



Muslim Women Australia

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# Muslim Women Australia

Submission on  
NSW Law Reform Commission  
Review of the Anti-Discrimination Act 1977  
(NSW)

AUGUST 2025

PO Box 264 Lakemba NSW 2195 p: (02) 9750 6916 e: [info@mwa.org.au](mailto:info@mwa.org.au) w: [www.mwa.org.au](http://www.mwa.org.au)

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## 1. Executive Summary

Muslim Women Australia (MWA) welcomes the opportunity to contribute to the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977 (NSW)*. As a leading community-based organisation with over 40 years of experience supporting Muslim women across New South Wales, MWA brings to this review a deep understanding of how discrimination functions not only in law, but in everyday life.

For Muslim women, discrimination is not hypothetical. It is lived in schools, workplaces, housing, public services, and online. It is compounded by the intersection of gender, faith, cultural background, and race. It is reinforced by institutions that lack cultural and religious literacy. And too often, it is ignored by laws that treat identity as siloed and harm as isolated.

This submission argues that the current Act does not adequately protect Muslim women nor reflect the realities of modern discrimination. Its limitations are both structural and substantive:

- Intersectional harms are rendered invisible by legal categories that fail to capture how multiple forms of discrimination combine and intensify;
- Religion, a core dimension of identity and a frequent ground of exclusion, is not protected as a standalone attribute;
- Public harassment and vilification, especially targeting visibly Muslim women, is increasing but remains largely unaddressed under existing thresholds;
- Harassment, particularly where gendered and racialised, is insufficiently recognised and inadequately defined;
- Institutional systems, including policing, legal services, and domestic violence supports, continue to reproduce harm yet the law offers little recourse;
- Positive duties to prevent discrimination are absent, leaving the burden on individuals to seek justice after harm has occurred.

MWA calls for a reformed Anti-Discrimination Act that centres the dignity, safety, and equal participation of all communities including those who experience exclusion not despite their identity, but because of it. This includes:

- A clearer and more inclusive definition of discrimination, including recognition of systemic and intersectional harm;
- The addition of religious belief and practice as a protected attribute;
- Expanded coverage of discrimination in all areas of public life, with explicit recognition of how discrimination manifests in service delivery, education, employment, and housing;
- Stronger vilification and harassment protections, including protections from gendered Islamophobia and online abuse;
- Retention of religious and educational exceptions with appropriate safeguards, to preserve the autonomy and viability of faith-based services;
- Introduction of a positive duty on organisations to prevent discrimination, not just respond to it.

Ultimately, this submission reflects MWA's conviction that the Anti-Discrimination Act must not only prohibit harm but also enable justice. The law must evolve to reflect the lives of those it seeks to protect.

## **2. About Muslim Women Australia**

MWA is a national organisation based in New South Wales with over four decades of experience advocating for the rights, safety, and dignity of Muslim women and their families. Founded in 1983, MWA has grown into a trusted, community-based organisation known for its culturally and faith-responsive service delivery, strategic policy engagement, and national leadership in violence prevention and social inclusion.

MWA delivers a range of specialist services to women experiencing domestic and family violence, homelessness, or systemic exclusion, many of whom are migrants, refugees, or women from newly emerging communities. Its work is grounded in a holistic, trauma-informed approach that recognises the intersecting barriers women face when seeking support from mainstream systems. These services are complemented by prevention and capacity-building initiatives aimed at strengthening families, communities, and the broader service sector.

MWA's work is underpinned by a firm commitment to justice, self-determination, and systemic change. Its engagement in policy reform is driven not only by its service experience, but by a deep understanding of the socio-political realities facing Muslim communities, particularly the unique vulnerabilities, resilience, and leadership of Muslim women.

As both a frontline provider and a national voice, MWA offers this submission to the NSW Law Reform Commission not simply as a stakeholder, but as a representative of the thousands of women whose stories, struggles, and strengths continue to shape its mission.

### **3. The Lived Experience of Discrimination Against Muslim Women**

The Anti-Discrimination Act can only be effective if it reflects and responds to the realities of those it aims to protect. For Muslim women in New South Wales, discrimination is not a theoretical concern, it is a daily reality that shapes their access to work, safety, education, housing, and public space. It is often layered and systemic, and arises not just from isolated acts of prejudice, but from how institutions respond, or fail to respond, to cultural and religious difference. This section outlines the specific ways in which Muslim women experience discrimination across public life, drawing on decades of MWA's frontline experience. It provides the lived foundation upon which our legal recommendations in Section 5 are based. Without acknowledging these patterns of harm, law reform risks being both incomplete and ineffective.

#### **3.1 Deep-Rooted Intersectional Discrimination Against Muslim Women**

The lived experience of Muslim women in New South Wales reflects a form of discrimination that is layered, compounding, and deeply entrenched. These women are often simultaneously marked by their gender, their faith, their cultural background, and their migration history, each of which can attract discrimination on its own, but which together produce forms of exclusion that are more severe and complex than any single identity category can capture. MWA, with over four decades of frontline service provision, has consistently observed that the current legal framework in NSW does not adequately recognise or respond to these intersectional harms.

