

Submission on measures to prohibit slogans that incite hatred

January 2026

Acknowledgement of Country

Anti-Discrimination NSW acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this document.

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Submission on measures to prohibit slogans that incite hatred

Anti-Discrimination NSW thanks the Legislative Assembly Committee on Law and Safety for inviting submissions in response to its inquiry into the use of slogans that are directed at certain communities and instil fear of violence (**the Inquiry**).

About Anti-Discrimination NSW

Anti-Discrimination NSW (**ADNSW**) administers the *Anti-Discrimination Act 1977 (ADA)* which makes it unlawful to discriminate in specified areas of public life against a person on grounds which include their sex, race, age, disability, homosexuality, marital or domestic status, transgender status, and carer's responsibilities. Sexual harassment, as well as vilification on the grounds of race, transgender status, religion, homosexuality and HIV/AIDS is also unlawful certain grounds.

ADNSW also administers the civil response scheme in the *Conversion Practices Ban Act 2024 (NSW)* which prohibits conversion practices that are directed to a person to change or suppress the person's sexual orientation or gender identity.

ADNSW works to eliminate discrimination in NSW by:

- answering enquiries
- resolving complaints
- raising awareness about discrimination and its impacts
- managing applications for exemptions from the ADA
- advising the government about discrimination issues
- administering the civil complaints scheme under the *Conversion Practices Ban Act*.

The ADA is currently under review by the NSW Law Reform Commission. ADNSW made a submission to the Commission's first consultation paper, which focused on the conduct prohibited by the ADA, including discrimination, vilification, sexual harassment and victimisation, in August 2025, a copy of which is available on the Commission's [website](#). The Commission is expected to release a second consultation paper which will focus on enforcement and other procedural aspects of the ADA during the first half of 2026.

Scope of ADNSW's response to the Inquiry

Whilst some of the Inquiry's Terms of reference are directly relevant to the work of ADNSW, others fall outside its area of activity. Accordingly, this submission will address the following terms of reference:

- (c) The need to protect communities from hatred, intimidation and violence; and

(f) Existing offences and other measures in New South Wales and Commonwealth legislation, including offences and measures that have been announced.

Current vilification provisions in the NSW Anti-Discrimination Act

Vilification is unlawful under the ADA on the grounds of certain protected characteristics. These characteristics are race (which includes colour, nationality, descent and ethnic, ethno-religious or national origin (Part 3), transgender status (Part 3A), homosexuality (Part 4C), HIV/AIDS status (Part 4F) and religion (Part 4BA)¹.

Elements of unlawful vilification

The test for unlawful vilification under the ADA is complex and requires that a person has committed:

- a 'public act'
- which incites
- hatred towards, serious contempt for, or severe ridicule of a person or group of persons
- on the ground of a protected characteristic of the person or members of the group².

'Public act' is defined broadly and includes:

- any form of communication to the public,
- any conduct observable by the public, including actions, gestures, wearing or displaying clothing, signs, flags, emblems and insignia, and
- the distribution or dissemination of any matter to the public *with knowledge* that it promotes or expresses hatred, serious contempt, or severe ridicule of the target group.

Exceptions

The vilification provisions provide exceptions including for fair reporting of instances of vilification, for public acts, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter. Communications that would be subject to a defence of absolute privilege in proceedings for defamation are also exempt.

Civil vs criminal vilification

Prior to 2018, the ADA contained additional, criminal offences relating to serious vilification on the grounds of race, transgender status, homosexuality and HIV/AIDS status.

¹ Religious vilification provisions were inserted into the ADA by the *Anti-Discrimination Amendment (Religious Vilification) Act 2023* and came into force on 12 November 2023. Prior to this, complainants would have to establish that vilification occurred because of their ethno-religious origin, which is covered by the ADA's racial vilification provisions, and has historically only been found to apply to a limited number of ethno-religious groups.

² Anti-Discrimination Act 1977 (NSW) Section 20C (Racial vilification); 38S (Transgender vilification); 49zt (Homosexual vilification); 49ZXB (HIV/AIDS vilification) and 49ZE (Religious vilification).

