 is divided into two clauses – one that covers the selection, training and appointment of people to perform or participate in religious practices, and the other that covers the other acts and practices of a religious body (including employment).
- (c) Faith-based bodies and charities should be able to continue to provide services in accordance with their doctrines, tenets and beliefs. This should not be dependent on whether they are in receipt of government funding.
- (d) If necessary to provide a greater balance between different human rights and freedoms, amend *s 56 of the ADA* to ensure that:
 - (i) Religious freedom protections apply to all religious institutions for which maintaining a religious ethos is essential;
 - (ii) Religious bodies may act in accordance with their doctrines to uphold that ethos, provided such actions are:
 - (A) In conformity with religious doctrines;
 - (B) Appropriate, necessary, and proportionate to that aim;
 - (iii) The protection applies to the entire course of the employment relationship, not only the point of recruitment; and
 - (iv) Institutions relying on this protection are required to have a clear, written policy in place governing termination or other employment actions under the religious protection.

- (e) It could also be expressly included that giving preference to persons of the same religion as the religious body in employment does not discriminate.

4.6 Clarify Limits of s 56 in Relation to Vilification, Harassment and Bullying

- (a) Confirm that s 56 does not apply to bullying, harassment or vilification, but create (and in the case of religious vilification, maintain) a separate defence permitting reasonable and good faith expression of religious teachings in existing vilification clauses.

4.7 Standing for Representative Complaints

- (a) Permit representative bodies to bring discrimination complaints on behalf of affected persons, consistent with ss 134(3)–(5) of the *Anti-Discrimination Act 1991 (Qld)* and as recommended by the QHRC in its *Building Belonging Report 2022*.

4.8 Clarify the meaning of service provision

- (a) **Unreasonable Use of Force by Police**
Ensure that victims of excessive police force can pursue redress under the anti-discrimination protections. The current interpretation by police—that use of force is not carried out as part of “service”—effectively places police conduct beyond legal accountability in this context, and existing complaints mechanisms are inadequate.
- (b) **Undercover Operations Involving Children and Persons with Disabilities**
It is submitted that children and persons with disabilities who are subjected to human rights abuses in the context of police undercover operations must have a clear and enforceable right to bring complaints under anti-discrimination law. The current framework must ensure that the conduct of such operations does not place these vulnerable groups beyond the reach of legal accountability or anti-discrimination protections.
- (c) **Discrimination in Custodial Settings**
Clarify that prison custody arrangements fall within the definition of “services” under the Anti-Discrimination Act (ADA), notwithstanding contrary case law. Persons in detention should remain entitled to protection against discriminatory treatment.

- (d) **Mental Health Detention as a ‘Service’**
Confirm that individuals detained under the *Mental Health (Forensic Provisions) Act 1990 (NSW)* are receiving a “service” within the meaning of s 49M of the ADA, and are therefore protected from discrimination.

- (e) **Discriminatory Attitudes in Public Sector Recruitment**
Ensure that public authorities (e.g., NSW Police, Youth Justice, and Justice Health & Forensic Mental Health Network) are subject to discrimination complaints where they fail to take reasonable steps to prevent the appointment of staff with demonstrably racist or dehumanising attitudes, including anti-Muslim bias.
Currently, ss 19 and 49M are interpreted too narrowly by the NSW Anti-Discrimination Board, excluding recruitment processes from the definition of “service provision”.

4.9 Regulate Foreign Digital Platforms

- (a) **Apply Anti-Discrimination Laws to Online Platforms**
Ensure that vilification and discrimination provisions apply extraterritorially to foreign-based social media platforms whose content is accessible in NSW, in recognition of the public harm caused by the dissemination of dehumanising material online.

4.10 Enact a Human Rights Act

- (a) Introduce a Human Rights Act for New South Wales, providing a comprehensive framework for the protection of civil, political, and social rights, and integrating these principles across government and public decision-making.