A key failing of the existing Anti-Discrimination Act is its siloed approach to discrimination. Individuals are required to pursue complaints based on individual attributes such as race, religion, or sex, without any ability to address how those attributes interact. For Muslim women, this fragmentation renders much of their experience legally invisible. A woman who is denied work because she wears a hijab or is harassed in public for being both visibly Muslim and a woman, faces barriers that are inseparable in her experience but treated as unrelated under law. The absence of a mechanism to respond to intersectional discrimination not only weakens legal protections but actively undermines the pursuit of justice.

The consequences of this failure are evident across all aspects of public life. In recent years, there has been a documented rise in public harassment and Islamophobia, with visibly Muslim women disproportionately targeted. The Islamophobia Register's latest national report<sup>1</sup> confirms that women and girls make up most of the victims accounting for more than 75% of all reported incidents between 2023 and 2024. These attacks, often occurring in public transport, shopping centres, workplaces, and even in front of children, range from verbal abuse to physical assault. The emotional and psychological toll of such repeated exposure to hate cannot be underestimated: many women report trauma, fear of public spaces, and withdrawal from civic life.

Discrimination in employment remains a persistent barrier. Muslim women face significant disadvantage in recruitment, often as a direct result of their names, dress, or perceived cultural background. A large-scale study<sup>2</sup> found that applicants with non-English sounding names, and Arabic sounding names even more so, were up to 57% less likely to receive callbacks for leadership roles, even when their qualifications and experience were identical. These biases extend beyond the hiring process, with many Muslim women reporting being pressured to compromise their religious identity, such as by removing hijab or downplaying their faith, to maintain employment or progress professionally. Others face the devaluation of overseas qualifications, particularly for women with migrant or refugee backgrounds.

These discriminatory experiences are compounded by barriers within the very institutional systems meant to offer protection. According to a 2021 Australian Human Rights Commission survey,<sup>3</sup> 48% of Muslim respondents reported receiving unfavourable treatment when seeking employment, and 50% experienced similar treatment from law enforcement. In MWA's service delivery, Muslim women have described being stereotyped, dismissed, or met with suspicion by police, courts, and mainstream service providers especially when seeking support related to domestic or family violence. Cultural and religious illiteracy in service

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<sup>1</sup> <https://islamophobia.com.au/wp-content/uploads/2025/03/Islamophobia-in-Australia-Report-5.pdf>

<sup>2</sup> <https://7news.com.au/news/australia/alarmed-level-of-name-discrimination-in-job-recruitment-according-to-new-research-c-10381148?utm>

<sup>3</sup> <https://www.abc.net.au/news/2021-07-21/australian-human-rights-commission-muslims-discrimination/100308290?utm>

settings remains a major deterrent to help-seeking, with the absence of culturally safe and faith-responsive support further isolating women in crisis.

At the policy level, Muslim women remain largely excluded from mainstream discourse on gender equality and anti-racism. They are routinely left out of decision-making processes, absent from leadership spaces, and poorly represented in public data. Where they do appear, it is often through narrow or negative stereotypes. This erasure contributes to the persistence of ineffective or inappropriate policy solutions and deprives Australia of the full insight and leadership that Muslim women bring to civic life.

The cumulative impact of intersectional discrimination is not only material but deeply psychological. Many women describe a sustained sense of marginalisation, isolation, and pressure to remain silent. One woman, after being physically assaulted in front of her children in a Sydney shopping centre, now requires ongoing psychological care for both her and her children, a story echoed in other survivor accounts<sup>4</sup>. These harms extend beyond the individual, generating ripple effects across families, communities, and generations.

These are not isolated incidents. They form part of a broader pattern of systemic discrimination that can no longer be ignored or inadequately addressed. The Anti-Discrimination Act must be updated to recognise the real-world effects of intersectional discrimination. Legislative reform must include mechanisms for compounded claims, improved data collection and monitoring practices, and robust institutional training, ensuring the law can fully protect those who continue to fall through its gaps.

### **3.2 Public Harassment, Vilification, and Gendered Islamophobia**

For many Muslim women in New South Wales, especially those who visibly express their faith through hijab or niqab, discrimination is an alarming and visceral reality of day-to-day

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<sup>4</sup> [https://www.theguardian.com/news/2025/mar/13/islamophobic-incidents-in-australia-have-doubled-over-the-past-two-years-research-suggests-ntwnfb?utm\\_source=chatgpt.com](https://www.theguardian.com/news/2025/mar/13/islamophobic-incidents-in-australia-have-doubled-over-the-past-two-years-research-suggests-ntwnfb?utm_source=chatgpt.com)

life. The fifth Islamophobia in Australia Report<sup>5</sup>, conducted by Monash and Deakin Universities in partnership with the Islamophobia Register, documents a catastrophic rise in anti-Muslim incidents between January 2023 and November 2024. The report recorded 309 verified in-person incidents and 366 online incidents, more than double the totals of previous years. Women and girls accounted for approximately 75% of all victims, disproportionately affected across all categories of harassment including 60% of physical assaults, 79% of verbal assaults, and every reported spitting incident.

