

INQUIRY INTO ANTISEMITISM IN NEW SOUTH WALES

Organisation: Anti-Discrimination New South Wales

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Submission to the Inquiry into Antisemitism in New South Wales

April 2025



Anti-Discrimination
New South Wales

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.

Submission

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Submission to the Inquiry into Antisemitism in New South Wales

Anti-Discrimination NSW (**ADNSW**) thanks the NSW Legislative Council's Portfolio Committee No. 5 - Justice and Communities (the **Committee**) for inviting submissions to the Inquiry into Antisemitism in New South Wales (**NSW**).

About ADNSW

ADNSW administers the *Anti-Discrimination Act 1977* (NSW) (**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, homosexuality, HIV/AIDS and religion, is also unlawful. 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 under the ADA, and
- advising the government about discrimination issues.

The ADA is currently under review by the NSW Law Reform Commission and ADNSW has made a submission to the Commission that supports consideration being given to expanding the attributes protected under the ADA.¹

Scope of Inquiry

ADNSW would like to address the following item in the inquiry's terms of reference:

“(a) the causes underlying the increasing prevalence and severity of antisemitic incidents across the state”

ADNSW recognises a prevalence of antisemitic incidents across NSW, particularly during the ongoing conflict in the Middle East. ADNSW has received enquiries and complaints where antisemitism, including antisemitism because of the conflict, has been alleged.

Our submission is informed by the experiences reported to our Enquiries and Conciliation and Community Engagement teams, and the research and expertise of our Governance and Advice team.

Race as a protected attribute

The ADA provides protection against discrimination on the ground of race (Part 2) in areas including employment, education, the provision of goods and services, accommodation and in registered clubs. Under the ADA, race is defined as including colour, nationality, descent and ethnic, ethno-religious or

¹ Anti-Discrimination Act Review, Preliminary Submissions, Law Reform Commission, <https://lawreform.nsw.gov.au/current-projects/anti-discrimination-act-review/preliminary-submissions.html>.

national origin. None of these terms are defined in the ADA. 'Ethno-religious origin' was added as a subset of 'race' in 1994; and the government's stated intention at the time was that ethno-religious groups would include 'Jews, Sikhs and Muslims'.² Since 1994, courts and tribunals have consistently accepted Jewish and Sikhs people share 'ethno-religious origins', however, the caselaw for Muslims have been less consistent.³ This means that Jewish people experiencing antisemitism have a clear pathway to lodge complaints of race discrimination under the ADA in circumstances where Muslims experiencing Islamophobia might experience uncertainty.⁴

Racial vilification

The ADA provides protection against vilification on the grounds of race (s 20C). In November 2023, the *Anti-Discrimination Amendment (Religious Vilification) Bill 2023* also introduced prohibitions on religious vilification (Part 4BA of the ADA).

The vilification provisions in the ADA make it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of people based on a protected ground. The ADA contains a definition of 'public act' (see for example: s 20B and 49ZD) and exceptions for vilification (see: s 20C(2) and 49ZE(2)).

Under s 88 of the ADA, a vilification complaint cannot be made unless each person making the complaint has the characteristic that was the ground for the conduct that constitutes the alleged contravention or claims to have that characteristic and there is no reason to doubt the claim. The current complaint handling framework in the ADA relies on an individual affected by unlawful conduct to make a complaint against a respondent. ADNSW brings the parties together in a confidential conciliation process to try to resolve the issue in an informal and mediated way. Conciliation can result in outcomes that satisfy a complainant, such as an apology or an assurance that the conduct will not occur again. ADNSW's complaint statistics indicate that few vilification complaints are resolved through conciliation; most are either withdrawn by the complainant or terminated under the ADA. One of the limitations of conciliating vilification complaints is the lack of an ongoing relationship between the parties where parties to a complaint may be less willing to engage in a conciliation process when there is no continuing connection between them. The statistics may also reflect difficulties with pursuing a complaint under the ADA's civil vilification provisions.

Serious racial vilification

Between 1989 and 2018, the ADA contained the criminal offence of serious racial vilification under s 20D.⁵ No case involving s 20D was ever prosecuted, although ADNSW referred 34 complaints of serious vilification to the Director of Public Prosecutions (DPP) between 1998 and 2018 including some

² Parliamentary Debates (Hansard) Legislative Council, New South Wales, 4 May 1994.

³ See *Mandla v Dowell Lee* [1983] 2 A.C. 548; *Jones and Harbour Radio Pty Ltd v Trad* (EOD) [2011] NSWADTAP 19; *Jones and Harbour Radio Pty Ltd v Trad (No 2)* [2011] NSWADTAP 62. In *Jones and Harbour Radio Pty Ltd v Trad (No 2)*, the ADT Appeal Panel ruled that Muslims are an ethno-religious group protected by the ADA on cultural grounds (including ethno-religious customs such as dress), but that vigorous criticism of religious belief, without more, is not racial vilification.