These provisions were repealed upon the introduction of section 93Z of the *Crimes Act 1900* (NSW)³, which created the offence of publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status.

There is currently inconsistency between the grounds covered by the ADA and those detailed in s. 93Z of the *Crimes Act 1900* (NSW), with the result there is a gap in coverage for vilification on the grounds of sexual orientation, intersex or gender identity that does not meet the threshold for criminal conduct, as there are no directly equivalent civil vilification provisions in the ADA;

Who can complain about vilification?

All complaints made under the ADA (whether of vilification, discrimination, victimisation etc) require an allegation that a named person or persons have contravened a provision of the ADA (s. 87A). This can make it difficult for individuals to complain about discrimination or vilification from strangers, including where they are subjected to hate speech in a public place.

An additional requirement for vilification complaints is that they can only be made by a person who has the protected characteristic that was the ground for the conduct, or by another person on their behalf and with their consent (s. 88). This can create an additional barrier to people reporting the conduct, as it requires an individual who has experienced hate speech to pursue individual legal action against the perpetrator.

ADNSW regularly receives reports from people wishing to complain about communications they have received, for example, flyers from right wing extremist groups containing racial and religious slurs, but who cannot lodge a formal complaint with ADNSW because they are not a member of the targeted group.

NSW Law Reform Commission review of the ADA

The NSW Law Reform Commission is currently reviewing the ADA. In May 2025 it released a consultation paper, “*Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct*”, which focused on the conduct prohibited by the ADA, including discrimination, vilification, sexual harassment and victimisation,

ADNSW’s submission in response to that consultation supports changes to the current vilification provisions, including:

- ensuring consistency in vilification provisions in the ADA to extend coverage to include persons vilified on the ground of a presumed or imputed characteristic (currently presumed race and religion are not covered).
- expanding vilification protections to all protected attributes in the ADA, including sex and disability.

³ The *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* came into force on 13 August 2018.

- Amending the test for vilification and updating the definition of public act to include material online, livestreamed events or conferences, and to reflect NSW Civil and Administrative decisions about what constitutes a public act⁴.

The Commission is expected to release a second consultation paper which will focus on enforcement and other procedural aspects of the ADA during the first half of 2026.

Protecting all vulnerable groups

The timing of the current inquiry, in the wake of the horrific terrorist attack on Jewish people celebrating Hannukah at Bondi, suggests that the intention of the response is to protect minority religious and racial communities, and in particular the Jewish community.

ADNSW strongly supports improving protections for Jewish people from antisemitism and hate speech and also urges the Committee to ensure that *all* vulnerable groups are similarly protected from public acts of hatred. Hate speech leads to real-world harm and protections should not be limited to only certain kinds of hatred. Protections should improve the safety of all people with any protected attributes, including Muslims, the LGBTIQ+ community, and people with disability.

Other measures to eliminate discrimination and hate

Legal protections, such as the civil complaints mechanism and criminal offences described above, convey an important message that against the incitement of hatred towards vulnerable communities is not tolerated in society. However, ADNSW considers that these protections form part of a broader societal and regulatory framework. Tackling hate, and hate speech, requires a whole-of-society commitment to inclusion and equal rights, and to the prevention and elimination of discrimination through research, education and understanding. Targeted diversion programs for at-risk individuals and groups should also form part of this framework. Other measures could include:

- Funding research to understand the drivers of hate speech and vilification and what programs can be implemented to effectively address this conduct.
- Strengthening education programs about vilification and hate conduct and their rights and responsibilities under the law. ADNSW undertakes community engagement in this area, including with people from multicultural and multi-faith backgrounds, to educate communities about complaint pathways under the ADA.
- Greater investment in community-led reporting tools which provide an informal way to report incidents, where information can be used to inform appropriate policy and legal responses to instances of vilification and hate. ADNSW has an online [community](#)

⁴ ADNSW submission to the NSWLRC, submission no. AD179 <https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/submissions.html>, pages 65-70

reporting tool which allows people to report discrimination, sexual harassment and vilification, including in circumstances where the conduct may not meet the threshold for a formal complaint under the ADA, or where the affected individual does not wish to pursue such a complaint.

