



Periyar Ambedkar Thoughts Circle Australia

19 April 2024

The Law Reform Commission
Locked Bag 5000,
Parramatta NSW 2124.

By email : nsw-lrc@dcj.nsw.gov.au

Dear Secretary,

Subject: Proposal to Amend Section 93Z of the Crimes Act 1900 (NSW) to Include Caste as a Protected Characteristic

I am writing to you in my capacity as the Vice President of the Periyar Ambedkar Thoughts Circle of Australia (PATCA), an organisation dedicated to combating caste discrimination and promoting equality and justice for all.

PATCA works actively to raise awareness about caste discrimination, empower marginalised communities, advocate for necessary legal and policy changes, and engage in dialogue with key stakeholders to foster understanding and collaboration.

Please find attached to this letter, our proposal seeking an amendment to Section 93Z of the Crimes Act 1900 (NSW) to explicitly include caste as a protected characteristic under the legal definition of "race."

As detailed in our attached proposal, we believe this amendment is crucial for several reasons:

- 1. Evolving Understandings of Racial Identities:** Our legal framework must evolve to reflect current understandings of racial identities and the dynamics of discrimination both nationally and internationally. Recognising caste as a part of these identities will ensure our laws are contemporary and relevant.



Periyar Ambedkar Thoughts Circle Australia

2. **Changing Demographics and Societal Needs:** The South Asian diaspora in Australia, a significant and growing part of our community, experiences caste discrimination. It is essential that our legislation adapts to meet the needs of our diverse population by acknowledging and addressing such forms of discrimination.
3. **Alignment with National Anti-Racism Frameworks:** According to the Australian Human Rights Commission National Anti Racism Scoping Framework Report 2022 (AHRC-NARF), caste racism is an intersectional form of discrimination that intersects with multiple identity factors such as skin colour, religion, and ethnicity. The report emphasises that caste discrimination is not reducible solely to these factors and must be addressed directly.
4. **Addressing Structural Invisibility of Caste Racism and Its Consequences :** The AHRC-NARF report highlights the structural invisibility of caste discrimination, which perpetuates social isolation and marginalisation of caste-oppressed communities.

This invisibility extends to various aspects of daily life, including access to housing, education, services, and community participation, notably in religious activities. Caste discrimination can significantly impede participation in religious activities, particularly within communities where social stratification influences access to religious spaces and rituals.

This lack of visibility makes it easier for such discriminatory practices to persist unnoticed and unchallenged, further entrenching the marginalisation and social isolation of these communities.



Periyar Ambedkar Thoughts Circle Australia

In light of these points and in accordance with the terms of reference provided by the NSW Law Reform Commission, we strongly advocate for the inclusion of caste as a protected characteristic in Section 93Z of the Crimes Act 1900 (NSW).

This amendment will not only enhance our legal tools to combat discrimination but also reflect Australia's commitment to a fair, just, and inclusive society.

We are ready to provide further information, get the opinion of legal experts like Professor Beth Gaze, engage in discussions, or participate in hearings to support this vital amendment. Thank you for considering this proposal. We look forward to your positive response and to contributing to the shaping of legislation that meets the diverse needs of our evolving multicultural society.

Yours sincerely,



Dr. Haroon Kasim

Vice President

Periyar Ambedkar Thoughts Circle of Australia (PATCA)

Email : 

**SUBMISSION FOR THE LAW
REFORM COMMISSION'S REVIEW
OF THE CRIMES ACT 1900 (NSW)**

*Seeking Inclusion of Caste as a Protected
Characteristic Under Section 93Z*



PERIYAR AMBEDKAR THOUGHTS CIRCLE OF AUSTRALIA

Periyar Ambedkar Thoughts Circle of Australia (**PATCA**) is committed to combating caste discrimination and promoting equality and justice for all.

PATCA works on multiple fronts, including promoting education and awareness about caste discrimination, empowering marginalised communities, advocating for legal and policy changes, and fostering dialogue and collaboration with key stakeholders.

Contributing Authors

1. *Mrs. Sumathy Vijayakumar, General Secretary, PATCA.*
2. *Dr. Haroon Kasim. Vice President, PATCA.*
3. *Dr. Anna. Mahizhnan. President, PATCA.*
4. *Mr. Ponraj Thangamani. Executive Committee Member, PATCA.*

TABLE OF CONTENTS

Introduction	4
The impact of caste racism on the NSW community	5
Alignment with National and International Definitions	6
<i>International Examples</i>	6
<i>National Examples</i>	6
<i>Local Adaptations Reflecting Societal Changes:</i>	6
Absence of Civil Vilification Provisions in the Anti-Discrimination Act 1977	8
Impact on freedoms, including freedom of religion	9
The need to promote community cohesion and inclusion	10
Views of relevant stakeholders	12
Conclusion	13

Introduction

This submission proposes an amendment to Section 93Z of the Crimes Act 1900 (NSW) to explicitly include caste as a protected characteristic under the legal definition of "race."

