Submission to the
NSW Law Reform Commission
Anti-Discrimination Act Review
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1.0 Executive Summary

This submission is made by the Islamic Sciences and Research Academy (ISRA) in response to the NSW Law Reform Commission's Review of the Anti-Discrimination Act 1977 (NSW). It addresses a legislative gap that leaves individuals vulnerable on the basis of religious belief and activity.

While the 2023 amendment to prohibit religious vilification marks an important development, NSW remains the only state or territory without explicit protections against religious discrimination across key domains of public life. The absence of an explicit prohibition against religious discrimination in the New South Wales Anti-Discrimination Act leaves an important gap in legal protections. This gap is not fully consistent with national anti-discrimination frameworks and Australia's international obligations under Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which safeguards freedom of thought, conscience, and religion.

The submission recommends:

1. Amend the New South Wales Anti-Discrimination Act (ADA) to expressly include "religious belief and activity" as a protected attribute.
2. Provide a broad and inclusive definition of "religious belief and activity" within the Anti-Discrimination Act to ensure that protections extend to both individual and communal expressions of faith.
3. Establish a clear and legally enforceable avenue of recourse for individuals experiencing religious discrimination by empowering the New South Wales Civil and Administrative Tribunal (NCAT) to hear and determine such cases.
4. Develop and issue practical guidance for employers, educators, and service providers on their obligations under the Anti-Discrimination Act in relation to religious belief and activity.
5. Implement public education initiatives to help individuals recognise, distinguish, and appropriately report instances of religious discrimination and vilification.

This review presents a timely and important opportunity to address the longstanding concern that people of faith in NSW currently lack legislative protection against discrimination on the basis of religious belief and activity. These reforms are necessary to ensure NSW's anti-discrimination framework delivers its promise of equal protection for all.

2.0 Purpose of Submission

ISRA appreciates the opportunity to contribute to the NSW Law Reform Commission's review of anti-discrimination protections in New South Wales (NSW). As one of Australia's most culturally and religiously diverse states, it is imperative that NSW's legislative frameworks reflect and respond to this diversity, ensuring that all individuals are afforded equal protection under the law.

As an organisation that primarily provides educational and community services to the Muslim community, ISRA is committed to promoting justice, equity, and inclusion. We are mindful that the current legislative gap may leave individuals vulnerable to discrimination based on religious belief and activity, particularly in critical areas such as employment, education, and the provision of goods and services.

This submission advocates for the explicit inclusion of "religious belief and activity" as a protected attribute under the *Anti-Discrimination Act 1977* (ADA), to ensure legislative consistency with other Australian jurisdictions that already provide such protections.

Since its enactment, the ADA has rightly prohibited discrimination on attributes that reflect core aspects of an individual's identity and dignity, such as age, sex, race, disability, carer's responsibilities, marital or domestic status, sexual orientation, and gender identity. Like these protected attributes, religious belief and activity are essential to the identity and lived experience of many Australians.

This submission contends that the absence of protection against religious discrimination under the ADA constitutes a significant gap in NSW's anti-discrimination framework that must be addressed through explicit legislative reform. This would uphold the principle of equal treatment under the law while affirming the state's commitment to protecting the rights of all individuals, including those who identify with a religion.

3.0 Limitations of Current Legislative Framework

As of 12 November 2023, the *Anti-Discrimination Amendment (Religious Vilification) Act 2023* came into effect, making it unlawful to engage in public acts that incite hatred, serious contempt, or ridicule on the basis of a person's belief, affiliation, activity, or lack thereof. While this amendment is a significant step forward, its scope remains limited to religious vilification. It does not extend to addressing broader discriminatory conduct, and individuals may still be subject to legal discrimination in workplaces, schools, and public services based on their religious identity. This limitation leaves a critical gap in protection that must be addressed through anti-discrimination provisions.

This gap is clearly acknowledged in the NSW Law Reform Commission's *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct* Consultation Paper (May 2025). The Paper notes that, unlike most Australian jurisdictions, the ADA does not contain a protected attribute for religious belief and activity. The only limited avenue for legal redress is through the Act's inclusion of "ethno-religious origin" under race discrimination.

This provision has been interpreted inconsistently, with some legal decisions limiting protection to individuals whose religion is linked to a particular ethnic group, rather than safeguarding all individuals on the basis of their religious identity alone. Such ambiguity makes it challenging for Anti-Discrimination NSW to provide clear guidance to the public on their legal rights, and leaves many people of faith uncertain about the extent of their protections under the law.

This gap is particularly significant for Australian Muslims, who, as a minority religious group, may face an added layer of discrimination and vulnerability, compounded by limited representation and voice in public and political spheres.