The experiences recounted within this data illustrate the daily vulnerability that Muslim women live with: being “yelled at,” spat on in shopping centres, harassed in public transport, and targeted in intimate public spaces. One woman’s child witnessed her being knocked unconscious in a food court after a racially motivated attack, a trauma requiring ongoing psychological support.<sup>6</sup>

Further compounding the danger are threats targeting places of faith. In March 2025, the Lakemba Mosque in Sydney’s west received a terror threat online, invoking the Christchurch massacre, an attack deliberately timed to coincide with Ramadan’s last ten nights. This was one of several threats made to several Mosques and places of worship during that period.

### **3.3 Discrimination as a Barrier to Safety**

The right to safety is a foundational principle of human dignity and equal participation in public life. Yet for many Muslim women in New South Wales, systemic discrimination acts as a persistent and deeply embedded barrier to accessing safety, justice, and the basic protections to which all individuals should be entitled. The very systems intended to provide support, police, legal institutions, and specialist services, are often sites where discrimination is reproduced through institutional bias, cultural incompetence, and neglect.

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

<sup>6</sup> <https://www.theguardian.com/news/2025/mar/13/islamophobic-incidents-in-australia-have-doubled-over-the-past-two-years-research-suggests-ntwnfb>

MWA, through decades of frontline domestic and family violence work, has observed consistent patterns of exclusion and alienation. Many Muslim women report being dismissed or stereotyped when engaging with law enforcement, with officers demonstrating limited understanding of cultural or religious dynamics and, at times, projecting assumptions that frame entire communities as inherently patriarchal or suspicious. Such responses do not simply fail to assist, they compound trauma and reinforce the perception that reporting harm may invite further harm or scrutiny.

The current Anti-Discrimination Act lacks adequate mechanisms to address discrimination by public authorities, including police and justice systems, when that discrimination is expressed through failure to act, failure to believe, or failure to provide culturally appropriate response frameworks.

Compounding this is the lack of religious and cultural responsiveness in many mainstream domestic violence and homelessness services. Women often encounter environments where their religious needs are invisible or worse, viewed as incompatible with service models. The absence of faith-sensitive practice such as access to prayer facilities, caseworkers with cultural understanding, or modesty-considerate service environments, can render support spaces inaccessible. MWA's own Linking Hearts service has, for years, been called upon to support women who disengage from mainstream services not because of lack of need, but because those services are not safe for them as Muslim women.

During the COVID-19 pandemic, MWA joined other organisations in raising concerns that culturally and linguistically diverse communities were largely excluded from emergency response planning. Critical decisions were made without representation from affected communities, and vital public messaging was delivered in inaccessible formats and with little cultural adaptation.

These examples, drawn from both frontline practice and broader policy contexts, are not simply illustrations of service failure. They are evidence of systemic discrimination that denies Muslim women equal access to safety and justice. Under the current Anti-

Discrimination Act, such experiences often fall outside the scope of legal remedy. The Act lacks an effective mechanism to address institutional discrimination, especially when expressed through omission, indifference, or lack of cultural literacy. Nor does it currently impose a positive duty on services and agencies to actively prevent discrimination and foster inclusion.

Reform of the Act must acknowledge that safety is not equally accessible to all. A modern anti-discrimination framework must move beyond individual intent or overt acts of prejudice. It must address the systemic conditions that leave Muslim women without viable pathways to protection and ensure that the right to safety is not conditional on one's ability to conform to dominant norms of culture, gender, or faith.

#### **4. Specific Responses to Reform Areas**

The previous section outlines how discrimination against Muslim women is experienced in practice across systems, institutions, and community life. What follows is a response to the specific areas of reform raised by the NSW Law Reform Commission, highlighting where the current *Anti-Discrimination Act* falls short, and what changes are required to ensure that the law reflects and protects the rights of all communities, including those most frequently excluded from public life.

##### **4.1 Definitions and Tests of Discrimination**

The current definitions and tests of discrimination under the *Anti-Discrimination Act 1977* (NSW) are insufficient to capture the complexity of discrimination experienced by Muslim women in real life. In particular, the test for indirect discrimination imposes a high threshold that places the burden of proof on already marginalised individuals and fails to reflect the intersectional nature of disadvantage.

The prevailing formulation in the Act requires a complainant to demonstrate that a condition, requirement, or practice is both imposed and “not reasonable in the circumstances.” This is an inherently subjective and legally complex test, which fails to account for the power imbalances between individuals and institutions. It presumes a level playing field in which all parties are equally placed to argue reasonableness, ignoring the structural inequalities that Muslim women face in accessing education, employment, housing, and public services.