This amendment is essential for updating our laws to reflect the evolving understandings of racial identities and discrimination dynamics both nationally and internationally.

Such an amendment will also address the evolving societal needs from the changing demographics and the prevalence of caste discrimination within the South Asian diaspora in Australia, ensuring that our legislation keeps pace with the diversity of our population.

Moreover, this proposal aligns with the Australian Human Rights Commission National Anti Racism Scoping Framework Report 2022 (**AHRC-NARF**)¹, which acknowledges casteism as an intersectional form of discrimination and notes that is not reducible separately to factors such as skin colour, religion, gender, ethnicity, nationality, ancestry/descent, work or occupation.

Additionally, the AHRC-NARF acknowledges the **structural invisibility** of caste racism, which continues to perpetuate caste discrimination and contributes to the ongoing marginalisation and social isolation of caste oppressed communities in NSW.

It is, therefore imperative to explicitly recognise caste as a protected category within anti-discrimination laws and policies to effectively address and mitigate its impacts.

In the following sections, we refer to the terms of reference provided by the NSW Law Reform Commission and advocate for an amendment to Section 93Z of the Crimes Act 1900 (NSW) to explicitly include caste as a protected characteristic and meet the diverse needs of our evolving multicultural society.

¹ Australian Human Rights Commission released its National Anti-Racism Framework 2022. <https://humanrights.gov.au/our-work/race-discrimination/publications/national-anti-racism-framework-scoping-report>

The impact of caste racism on the NSW community

The observations made by the Australian Human Rights Commission through the National Anti-Racism Framework (AHRC-NARF) clearly highlight the pervasive and insidious nature of caste-based racism.

By recognising that caste discrimination impacts a wide array of fundamental rights—including civil, political, social, economic, and cultural spheres—the necessity for legal protections against such discrimination becomes evident.

Caste racism not only influences personal interactions but is also deeply ingrained in institutional behaviours and structural norms, leading to entrenched social and economic exclusion and inequality.

The consequences of this form of discrimination are profound, affecting access to housing, education, services, and community participation, including religious activities.

Furthermore, the **structural invisibility** of caste racism, continues to perpetuate caste discrimination and contributes to the ongoing marginalisation and social isolation of affected communities.

These outcomes starkly illustrate how caste discrimination systematically undermines the principles of equality and social justice, fundamental to a fair and inclusive society.

The amendment of Section 93Z to **explicitly** include caste under its definition of "race" would thus not only address a current legal gap but also enhance the protective measures against all forms of racial discrimination, promoting a more inclusive and just society.

Alignment with National and International Definitions

International Examples

- **Seattle:** In February 2023, Seattle became the first U.S. jurisdiction to recognise caste as a protected characteristic, setting a precedent for legislative changes in other regions with significant diaspora populations
- **Academia and Technology:** Prominent educational institutions like Brandeis ² and California State ³ Universities, along with global corporations such as Apple⁴, have already incorporated caste as protected characteristic into their anti-racism policies, demonstrating a broad and growing international consensus on the matter.

National Examples

- **Australian Human Rights Commission National Anti Racism Framework 2022 (AHRC- NARF) :** The AHRC-NARF highlights the severe and wide ranging impacts of caste discrimination and its structural invisibility within current legislation. The Framework supports the explicit recognition of caste as a protected category, indicating a clear national directive for legal reforms to address these issues.

Local Adaptations Reflecting Societal Changes:

- **City of Monash ⁵ :** This locality, known for its diverse multicultural population, including those potentially affected by caste-based discrimination, has recognised caste as a protected characteristic. This local policy adaptation is pivotal and exemplifies the necessary response to societal changes at a larger scale.