Previous court decisions have demonstrated that the current "ethno-religious origin" provision has limitations in its capacity to protect individuals from discrimination arising solely from their religious beliefs. In *Khan v Commissioner, Department of Corrective Services* (2002), for example, Mr Khan, a Muslim prisoner, argued that the prison's failure to provide halal food constituted racial discrimination.[1] In its decision, the NSW Administrative Decisions Tribunal found that Islam did not qualify as an ethno-religious identity for the purposes of the Act due to the followers' diverse ethnic backgrounds. The Tribunal required a demonstrable link between ethnicity and religion, such as those found in groups like Sikhs and Jews, who have historically been accepted as ethno-religious under Australian law.[2]

This precedent has created a substantial barrier to legal redress for many religious individuals whose religion is not tethered with a specific ethnicity. It effectively excludes groups from anti-discrimination protections unless they can demonstrate that their faith is inextricably linked to an ethnic identity. While this interpretation has directly affected Muslims in practice, the same limitation applies more broadly to members of other religious groups such as Christians, Hindus, or Buddhists, whose religious identity may not meet the ethno-religious threshold.

[1] Mareike Riedel, "Islamophobia, Racial Discrimination Law, and the Question of Self-Identification," *Identities* 32, no. 3 (2025): 454.
[2] Ibid., 447.

4.0 Case Studies of Religious Discrimination

Although NSW is home to diverse religious communities, the absence of explicit protections for religious belief and activity under the ADA continues to leave individuals, particularly Muslims, vulnerable to discrimination across various sectors. The following case studies, drawn from the Islamophobia Register Australia and published research, illustrate the scope and impact of religious discrimination affecting Muslim communities. In the most recent reporting period, NSW accounted for over 40% of all in-person Islamophobic incidents reported nationally, indicating a significant concentration of reported discrimination within the state.[3]

While three of the four case studies below reflect national data, they illustrate forms of religious discrimination that are consistent with the elevated rates of incidents reported in NSW.

Case study 1:

A woman received an informal job offer before completing the official application process, but the opportunity was withdrawn after she submitted her resume containing a photo of her wearing a hijab (Case 59-21).[4] The employer questioned how her Muslim identity would align with selling company products, expressed concerns about her modest attire, and worried about how clients would react to "someone like her." The experience left her feeling disempowered and uncertain about future employment prospects.

This case reflects how visible markers of religious identity, such as the hijab, can prompt discriminatory treatment in hiring decisions.

Case study 2:

One parent shared that their two sons were performing midday prayer (compulsory in Muslim practice) at school when a teacher interrupted them, moved their belongings, and told them to stop praying.[5] The students complied, only to be subsequently informed they were no longer permitted to pray on school grounds.

This incident highlights the vulnerability of students of faith in educational settings where no legal protections exist to uphold their right to religious expression and practice, contributing to broader exclusion and marginalisation.

[3] Susan Carland et al., "Islamophobia in Australia Report V 2023–2024," (2025): 33.
[4] Derya Iner, Ron Mason, and Chloe Smith, "Islamophobia in Australia Report-Iv (2014-2021)," (2023): 38.
[5] Carland et al., "Islamophobia in Australia Report V 2023–2024," 53.

Case study 3:

Following her conversion to Islam, a woman began wearing the hijab at work.[6] Her employer subsequently expressed discomfort and requested that she remove it. The employee lodged the complaint with Australian Human Rights Commission (AHRC), who facilitated an informal resolution. The employer eventually apologised and agreed that she could wear her hijab at work. While this was a positive outcome, the case highlights a serious limitation. The AHRC's recommendations are not legally binding, as its role is not adjudicative. If the employer had refused to accommodate her religious attire, the complainant would have no enforceable legal pathway to challenge that decision.

This case illustrates the limitations of existing processes, which rely on voluntary compliance rather than enforceable legal rights, leaving outcomes uncertain for complainants.

Case study 4:

In 2023, Campbelltown City Council issued a "stop-use" order to prohibit the Australian Muslim Welfare Centre (AMWC) in Minto, Sydney from hosting prayer gatherings.[7] It claimed that the site, approved as a community facility, was allegedly being used as a public place of worship. The AMWC rejected this characterisation, stating that prayer was only one part of the broader community activities. An independent legal review found insufficient evidence of discriminatory intent by the council and affirmed reliance on community complaints and planning compliance as grounds for the order. The case has concerned Muslim community leaders, who contend that religious practices have been unfairly targeted.

This matter signifies how the lack of explicit anti-discrimination protections can lead to regulatory outcomes that disproportionally restrict religious communities from engaging in communal observances.

In the absence of legislative protection for religious belief and activity under the ADA, individuals and communities in similar circumstances are left without valid legal recourse. These examples represent just a fraction of the many incidents that demonstrate the pressing need for clear and enforceable protections for religious expression.