ADNSW is concerned that outlawing specific slogans and symbols may encourage perpetrators to instead use coded language or emojis to circumvent the law and evade detection. Social media users have used such methods to bypass AI moderation of platforms' safety and community standards rules ⁵.

Functions of the President and Anti-Discrimination Board

The President of the ADA has functions that include investigating and attempting to conciliate complaints of unlawful discrimination and vilification. Complaints are managed by staff of ADNSW under delegation from the President and, during the year 2024-25, ADNSW's Enquiries and Conciliation team answered 3,034 enquiries and received 1,945 complaints.

In addition, the Anti-Discrimination Board, which consists of 5 members including the President, has additional functions under section 119 of the ADA, which provides:

- (1) *For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may, by resolution, determine to—*
 - (a) *carry out investigations, research and inquiries relating to discrimination and in particular discrimination against a person or persons on the ground of—*
 - (i) *age,*
 - (ii) *a characteristic that appertains generally to persons of a particular age,*
 - (iii) *a characteristic that is generally imputed to persons of a particular age,*
 - (iv) *religious or political conviction,*
 - (v) *a characteristic that appertains generally to persons of a particular religious or political conviction,*
 - (vi) *a characteristic that is generally imputed to persons of a particular religious or political conviction,*
 - (vii) *mental disability,*
 - (viii) *a characteristic that appertains to persons having a mental disability or any particular mental disability,*
 - (ix) *a characteristic that is generally imputed to persons having a mental disability or any particular mental disability,*
 - (x)–(xii) *(Repealed)*
 - (xiii) *membership or non-membership of an industrial organisation, or*
 - (xiv) *a characteristic that appertains generally to membership or non-membership of an industrial organisation or a characteristic that is generally imputed to members or non-members of an industrial organisation,*

⁵ <https://www.bloomberg.com/news/newsletters/2022-10-19/emoji-help-anti-vaccine-posts-avoid-moderation-on-facebook>

- (a1) without limiting paragraph (a), carry out investigations, research and inquiries relating to discrimination or racial vilification on the referral of a matter to the Board by Multicultural NSW,
- (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights,
- (c) arrange and co-ordinate consultations, discussions, seminars and conferences,
- (d) review, from time to time, the laws of the State,
- (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality,
- (f) hold public inquiries,
- (g) develop human rights programmes and policies, and
- (h) liaise or collaborate with academics and other persons engaged in carrying out investigations, research or inquiries relating to discrimination when it considers it appropriate to do so and, for those purposes, to facilitate disclosure to those persons of information obtained under this Act.

Challenges facing ADNSW

Despite the Board's broad functions, funding for ADNSW has not kept pace with an increased demand for its services, including the state's population growth, which has significantly impacted upon its ability to deliver its statutory functions in full.

The small size of ADNSW further compounds its ability to deliver its statutory functions. As at 30 June 2025, ADNSW had 36 people employed in a range of full-time and part-time positions.

ADNSW is facing significant resourcing challenges and strongly calls for a review of and an investment into ADNSW's capacity to adequately respond to increasing levels of discrimination in our community.

Any review should consider ADNSW's:

- funding per capita in comparison to other State and Territory anti-discrimination commissions and equivalent NSW statutory agencies;
- staffing levels, and the impact of increased demand for its services, including on staff workloads;
- structure and governance, including reporting lines and grading of senior staff.

Further information

Thank you again for the opportunity to provide submissions in this process. If you have any questions or would like to discuss this matter further, please contact Jackie Lyne (Jackie.Lyne@justice.nsw.gov.au), Manager Governance and Advice.

We strive to eliminate discrimination in NSW by resolving enquiries and complaints, raising awareness about discrimination and its impacts, and taking action to influence change.

We administer the *Anti-Discrimination Act 1977 (NSW)* and the civil complaints scheme under the *Conversion Practices Ban Act 2024 (NSW)*.

Enquiries and complaints

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