² Adding Caste to Our Non-Discrimination and Harassment Policy. <https://www.brandeis.edu/president/letters/2019-12-17-adding-caste-to-our-nondiscrimination-harassment-policy.html>

³ All Cal State universities add caste to anti-discrimination policy. <https://www.nbcnews.com/news/asian-america/cal-state-schools-add-caste-anti-discrimination-policy-rcna12602>

⁴ As Big Tech grapples with caste-based discrimination, Apple explicitly bans it. <https://arstechnica.com/tech-policy/2022/08/indian-workers-allege-casteism-in-big-tech-question-discrimination-policies/>

⁵ 8.1 NOTICE OF MOTION - DISCRIMINATION BY CASTE. <https://www.monash.vic.gov.au/files/assets/public/v/1/about-us/council/agendas/2024/26-march/8.1-notice-of-motion-discrimination-by-caste.pdf>

The City of Monash asserts that including caste alongside race and religion in anti-discrimination policies is crucial for effectively addressing caste-based racism. A protected characteristic, akin to race and religion, is essential for addressing caste-based racism.

Furthermore, they have noted that there is no substantial legal or social reason to justify the exclusion of caste from other characteristics already protected under their policies and plans, reinforcing the necessity for its inclusion.

The inclusion of caste as a protected characteristic under Section 93Z of the Crimes Act 1900 (NSW) is not only a reflection of changing demographics and evolving social norms but also a crucial step in ensuring our legal frameworks are comprehensive and inclusive.

There is no substantial legal or social basis to exclude caste from protections afforded to other characteristics such as race, colour, nationality, and descent.

Recognising caste officially under the Crimes Act would address the gaps in protection for those facing caste racism and align NSW law with both national priorities and global trends.

Absence of Civil Vilification Provisions in the Anti-Discrimination Act 1977

Currently, the Anti-Discrimination Act 1977 does not include specific provisions against caste discrimination, which leaves many vulnerable to both subtle and overt acts of exclusion and harassment, without sufficient legal protection.

The Coalition Against Caste Discrimination⁶ has recently made a submission to the Law Reform Commission to advocate for the recognition of caste as a protected characteristic.

This move highlights a growing recognition within the community and among civil society groups about the significant effects of caste discrimination on individuals in Australia, particularly those from the South Asian diaspora.

By amending Section 93Z of the Crimes Act 1900 (NSW) to explicitly include caste under its definition of "race", we can create a unified and thorough legal framework that effectively addresses all forms of racial discrimination, thereby bridging existing legislative gaps.

⁶ COALITION AGAINST CASTE DISCRIMINATION Submission 29th September 2023 https://lawreform.nsw.gov.au/documents/Current-projects/ada/preliminary_submissions/PAD28.pdf

Impact on freedoms, including freedom of religion

Caste discrimination can significantly impede participation in religious activities, particularly within communities where social stratification influences access to religious spaces and rituals.⁷

Individuals from lower caste backgrounds often face restrictions and are sometimes outrightly barred from participating in religious ceremonies, entering places of worship and denied employment in temples.

The **structural invisibility** of caste compounds these issues, as it often goes unrecognised and unaddressed within legal and social frameworks. This lack of visibility makes it easier for such discriminatory practices to persist unnoticed and unchallenged, further entrenching the marginalisation and social isolation of these communities.

The exclusion based on caste in religious settings is not merely a matter of social discrimination; it often escalates into active vilification and harassment, which can have severe psychological and social consequences for the individuals involved.

By failing to protect against this form of discrimination, the current legal framework allows these practices to persist unchallenged, contributing to a cycle of exclusion and marginalisation.

Amending Section 93Z of the Crimes Act 1900 (NSW) to **explicitly** include caste under its definition of "race" is essential.

Such an amendment would address the **structural invisibility** of caste racism and extend protections to ensure that individuals are not discriminated against on the basis of caste in religious, social, or public spheres.

This would help safeguard the right to participate fully in religious practices and promote inclusivity, reflecting the diverse and of. reality of modern Australia.

⁷ International Dalit Solidarity Network, Caste-based Discrimination in South Asia: Situational Overview, Responses and Ways Forward (Report, June 2009) 1, 3–4 https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/EU/EU_Study_Caste_Discrimination_merged_April2010.pdf

The need to promote community cohesion and inclusion

Community cohesion and inclusion are fundamental principles that support a healthy, functioning society. In NSW, as in many parts of the world, these principles are essential for ensuring that all individuals, regardless of their background, can contribute to and benefit from the broader community.

The current framework of Section 93Z of the Crimes Act 1900 (NSW), which does not include caste as a protected characteristic under its definition of "race," inadvertently allows for a gap through which caste-based discrimination can undermine these principles.

Caste-based discrimination can lead to social fragmentation by segregating communities and limiting interactions across different social strata. This segregation not only hinders social mobility but also deepens existing inequalities and promotes environments where prejudices can flourish unchecked.

The **structural invisibility** of caste racism exacerbates these problems by ensuring that such discriminatory practices remain largely unseen and unaddressed within mainstream societal and legal structures.