5. DISCUSSION

5.1 Prevalence of anti-Muslim sentiment and hate incidents

- (a) Numerous studies and reports, including submissions to government inquiries and research by community organisations, document a persistent pattern of anti-Muslim sentiment manifesting in public abuse, vilification, online harassment, and sometimes, violence. The Islamophobia Register Australia (‘the Register’) in its 5th Islamophobia in Australia research report

released in March this year found that in the period between 1 January 2023 and November 30, 2024, there had been a significant spike in incidents of Islamophobia in Australia, with a 250% increase in reported online incidents and a 150% increase in in-person incidents, averaging nearly one Islamophobic online or in-person incident every day of the 700 day reporting period.¹ The Register also found that women, particularly those visibly identifying as Muslim, were disproportionately targeted, accounting for 75% of all victims.² Such hatred undermines individuals' sense of safety, belonging, and full participation in society, and perpetuates systemic barriers to employment, education, and civic engagement. In fact, the psychological impact of all the incidents reported from men, women, and children is profound and long-lasting, with 92% of victims reporting ongoing effects on their mental wellbeing and daily activities, including anxiety, depression, and social isolation.³ Critically, it is well-documented that Islamophobia is underreported and so this report likely captures only a fraction of total Islamophobic incidents in Australia, suggesting the experience and impact of Islamophobia on Muslim Australians is far more pernicious than documented in the report.

5.2 Intractability of anti-Muslim sentiment due to official conflation with terrorism

- (a) No amount of anti-racism education, personal relationships with Muslims or education on Islam conducted within the police force is likely to be effective while terrorism concerns remain elevated in the media.⁴

5.3 Extension of protected attributes

- (a) The absence of religious belief or activity as a protected attribute under the Anti-Discrimination Act has resulted in the denial of equal legal protection to a significant number of students, employees, and service recipients. This exclusion also has the consequential effect of precluding affected workers from accessing the general protections regime under the

¹ Carland, S. Alziyadat, N., Vergani, M. & O'Brien. K. (2025) Islamophobia in Australia Report V, Sydney: Islamophobia Register Australia p20.

² Ibid, p38.

³ Ibid, p74.

⁴ Vergani, M., Mansouri, F., & Orellana, L. (2022). Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Journal of Community & Applied Social Psychology*, 32(6), 1029–1046. <https://doi.org/10.1002/casp.2633>

Fair Work Act 2009 (Cth), which is contingent upon the existence of complementary state-based discrimination protections.

- (b) It is a matter of profound concern that, notwithstanding the well-documented and disproportionately high levels of prejudice experienced by members of the Muslim community, this group has for years been denied equal protection before the law. Such a failure constitutes a serious injustice that demands immediate legislative redress.
- (c) The persistence of this legislative gap has contributed to the entrenchment and normalisation of anti-Muslim sentiment within parts of the broader community, thereby compounding the vulnerability and marginalisation of Muslim individuals in New South Wales.
- (d) It is respectfully submitted that rectifying this omission should be treated as a matter of urgency by the Minns Government. In the event the Government proposes to engage in an extended review or overhaul of the Anti-Discrimination Act, it is strongly recommended that this particular deficiency be addressed as part of an initial tranche of reforms, to be introduced without delay.

5.4 Consideration of religious belief in indirect discrimination

- (a) In line with principles recognised at common law, the Anti-Discrimination Act (ADA) should provide that individuals and organisations are not to be compelled to express, publish, associate with, or endorse statements or opinions that contravene their genuinely held religious beliefs. The same reasoning must apply equally across a range of belief systems. A Muslim artist should not be compelled to produce materials bearing the phrase “God is not Great”. These protections are essential to maintaining the balance between freedom of religion, freedom of expression, and freedom from compelled speech.
- (b) Consideration must be given to the need for reasonable adjustments that support religious diversity, even in circumstances where the reasonableness of a term or condition is otherwise accepted.
- (c) For example, an employee may seek to be absent from the workplace for a brief period—such as 20 minutes at a set time—due to a religious

obligation (e.g., a Muslim employee observing daily prayer). If, at the same time, a non-religious employee is absent for a similar duration for personal reasons (such as a smoke break), and the employer imposes the same disciplinary or adverse treatment on both, the employer may assert that no discrimination has occurred, as the treatment is based on the fact of absence, not on the religious belief or activity itself.