In practice, MWA has observed how this test creates a significant barrier to justice for Muslim women. A woman who is refused a job interview after attending in hijab, or who is told that flexible hours to accommodate prayer breaks are not operationally viable, must demonstrate that such requirements are unreasonable. Yet the employer’s claim of neutrality or operational necessity is often accepted at face value, particularly when the discriminatory effect appears indirect or unintended.

This reflects a deeper conceptual failure in the legislation: the assumption that discrimination is only actionable when it is overt, easily demonstrable, or based on a single protected

attribute. However, for Muslim women, discrimination is often subtle, cumulative, and intersectional, emerging from the interaction between religious identity, racialised perception, gender, and sometimes visa or migration status. These multiple dimensions of exclusion do not sit comfortably within siloed legal categories. A woman is not discriminated against solely because she is a woman, or because she is Muslim, or because she is visibly of colour, but because of how these aspects are perceived and responded to together.

MWA endorses a shift toward the test adopted in other jurisdictions, most notably Victoria's Equal Opportunity Act 2010, where the focus is on whether a requirement, condition or practice causes unjustifiable disadvantage, rather than whether it is "not reasonable." This formulation places the emphasis on the impact of the policy or decision, rather than its intention or justification, and provides clearer grounds for challenging policies that may appear neutral but disproportionately harm specific groups.

Further, the current definitions do not reflect how systemic and institutional discrimination operates. Muslim women in MWA's services frequently report exclusionary experiences with police, courts, healthcare providers, and educational institutions, not always through direct denial, but through cumulative signals that their presence is unwelcome, their needs misunderstood, or their values disrespected. Under the current framework, these experiences rarely meet the legal definition of discrimination, despite the real-world harm they cause.

For the Act to be effective in protecting Muslim women, it must therefore:

- Adopt a test of "unjustifiable disadvantage" in place of "not reasonable in the circumstances" for indirect discrimination.
- Explicitly recognise intersectional discrimination, including through examples in the Act and supporting guidelines that reflect the lived experiences of women whose identities do not fit neatly into a single category.
- Allow for systemic discrimination claims, so that the cumulative impact of institutional practices can be challenged even when no single incident reaches the current threshold.

The aim of anti-discrimination legislation should be not only to penalise individual acts of bias, but to redress the structural conditions that allow such bias to flourish. Until the Act evolves to recognise and respond to the complex realities of discrimination as experienced by Muslim women, it will continue to fall short of its purpose.

#### **4.2. Protected Attributes**

MWA strongly supports the expansion and clarification of the protected attributes under the Anti-Discrimination Act 1977 (NSW), particularly through the explicit inclusion of religion as a standalone protected attribute. The current omission leaves a significant gap in legal protection and undermines the lived reality of Muslim women, for whom discrimination is often rooted in religious identity, especially when visibly expressed through clothing, practice, or association.

NSW remains the only Australian state or territory without comprehensive protections against religious discrimination in its anti-discrimination legislation. This is not a neutral oversight. It leaves visibly Muslim women disproportionately exposed to discrimination across multiple domains of public life including employment, education, healthcare, service provision, and access to public spaces, without a clear or reliable avenue for redress.

This absence is especially harmful in the current social climate, where Islamophobia, as noted earlier, is both rising and increasingly normalised. Most of these incidents occurred in public spaces, but a significant portion also took place in workplaces and educational institutions, places currently covered by anti-discrimination protections, but not fully accessible without recognition of religion as a ground.

The intersection of religion with gender and race means that Muslim women are particularly exposed. Their experiences are shaped not just by their religious beliefs, but by the way those beliefs are perceived through a gendered and racialised lens. A visibly Muslim woman may be seen as foreign, submissive, or politically threatening, all at once. These harmful stereotypes are compounded in employment and service contexts, where employers or providers may claim cultural “fit” or operational neutrality as justification for exclusion.

Without explicit protection for religious identity, these cases remain unchallenged, allowing discrimination to be rationalised rather than redressed.

MWA also supports the retention and strengthening of existing protected attributes, particularly sex, gender identity, and race, which remain vital for Muslim women. However, it is not enough to protect each attribute in isolation. The law must be capable of recognising when harm arises at their intersection. A Muslim woman should not have to choose whether to lodge a complaint based on her race, religion, or gender when all three are implicated. The absence of intersectional recognition creates both procedural and substantive injustice.

Accordingly, MWA recommends that Section 4 be amended to:

- Explicitly list “religious belief and practice” as a protected attribute, defined broadly enough to include both belief and manifestation (e.g. dress, prayer, dietary practices).
- Include guidance or examples that reflect intersectional discrimination, such as instances where a person is treated less favourably because of the interaction between their religion and gender.
- Ensure alignment with Commonwealth legislation, to avoid gaps or conflicts between state and federal protections and to support a consistent national standard.