This invisibility allows caste-based segregation and its consequent social inequalities to persist without adequate scrutiny or challenge, thereby perpetuating a cycle of exclusion and disadvantage for affected communities.

Such division is detrimental to the concept of community cohesion and contradicts the very notion of inclusive community development.

Amending Section 93Z to **explicitly** encompass caste within the definition of "race" will bridge this legal gap, thereby enhancing protections against discrimination and promoting greater social integration.

This amendment is crucial for a number of reasons:

1. **Equal Participation:** It ensures that individuals from all caste backgrounds can participate equally in social, economic, employment and cultural activities, which is essential for true community cohesion.
2. **Prevention of Social Exclusion:** By **explicitly** acknowledging and protecting against caste racism, the amendment would prevent the social exclusion of certain groups within the community, fostering a more inclusive society where no individual is marginalised.
3. **Reduction of Prejudice:** Explicit legal recognition and protection can lead to increased awareness and understanding, which are critical for reducing long-standing prejudices and misconceptions associated with caste.
4. **Harmonious Society:** Inclusive legal protections contribute to building trust and mutual respect among community members, leading to a more harmonious and integrated society.

By amending Section 93Z of the Crimes Act 1900 (NSW) to **explicitly** include caste within the definition of "race", the legislation would not only align with modern social values and human rights standards but also actively promote the ideals of community cohesion and inclusion.

This step would signify a commitment to addressing all forms of racial discrimination, ensuring that NSW remains a leader in fostering a just, equitable, and inclusive community.

Including caste as a protected characteristic under Section 93Z is therefore crucial for fostering social inclusion and cohesion.

Recognising and legally protecting caste-oppressed communities will help combat social exclusion and enhance the collective societal fabric of multicultural society.

Views of relevant stakeholders

Professor Beth Gaze, an esteemed legal expert at the University of Melbourne, and former race discrimination commissioner Chin Tan have noted the profound impact of caste racism and highlighted an urgent need to explicitly recognise caste within our anti-racism legislation to address and mitigate its effects effectively.⁸

Professor Gaze, highlights the growing concern of caste discrimination in Australia, particularly due to the increasing size of the subcontinental community. She stresses that failing to address caste discrimination may hinder the effectiveness of broader anti-racism initiatives.

Professor Gaze advocates for explicitly recognising caste as a protected characteristic under the existing definition of "race" in anti-discrimination laws.

The necessity to tackle caste discrimination is further emphasised by Australia's Former Chin Tan, the race discrimination commissioner, who deems any form of discrimination, including that based on caste, as completely unacceptable.

By amending the definition of "race" in Section 93Z of the Crimes Act 1900 (NSW) to explicitly include "caste" as a protected characteristic, New South Wales will align with the insights of experts such as Professor Beth Gaze and former race discrimination commissioner Chin Tan.

This adjustment will enhance the state's capacity to safeguard all residents against discrimination and serve as a testament to the state's commitment to fostering an inclusive and just society.

⁸ A disease': Caste discrimination in Australia is on the rise – but some are fighting back. <https://www.theguardian.com/australia-news/2023/feb/18/a-disease-caste-discrimination-in-australia-is-on-the-rise-but-some-are-fighting-back>

Conclusion

In conclusion, the suggested amendment to Section 93Z of the Crimes Act 1900 (NSW) to explicitly include caste as a protected characteristic under the definition of "race" is both crucial and timely.

This amendment will align New South Wales with national and international anti-discrimination standards, addressing the evolving societal needs brought about by demographic changes, especially the growth of the South Asian population and the rising issue of caste discrimination within these communities.

The adoption of this amendment would ensure equitable access to housing, education, services, and community engagement, thereby enhancing community cohesion and affirming a commitment to inclusivity.

This change will also tackle the intersection of caste discrimination with religious freedoms, safeguarding against discriminatory practices that could infringe on religious rights.

Furthermore, this proposal is supported by the Australian Human Rights Commission's National Anti Racism Scoping Framework Report 2022 (AHRC-NARF), which identifies casteism as an intersectional discriminating factor that remains structurally invisible, perpetuating discrimination and contributing to the ongoing marginalisation and social isolation of these communities.

Noted experts such as Professor Beth Gaze and former race discrimination commissioner Chin Tan have emphasised the pressing need for this legal safeguard, underlining the importance of these comprehensive protections.

By implementing this amendment, NSW would not only foster greater community unity and protect religious freedoms but also reinforce its dedication to building an equitable society, thus maintaining its status as a leader in human rights and social justice during a time of significant societal shifts.