- (d) However, this approach fails to account for the distinct nature and significance of religious obligations. A legal framework that does not require reasonable accommodation risks treating materially different situations as if they were the same, thereby undermining substantive equality for religious individuals. To promote genuine inclusion and diversity, the law must recognise that neutrality in application can still result in disadvantage, and must therefore include a positive duty to accommodate religious practice, unless doing so would cause unjustifiable hardship.

5.5 Protections for religious bodies

- (a) The ADA provides broad exceptions for religious bodies. Section 56 of the ADA states:

Nothing in this Act affects:

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order,
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order,
- (c) the appointment of any other person in any capacity by a body established to propagate religion, or
- (d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

(b) As the Consultation Paper notes,

These exceptions apply to the whole ADA, not just the prohibition of discrimination. This means the exceptions also permit religious bodies to engage in other forms of otherwise unlawful conduct (including sexual harassment and vilification).

(c) It is also noted that in

some circumstances, certain religious bodies will be able to access other exceptions. This includes the exceptions for private educational authorities, adoption service providers, voluntary bodies, charitable benefits, and aged care accommodation providers.

(d) The Consultation Paper states,

This is a complex and sensitive area, which raises issues about the best way to accommodate intersecting human rights. These include the right to nondiscrimination (including based on sex, sexual orientation, gender identity, marital or relationship status, pregnancy, race, or religion). They also include the right to freedom of thought, conscience, and religion.

(e) Human rights include the freedom to manifest religion or belief, either individually or in community with others, and in public or private, in worship, observance, practice and teaching (ICCPR, article 18.1).

(i) Freedom of religion has both an individual and a collective aspect, under which religious bodies ought to be free to manifest the religious beliefs of their members.⁵

(ii) Australia also has obligations under article 18.4 of the ICCPR to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

(iii) Under article 18.3 of the ICCPR, freedom to manifest one's religion or beliefs may be subject *only* to such limitations as are prescribed

⁵ Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33 University of Queensland Law Journal 153, 178-181 (available at: <https://ssrn.com/abstract=2507045>); Nicholas Aroney and Patrick Parkinson, 'Associational Freedom, Anti-Discrimination Law and the New Multiculturalism' (2019) 44 Australasian Journal of Legal Philosophy 1, 8-13 (available at: <https://ssrn.com/abstract=3543308>).

by law and are *necessary* to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

- (f) The parties to this submission respectfully dissent from the proposition that religious discrimination in employment should be permissible only where the teaching, observance, or practice of religion constitutes an *inherent requirement* of the role or a *genuine occupational requirement*.
- (i) Such a test fails to recognise the practical and doctrinal reality that, within faith-based schools, **all roles**—regardless of whether they involve formal teaching—contribute meaningfully to the maintenance of the school’s religious ethos and to the spiritual development of students.
- (ii) It may lead to situations like discussed in the Consultation Paper where it is asked whether, for example, adherence to religious beliefs or practices in relation to LGBTQI identity is a ‘genuine occupational requirement’ or ‘inherent requirement’ of a role. Respectfully, we submit this is an improper framing and mischaracterisation of the test to be applied. The proper broader framing is whether a religious community can manifest its religious beliefs at a collective and individual level, and whether parents can send their children to a school that conforms with their moral convictions. The imposition of an "inherent requirements" threshold not only leads to improper framing of problems, which can compound conflict, but also unduly restricts religious freedom protections, therefore undermining the principle of indivisibility of human rights.
- (iii) We do not support the inclusion of a provision that would require a religious body to justify, on a case-by-case basis, the imposition of a religious belief requirement for a particular role. Such an approach would impose an unduly burdensome and uncertain standard, undermining the autonomy of religious organisations to maintain their ethos through their staffing decisions.
- (g) It is therefore submitted that *section 56* of the Anti-Discrimination Act should be clarified in the manner proposed in our recommendations, to ensure consistency with both the legitimate aims of religious institutions

and the principles of proportionality and necessity under international legal standards.