For Muslim women, religious identity is not merely personal it is social, visible, and political. Its exclusion from the list of protected attributes sends a message that faith-based discrimination is not serious or worthy of redress. If NSW is to claim a contemporary and inclusive anti-discrimination framework, this omission must be corrected.

### **4.3. Areas of Public Life**

MWA supports the continued inclusion of key areas of public life in the Anti-Discrimination Act 1977 (NSW) including employment, education, accommodation, and the provision of goods and services, but urges that these domains be both clarified and expanded to better reflect the lived realities of Muslim women. For anti-discrimination protections to be meaningful, the scope of the Act must align with where discrimination actually occurs.

MWA's extensive frontline work reveals that Muslim women encounter discrimination across a broad range of public-facing environments yet many of these settings are not clearly or comprehensively addressed in the current legislative framework. Without clarity or explicit coverage, discrimination remains unchallenged, or worse, is normalised.

### *Employment*

In employment settings, Muslim women are often denied opportunities for advancement, excluded from leadership positions, or face heightened scrutiny for their religious or cultural expression. For example, women wearing the hijab report being told, directly or subtly, that they are “not a good fit” for the workplace. Others report being bypassed for client-facing roles, being asked to modify their dress or appearance, or being subject to workplace hostility due to assumptions about their beliefs.

These exclusions are often rationalised under the guise of workplace culture or customer comfort, rather than recognised as discrimination. The Act must make clear that such rationalisations are not legitimate bases for unequal treatment. MWA supports legislative examples and guidance that illustrate how discrimination may occur in recruitment, promotion, team integration, and workplace culture, not just in overt hiring decisions.

### *Education*

In educational institutions, Muslim women, particularly younger women, report experiences of alienation, harassment, or institutional neglect when they seek religious accommodations or present as visibly Muslim. Requests for modest dress in sports uniforms, prayer space access, or flexibility during Ramadan fasting periods are often treated as unreasonable disruptions. Students are forced to choose between participation and identity, with discriminatory attitudes reinforced through peer and staff behaviour.

MWA has also noted the rise in Islamophobic incidents in schools and tertiary settings following media coverage of global or national events. In such moments, visibly Muslim

students are targeted or expected to “explain” political developments. The Act must provide clear protections in educational settings that recognise discrimination may be both structural and episodic, and that cultural or religious exclusion can occur even when policies appear neutral.

### *Accommodation and Services*

Discrimination in accommodation continues to affect Muslim women, particularly those from migrant or refugee backgrounds, who report being denied rentals, facing exploitative conditions, or being subjected to racial and religious profiling by real estate agents. This is especially acute for women escaping domestic violence, where urgent housing is needed, and landlords or providers may express discomfort or suspicion when women present with children, limited English, or visibly Muslim appearance.

In service provision, barriers include both overt denial and more insidious forms of exclusion, such as:

- Lack of cultural safety in healthcare settings;
- Faith-blind delivery of domestic violence or homelessness services;
- Poor interpreter access;
- Ignorance or hostility toward faith-based needs (e.g. halal food, privacy for health consultations, gender-concordant practitioners).

MWA’s experience delivering services demonstrates that discrimination is not always about refusal—it can be about the failure to understand and respond. In some cases, services may technically be “available” but remain practically inaccessible because they are not delivered in a way that is safe, respectful, or inclusive.

### Expanding the Act’s Reach

To address these gaps, MWA supports the Act being expanded or clarified to:

- Cover all areas of public life where people engage with institutions, systems, and services;

- Include specific references to emerging areas, such as algorithmic or AI-based decision-making (e.g. rental screening tools or recruitment platforms that inadvertently discriminate);
- Ensure that public authorities delivering outsourced or contracted services (including through community sector organisations) are also bound by anti-discrimination obligations;
- Recognise the indirect forms of exclusion that result from monocultural policies or assumptions of “secular neutrality” that disadvantage people with religious and cultural needs.

In short, discrimination occurs not only when access is denied, but when systems fail to accommodate difference. If the Act is to fulfil its purpose, it must reflect how Muslim women actually navigate public life, not as abstract legal subjects, but as members of communities who must constantly negotiate belonging, safety, and recognition.

#### **4.4 Religious and Faith-Based Exceptions**

The preservation of religious and faith-based exceptions within the Anti-Discrimination Act is of critical importance to MWA. As a community-based, faith-informed organisation that has supported Muslim women for over four decades, MWA recognises the vital role that religious freedom plays in enabling culturally and spiritually safe services, in shaping identity, and in allowing faith-based organisations to operate with integrity in line with their values and mission.

MWA strongly supports the retention of religious exceptions that allow religious organisations, including Muslim organisations, to make decisions about staffing, service delivery, and internal governance in accordance with their religious beliefs and ethos. These exceptions are not peripheral to anti-discrimination law; they are a necessary feature of a pluralistic society in which diverse communities are able to participate on their own terms.