⁴ In *Etemadi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 (*Ekeremaw*), the Tribunal considered the question of whether Australian Muslims are an ethno-religious group under the ADA. The term 'ethno-religious' have been given a narrow interpretation previously before in *Khan v Commissioner, Department of Corrective Services* [2002] NSWADT 131. However, the Tribunal in *Ekeremaw* preferred the wider approach of the Appeal Panel in *Jones and Harbour Radio Pty Ltd v Trad (No 2)* [2011] NSWADTAP 62 which involved a consideration of a number of factors that may be relevant to determining whether a particular group shares an ethno-religious origin. The evidence that is provided to the NSW Civil and Administrative Tribunal (NCAT) about these factors will therefore be the key issue in deciding whether or not a group shares an ethno-religious origin. This makes it difficult for ADNSW to provide clear advice to members of the public about the when the ADA applies to Muslims.

⁵ Introduced in the *Anti-Discrimination (Racial Vilification) Amendment Act 1989 (NSW)*, repealed by the *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018 (NSW)*.

allegations of serious antisemitic vilification.⁶ The lack of prosecutions may be attributed to the difficulty in establishing the elements of the offence to the criminal standard of proof.

Section 93Z was added to the *Crimes Act 1900* (NSW) in 2018, replacing the serious racial and religious vilification offences in the ADA. A person can be guilty of an offence under s 93Z if they:

- intend to incite or threaten violence by their act, or
- know that inciting or threatening violence is a possible outcome of their act, but they do the act anyway.

There have still been very few successful prosecutions under this legislation.⁷ Until 1 January 2024, any prosecutions under s 93Z needed to be approved by the DPP, which meant delays and a tendency for police to prosecute using other offences instead.

ADNSW has made submissions on the *Criminal Code Amendment (Hate Crimes) Bill 2024*, and on the effectiveness of s 93Z of the *Crimes Act 1900* in addressing serious racial and religious vilification in NSW.⁸

Enquiries and complaints of antisemitism

ADNSW gathered statistics on the number of enquiries and complaints received during the period between 1 October 2023 and 22 January 2025, and comparatively, the period between 1 October 2021 and 22 January 2023, alleging or relating to antisemitism.

ADNSW received 25 enquiries and 25 formal complaints relating to antisemitism during the period 1 October 2023 to 22 January 2025. In comparison, during the period 1 October 2021 and 22 January 2023, these figures were 6 and 8 respectively. Some of these matters were recorded across multiple categories of racial discrimination, racial vilification, religious vilification and Middle East conflict. Therefore, the total figures provided above may not match the number of individual incidents of antisemitism.

It is very unlikely that these complaint statistics reflect the actual level of unlawful behaviour that is occurring in the community, as evidence shows that only a very small proportion of affected individuals will make a formal complaint of discrimination.⁹

Community Engagement

In addition to enquiries and formal complaints, ADNSW's Community and Engagement team have engaged with community groups and organisations and received anecdotal reports on antisemitism.

Community groups and organisations have reported a significant increase of antisemitism since the 7 October 2023.

⁶ The period for which records are available.

⁷ In 2022, the NSW Attorney General reported that six people had been charged with committing an offence under section 93Z since it was introduced. Of these, two convictions in 2020 were annulled in 2021; two had charges withdrawn in 2021; and two ongoing prosecutions had been adjourned to 2023 (See: [NSW Parliament, 8694 - PROSECUTIONS UNDER S93Z OF THE CRIMES ACT](#)).

⁸ [Submission to the Senate Legal and Constitutional Affairs Committee related to the Criminal Code Amendment \(Hate Crimes\) Bill 2024](#), Anti-Discrimination NSW; [Submission on serious racial and religious vilification to the NSW Law Reform Commission review into the effectiveness of section 93Z of the Crimes Act \(NSW\)](#), Anti-Discrimination NSW; [Further submission to the NSW Law Reform Commission review on the effectiveness of section 93Z of the Crimes Act 1900 \(NSW\) in addressing serious racial and religious vilification in NSW](#), Anti-Discrimination NSW.

⁹ [Tackling the "Known Unknown": How Equality Bodies Can Address Under-Reporting of Discrimination Through Communications](#), 2012 Equinet, the European Network of Equality Bodies.

Jewish community organisations have conveyed to ADNSW a heightened sense of insecurity and fear especially in response to the increase of antisemitic incidents during the 2024-25 summer period and protests being held near Jewish communities and synagogues.

ADNSW's community stakeholders from the Jewish community have expressed concern over how police have handled certain incidents that appeared antisemitic and how the media may have portrayed these incidents by suggesting certain Muslim, Arab, and Palestinian communities may be responsible. Organisations have also expressed concern over how political leaders' comments have escalated fear and eroded trust in the community.

Jewish communities have also reported feeling unsafe due to antisemitic crimes and how the media reported those crimes, which heightened their alarm. Non-Jewish community members expressed concern and empathy, fearing that targeting one group could lead to broader racial violence or discrimination. Some community members also expressed the view that criticism of the state of Israel is distinct and separate from antisemitism.

Thank you again for the opportunity to provide a submission. If you have any questions or would like to discuss this matter further, please contact [Anti-Discrimination NSW](#) at adbcontact@justice.nsw.gov.au.

Anti-Discrimination NSW

We are committed to eliminating discrimination and promoting equality and equal treatment for everyone in New South Wales, including by resolving enquiries and complaints, raising awareness about discrimination and its impacts, and taking action to influence change.

Enquiries and complaints

Phone

Toll free number

Telephone interpreter service

Website

antidiscrimination.nsw.gov.au

Head office



Anti-Discrimination
New South Wales