- (i) We note that the model we propose does not require judges to assess the reasonableness of a religious belief.
 - (ii) The rights-based model recommended in this submission treats such conduct as an expression of the institution's legitimate religious purpose. It aligns more closely with international human rights law, which recognises that not all differential treatment constitutes discrimination. As the UN Human Rights Committee has affirmed: "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and the aim is to achieve a purpose which is legitimate under the Covenant" (Human Rights Committee, General Comment No. 18 (1989), [13]).
- (h) We note that the dominant public debate tends to neglect the vital role of religious schools for communities in supporting pluralism. We wish to provide further information on the connection between religious education and the formation of healthy and psychologically safe communities, which is essential to supporting pluralistic societies.
- (i) Unfortunately, negative sentiment towards Muslims in Australia has been exceptionally high for years⁶, driven in large part by the official conflation of terrorism and Islam, which do not reflect or show respect for our faith.
 - (ii) Children have been routinely targeted in Islamophobic hate incidents in public places, and the presence of Muslim children has not deterred perpetrators from committing acts of hatred.⁷

⁶ Refer to various Scanlon Foundation Surveys over the past decade.

⁷ Refer to Islamophobia in Australia Reports, Islamophobia Register. Dr Derya Iner et al.

- (iii) Muslim parents struggle to explain terrorism discourse from the media to their children.⁸
- (iv) Kayrouz et al. (2022) paint a grim picture of the mental health of Australian Muslim youth.
 - (A) Muslim females (11–15 years) are at a substantially higher risk of developing clinically significant emotional and conduct problems than age-related females. Muslim females (11–17 years) were at even greater risk of developing clinically significant conduct problems, emotional symptoms, and hyperactivity-inattention problems than Muslim males (11–17 years).⁹
- (v) Kayrouz et al. (2022) explain identity stress amongst Australian Muslim youth as being connected to:
 - (A) First, the high percentage of children from first-generation immigrants is at higher risk of problem behaviours when compared to children from the host culture (Flink et al., 2012).
 - (B) Second, Muslim females aged 11–15 may have lower levels of ethnic identity when compared to Muslim males (11–17 years) and older Muslim females (16–17 years).
 - (C) Muslim females aged 11–15 years may report low levels remaining stable or significant decreases in ethnic identity levels. They cannot mitigate the risks associated with their reported experience of vilification and discrimination.¹⁰

⁸ Bedar, A, et al, 2020, Supporting Muslim Families and Children in Dealing with Islamophobia: Australian Muslim Women’s Centre for Human Rights & Alfred Deakin Institute, Research Paper, 2020.

⁹ R Kayrouz, E Karin, C Ghanem, N Chowdury & Ahmad Malas, ‘Muslim Adolescent Mental Health in Australia: A Cross-Cultural Comparison of the Risk of Developing Clinically Significant Psychological problems’ (2022) 31, *Journal of Child and Family Studies* 2837. <https://doi.org/10.1007/s10826-022-02257-6>

¹⁰ Ibid.