For Muslim women, the existence of religiously grounded services, such as those provided by MWA, is often the only safe and accessible pathway to support, particularly in situations involving family violence, homelessness, or legal stress. Mainstream services, even where well-intentioned, frequently lack the cultural and faith literacy required to respond to Muslim women in a way that affirms both their safety and their religious identity. Attempts to narrow or remove religious exceptions would threaten the viability of these services and risk further marginalising the very women anti-discrimination law is meant to protect.

MWA acknowledges that there are legitimate concerns about the potential misuse of religious exceptions, particularly where they may be used to shield discriminatory conduct that causes harm. MWA does not support the use of religious belief to justify violence, exclusion, or the denial of fundamental dignity. However, the answer to this challenge is not to remove religious exceptions altogether, but rather to ensure that their use is subject to appropriate safeguards. This includes clear tests of good faith, proportionality, and consistency with the stated beliefs and practices of the organisation.

Crucially, any reform to the religious exceptions framework must proceed from an understanding of how such reforms would disproportionately affect minority religious communities. Large, well-resourced institutions may be able to absorb the impact of tighter legal constraints. Smaller, community-based organisations, such as those run by and for Muslims, may find themselves unable to continue operating in accordance with their values if these exceptions are weakened. In that context, reform aimed at promoting inclusion in one domain may result in the exclusion of others.

MWA therefore urges the NSW Law Reform Commission to:

- Retain existing religious and educational exceptions under the Act, with appropriate safeguards to prevent misuse.
- Ensure that any reforms acknowledge the role of religious autonomy in enabling culturally and faith-competent service delivery.
- Protect the rights of minority religious communities to establish and maintain institutions in accordance with their beliefs.

- Avoid reforms that would impose a secular model of inclusion that undermines the diversity of religious and cultural expression in New South Wales.

For Muslim women, religious freedom is not a shield for harm—it is the foundation upon which community, safety, and dignity are built. Any reform to anti-discrimination law must be approached with this in mind.

#### **4.5. Vilification**

MWA strongly supports the strengthening of vilification provisions in the Anti-Discrimination Act 1977 (NSW). The current legislative threshold, requiring that conduct incite “hatred, serious contempt or severe ridicule”, is too high to capture the widespread and insidious forms of public hostility that Muslim women face. It also fails to provide adequate deterrence or recourse for those targeted, especially in the context of rising Islamophobia and gendered hate.

Visibly Muslim women, particularly those wearing the hijab or niqab, are disproportionately targeted for public abuse, verbal harassment, and acts of intimidation. These experiences are rarely isolated. They occur in public transport, shopping centres, workplaces, educational institutions, and increasingly online. Reports collected by MWA and others in the sector consistently show that most victims of anti-Muslim abuse in Australia are women, and most incidents are perpetrated by strangers in public settings.

Despite this, the existing vilification provisions offer little protection. Victims are often told that unless the abuse includes a direct threat or incitement to violence, it does not meet the legal threshold. This fails to account for the cumulative impact of ongoing harassment, the chilling effect it has on women’s participation in public life, and the gendered nature of much anti-Muslim abuse where threats may be implicit, coded, or delivered in ways intended to intimidate without breaching the law.

The limitations of the current Act are especially apparent in the context of social media and digital vilification. Online hate campaigns targeting Muslim women, particularly public figures, advocates, and service providers, are now commonplace. These include:

- Doxxing or the publication of personal details to encourage harassment;
- Targeted trolling campaigns and death threats;
- Gendered slurs intertwined with racist and Islamophobic narratives.

Current legal protections are poorly equipped to respond to this environment. Victims are often left navigating fragmented processes through police, online platforms, or under general harassment provisions none of which are designed to address vilification rooted in religion or gendered racialisation.

MWA supports reforms that would:

- Lower the threshold for unlawful vilification to include conduct that is seriously demeaning, harassing, or humiliating particularly where it has the effect of silencing or marginalising minority voices;
- Include religion as a clearly protected ground for vilification, bringing NSW into alignment with other jurisdictions;
- Provide specific recognition of gendered vilification, particularly where religious identity is gender-expressed (e.g. through dress or public perception);
- Introduce protections against online vilification, with clear mechanisms for redress and platform accountability.

Importantly, MWA does not support the view, advanced by some parties, that stronger vilification laws unduly restrict free speech. The right to freedom of expression does not include the right to abuse, intimidate, or publicly humiliate others based on their religion, gender, or race. The current lack of protection not only silences Muslim women but emboldens those who target them. This is not a question of political disagreement, it is a question of whether the law takes their dignity, safety, and right to participate seriously.

A reformed vilification provision must centre the experiences of those most impacted, not the discomfort of those most privileged. For Muslim women to live, speak, and lead without fear, the law must offer more than words it must offer protection.

#### **4.6. Harassment**

MWA supports the introduction of a standalone provision in the Anti-Discrimination Act 1977 (NSW) prohibiting harassment across all protected attributes, including religion, sex, and race. Harassment is one of the most common forms of discriminatory conduct experienced by Muslim women but under the current Act, it remains inadequately defined, inconsistently applied, and often unaddressed.