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[6] Maria Bhatti, Maryam Hashimi, and Sandy Noakes, "Anti-Discrimination Laws in Australia—Are Muslim Women Protected?," *Australian Journal of Human Rights* 29, no. 1 (2023): 4.
[7] "Council Cleared of 'Discrimination' over Muslim Centre Prayer Ban," *Macarthur Chronicle (New South Wales, Australia)*, 2024/08/14/ 2024.

5.0 Protection in Other Australian Jurisdictions

A review of protections in other Australian states and territories reveals how NSW falls behind national standards. As mentioned previously, while NSW currently lacks explicit protections for religious belief and activity under the ADA, a number of other jurisdictions have defined religion as a protected attribute, and enacted legislation to prohibit religious discrimination, particularly in employment, education, and service provision.[8]

For example, the *Equal Opportunity Act 2010 (VIC)*[9] and *Anti-Discrimination Act 1991 (QLD)*[10] prohibit discrimination based on "religious belief or activity." Similar protections are included in anti-discrimination laws of the Australian Capital Territory (ACT),[11] Western Australia,[12] the Northern Territory,[13] and Tasmania.[14] South Australia[15] offers partial protection, limited to vilification based on religious appearance or dress. NSW remains the only state without explicit legislative protections for religious belief or activity.

6.0 Recommendations

1. ISRA's support for amending the ADA to include "religious belief and activity" as a protected attribute aligns with the broader stakeholder consensus identified in the Consultation Paper. This reform would bring NSW in alignment with national standards and ensure compliance with Australia's international human rights obligations, particularly Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of thought, conscience and religion.[16]
2. The Consultation Paper raises challenges around defining "religion" and "religious belief and activity." ISRA encourages the Commission to adopt a broad and inclusive definition of "religious belief and activity" that reflects both individual values and communal observance. This would ensure that protections are not limited to institutional or traditional religions but extend to all forms of religious expression and identity.

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[8] Bhatti, Hashimi, and Noakes, "Anti-Discrimination Laws in Australia—Are Muslim Women Protected?," 5.
[9] "Equal Opportunity Act 2010 (Vic)," (2010), ss 6(n), 16, 18.
[10] "Anti-Discrimination Act 1991 (Qld)," (1991), ss 7(i), 13–15.
[11] "Discrimination Act 1991 (Act)," (1991), ss 7(1)(t), 10, 11.
[12] "Equal Opportunity Act 1984 (Wa)," (1984), ss 53, 54.
[13] "Anti-Discrimination Act 1992 (Nt)," (1992), ss 19(1)(m), 31.
[14] "Anti-Discrimination Act 1998 (Tas)," (1998), ss 16(o)-(p), 22 (1)(a).
[15] "Equal Opportunity Act 1984 (Sa)," (1984), ss 85T(1)(f), 85T(7), 85V.
[16] United Nations, "General Assembly Paris 1948 Resolution 217," (1948).

3. ISRA emphasises that inclusion of religious belief and activity as a protected attribute will align the law with the principle of equal protection. Currently, individuals of faith are not afforded the same legal safeguards as those available for sex, race, disability, or sexual orientation. Religious belief, like these attributes, constitutes a core aspect of personal identity. The absence of explicit protection risks perpetuating structural disadvantage, particularly where religious identity and expression becomes a barrier to equal participation in employment, education, and the provision of public services.
4. ISRA recommends the ADA be amended to allow for enforceable legal protections, including access to the NSW Civil and Administrative Tribunal (NCAT), to ensure individuals can pursue formal resolution where informal processes are insufficient. While existing conciliation processes, such as those offered by AHRC, may offer some recourse for individuals facing religious discrimination, these outcomes are not legally binding and rely solely on voluntary compliance.
5. Given the current ambiguity surrounding the interpretation of "ethno-religious origin", the inclusion of religious belief and activity as a protected attribute must be accompanied by clear, practical guidance to employers, educators, and service providers. Such guidance is necessary to support compliance and to ensure the law is applied consistently and equitably.
6. ISRA proposes that the NSW Government develop public education materials to raise awareness of religious discrimination protections, clarify the distinction between vilification and discrimination, and provide clear guidance on how to report incidents. Greater public understanding is essential in improving access to legal redress and ensuring effective application of legislative changes.

ISRA welcomes the opportunity presented by this review to strengthen NSW's commitment to equality, fairness, and social cohesion. By explicitly protecting religious belief and activity under the Anti-Discrimination Act, NSW can set a clear standard that values the dignity of every individual, fosters mutual respect across its diverse communities, and ensures that all people of faith can participate fully in public life without fear of discrimination. We are confident that these reforms will not only bring the law into alignment with national and international standards, but will also contribute to a more inclusive, harmonious, and resilient New South Wales.

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