- (vi) Teachers in faith-based schools embrace Islamic values and teachings to support Australian Muslim teenagers in their challenges. Those challenges include:
- (A) The typical scale and pace of psychological and physical change during adolescence,
 - (B) exposure to a multitude of value sets and coping strategies online,
 - (C) a rapidly evolving online sphere,
 - (D) the demonisation of Islam and Muslims in official, political, media and online spheres, including through terrorism discourse, and
 - (E) an anti-religion sentiment more broadly in the public sphere.
- (vii) Religious instruction is not only about content. Islamic values are instilled through the way teachers teach, leaders lead, and support staff provide support. Every staff member in an Islamic school must engage with the beliefs, values and faith perspectives that inform the school's purpose, curriculum, and instruction (pedagogy).¹¹ As such, not only religious studies teachers contribute to a community of faith.
- (viii) Communities of faith are also communities of safety and wellbeing, given the symbiotic nexus between identity, culture, wellbeing and safety.
- (ix) Faith-based schools are not the schooling choice for every Muslim family, but when it is their choice, the school must be able to nurture that community of faith. This is vital to parental confidence in the school, which in turn is vital to maintaining the school community.

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Mohamad Abdalla, Nadeem Memon and Dylan Chown, *Joint Submission Queensland Human Rights Commission Review of Queensland's Anti-Discrimination Act* (16 February 2023).

5.6 Limitations on holding statutory agencies to account

- (i) To rebuild trust, discriminatory conduct by law enforcement, prison officers, and government staff should not be off-limits under the Act.
- (ii) Existing limitations with the Act mean that enormous spheres of discriminatory conduct are off limits because they are carried out by statutory agencies or deemed not to be providing a service within the ambit of the Act (ss19 and 49M).
- (iii) In particular, NSW Police, Youth Justice and Justice Health & Forensic Mental Health Network must be treated as providing a service to persons in their custody or care, or another category must be formulated to ensure that redress under the Act is available.

5.7 Social media companies

- (a) The Act should be amended to ensure that both vilification and discrimination clauses apply to foreign social media companies whose platforms are accessed by end-users based in New South Wales.¹²

5.8 Representative bodies

- (a) It is submitted that representative bodies should be expressly empowered to initiate complaints of both discrimination and vilification on behalf of affected groups or communities.
- (b) By way of precedent, the Australian Muslim Advocacy Network (AMAN) has exercised such standing under ss 134(3)–(5) of the *Anti-Discrimination Act 1991 (Qld)*, acting in a representative capacity in vilification proceedings brought under that legislation. However, because the Queensland legislation did not allow representative proceedings in relation to discrimination, that element of the complaint could not be pursued.
- (c) Notably, the Queensland Human Rights Commission has, in its *Building Belonging Report (2022)*, recommended the extension of representative

¹² [X should answer to Queensland authorities over Islamophobic tweets by an American, tribunal hears | Queensland | The Guardian](#)

standing to include discrimination complaints—further reinforcing the utility and legitimacy of this mechanism.

- (d) The parties to this submission strongly support such reform, on the basis that it relieves individuals—often from marginalised or vulnerable communities—of the onerous burden of pursuing legal redress alone, and enables systemic issues to be addressed through collective action.

5.9 A Human Rights Act

- (a) In recent times, the State has enacted a raft of legislative measures—particularly in the realm of public protest and expression—that curtail civil liberties. These restrictions have proceeded without any commensurate legislative safeguard to preserve the fundamental rights and freedoms.
- (b) Institutions, whether governmental or quasi-governmental, are rarely self-correcting. They lack the inherent incentive to investigate their own failings. A Human Rights Act would impose a normative framework that compels public institutions—across housing, education, health, employment, and policing—to act in accordance with rights-based principles. In so doing, it creates both the structure and impetus for ongoing institutional improvement.
- (c) Any such Act must bind all public authorities, including those exercising functions under statutory power. This would encompass law enforcement agencies, mental health practitioners operating under involuntary treatment provisions, and correctional services personnel. The extension of accountability to all publicly funded actors is not only principled but necessary.
- (d) A NSW Human Rights Act will emphasise that all rights must be treated with equal importance, and no right should be prioritised at the expense of any other. This foundational principle of human rights law clarifies the relationship between human rights. It recognises that all rights are interconnected and interdependent, and there is no hierarchy of rights in international law.