For Muslim women, harassment is not limited to isolated incidents or overt aggression. It often takes the form of sustained microaggressions, patterned exclusion, and hostile interpersonal conduct that cumulatively create environments of fear, humiliation, or marginalisation. It is experienced across multiple domains, including workplaces, education settings, public services, and online platforms.

##### *Current Gaps in the Act*

At present, the NSW Act includes harassment provisions only in limited contexts (such as sexual harassment), leaving significant gaps in coverage. Religion-based harassment, in particular, is not explicitly prohibited. This leaves Muslim women without clear legal recourse when they are:

- Subjected to mocking or derogatory comments about their religious dress;
- Repeatedly questioned, interrogated, or singled out due to their faith;
- Made to feel unsafe or unwelcome through tone, demeanour, or exclusionary behaviour;
- Harassed in institutional settings (e.g. housing, healthcare, or legal services) where the cumulative effect is degrading or harmful.

The lack of clarity around what constitutes unlawful harassment creates both practical and psychological barriers to reporting. Many Muslim women internalise these experiences, fearing they will be dismissed as “too sensitive” or that their complaints will not be taken seriously due to prevailing stereotypes about Muslim communities.

### *Gendered and Racialised Harassment*

MWA’s casework shows that harassment is often intersectional in character. Muslim women are not just targeted as Muslims, or as women, or as people of colour but in the compounded space where these identities converge. For example:

- A woman wearing hijab is ridiculed by a colleague about “oppression” or “terrorism”;
- A university student is repeatedly challenged by her lecturer for referencing faith in assignments;
- A client service worker asks invasive personal questions about marriage or family roles during intake.

These examples may not rise to the level of vilification or outright discrimination under current definitions, yet they create harmful environments that limit participation, erode confidence, and reinforce power imbalances.

### *Online Harassment*

Online harassment, particularly via social media and digital platforms, is a growing concern. MWA staff and community advocates, especially those speaking publicly on gender, faith, or social justice, are often targeted with coordinated trolling, abuse, and intimidation. Much of this is gendered and faith-based, with threats or slurs invoking both Islamophobic and misogynistic tropes. These digital attacks have real-world consequences: women reduce their public engagement, censor themselves, or disengage from civic participation altogether.

The Act currently offers no meaningful remedy for this form of harm, despite its growing impact on public safety and democratic inclusion.

### *Recommendations*

MWA supports the following legislative reforms:

- Introduce a clear, standalone prohibition on harassment applicable to all protected attributes, including religion, sex, race, and gender identity;
- Define harassment to include conduct that offends, humiliates, intimidates, or degrades, taking into account the cumulative effect of repeated conduct or patterned behaviour;
- Recognise the intersectional nature of harassment, particularly for Muslim women;
- Extend the definition to cover online and digital spaces, with mechanisms for addressing harassment in public discourse, institutional communications, and service delivery;
- Include clear guidance and examples to assist organisations in identifying and preventing harassment in workplace, educational, and service settings.

Such reforms would provide not only legal clarity but symbolic recognition: that Muslim women's safety, dignity, and full participation are valued by the legal system. Harassment may be subtle or informal—but its effects are deeply structural. A modern anti-discrimination regime must name it, address it, and protect against it.

#### **4.7. Positive Duty**

MWA supports the introduction of a positive duty in the Anti-Discrimination Act 1977 (NSW) requiring organisations to proactively prevent discrimination, harassment, and vilification. While individual complaints mechanisms remain necessary, they are reactive by design and place the burden of enforcement on those already harmed. A positive duty

framework shifts responsibility toward institutions, recognising that cultural change and inclusion require systemic effort, not just redress after the fact.

This reform is particularly critical for Muslim women, whose experiences of discrimination are often:

- Intersectional, occurring across multiple dimensions of identity;
- Cumulative, involving repeated, low-level exclusions that are difficult to prove in isolation;
- Normalised, especially in environments that view cultural or religious expression as problematic, irrelevant, or disruptive.

A complaints-based system fails to capture these dynamics. It assumes that individuals have the time, resources, and psychological safety to lodge complaints, and that such complaints will be dealt with impartially. MWA's experience shows this is rarely the case, particularly for women who face language barriers, institutional mistrust, or fear of retaliation.

### *The Case for Positive Duty*

A positive duty would legally require public, private, and community sector organisations to:

- Take reasonable and proportionate steps to eliminate discrimination, harassment, and vilification;
- Implement policies, training, and monitoring mechanisms that foster inclusive and respectful environments;
- Regularly assess their practices, systems, and culture for bias or exclusion;
- Be accountable not just for conduct, but for conditions that enable harm.

Such a duty already exists under the Sex Discrimination Act 1984 (Cth) following recent amendments and is in place in Victoria under the Equal Opportunity Act 2010. NSW risks falling behind unless similar reforms are adopted.

### *Community-Based Implementation Models*

MWA urges that implementation of a positive duty must:

- Be co-designed with affected communities, including culturally and linguistically diverse women;
- Recognise that change is contextual, what inclusion looks like in a Muslim women's refuge is not the same as in a corporate boardroom;
- Allow for sector-specific tools and frameworks, not just generic compliance templates.

### *Support, Not Just Compliance*

MWA also stresses that any positive duty framework must be accompanied by:

- Capacity building, especially for small and community-run organisations;
- Clear regulatory guidance that distinguishes between genuine efforts and tokenistic compliance;
- A supportive, educative approach to enforcement that builds trust and collaboration, not fear.

Muslim women's rights to inclusion and safety should not depend on whether they feel able to fight back. A positive duty creates the conditions where harm is prevented, rather than merely punished. It repositions anti-discrimination law as a tool for building equitable systems not just for managing complaints. MWA welcomes this shift and encourages its bold, inclusive implementation.

## **5. Summary of Recommendations**

MWA makes the following recommendations to the NSW Law Reform Commission as part of its review of the *Anti-Discrimination Act 1977 (NSW)*:

### **Section 3 – Definitions and Tests of Discrimination**

- Replace the current indirect discrimination test (“not reasonable in the circumstances”) with a test based on unjustifiable disadvantage, as used in Victoria and other modern frameworks.
- Explicitly recognise intersectional discrimination in both the Act and associated guidance material, including examples relevant to faith, gender, and race.
- Permit claims of systemic discrimination, particularly in institutional settings where cumulative exclusion occurs.

### **Section 4 – Protected Attributes**

- Include religious belief and practice as a standalone protected attribute, defined to cover both internal beliefs and outward expressions (e.g. clothing, prayer, dietary observance).
- Retain and strengthen existing attributes (sex, race, gender identity), ensuring the law can respond to their combined effect in lived experience.

### **Section 6 – Areas of Public Life**

- Ensure continued coverage of key areas such as employment, education, service provision, housing, and accommodation, and explicitly recognise modern and emerging contexts (e.g. digital services, algorithmic decision-making).
- Extend obligations to contracted service providers and public authorities, including in community and government-funded services.
- Clarify that services must be culturally and religiously safe, not merely technically available.

## **Section 7 – Religious and Educational Exceptions**

- Retain religious and educational exceptions to allow faith-based organisations to operate in accordance with their beliefs and mission, including in staffing and service delivery.
- Introduce safeguards to ensure exceptions are applied in good faith, are proportionate, and are aligned with the organisation’s publicly stated ethos.
- Avoid reforms that would indirectly disadvantage minority faith-based organisations, such as those providing culturally and religiously safe services to Muslim women.

## **Section 8 – Vilification**

- Lower the threshold for unlawful vilification to include conduct that seriously demeans, humiliates, or harasses, not just incitement to hatred.
- Include religion as a protected ground for vilification, consistent with other attributes.
- Recognise and explicitly include gendered and online vilification, with enforcement tools that address modern modes of abuse.

## **Section 9 – Harassment**

- Introduce a standalone prohibition on harassment across all protected attributes.
- Define harassment to include conduct that is offensive, humiliating, degrading, or intimidating, including repeated or cumulative acts.
- Acknowledge the intersectional, gendered, and racialised nature of harassment against Muslim women.
- Extend protections to cover online and institutional contexts, with relevant examples and guidance.

## **Section 11 – Positive Duty**

- Introduce a positive duty requiring organisations to take proactive steps to prevent discrimination, vilification, and harassment.

- Ensure duty implementation is contextualised allowing for community-led and culturally safe approaches.
- Provide capacity-building and educative support to organisations, particularly those in the community and not-for-profit sectors.
- Align with recent Commonwealth reforms and best practice frameworks from other jurisdictions.

## **6. Conclusion**

MWA submits this contribution to the review of the *Anti-Discrimination Act 1977 (NSW)* as both a frontline service provider and a national advocate for the rights and dignity of Muslim women. The Act in its current form does not adequately reflect the lived experiences of those most affected by discrimination particularly women who sit at the intersection of religion, race, gender, and cultural identity.

Discrimination against Muslim women is not always overt. It is embedded in the structures of public life, reinforced through institutional responses, and compounded by legal frameworks that fail to name or address it. Without clear protection for religious identity, recognition of intersectional harm, or a legal duty on institutions to act preventively, the promise of equality remains out of reach.

This review presents an opportunity to bring the law into alignment with contemporary understandings of justice, safety, and inclusion. But more than that, it offers the chance to ensure that Muslim women, and all communities affected by exclusion, are not only seen by the law, but protected by it.

MWA urges the Commission to adopt reforms that are principled, practical, and grounded in the realities of those most at risk of harm. The voices of Muslim women, long overlooked in legal and policy reform, must be central to the next chapter of anti-discrimination law in New South Wales.