

Submission on the review of the *Anti-Discrimination Act 1977 (NSW)*

29 August 2025

NSW Law Reform Commission

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

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The NSW Young Lawyers Human Rights Law Sub-Committee (the **Sub-Committee**) makes the following submission in response to the review of the *Anti-Discrimination Act 1977* (NSW) (the **ADA**) by the NSW Law Reform Commission.

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its multiple sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

NSW Young Lawyers Human Rights Law Sub-Committee

The NSW Young Lawyers Human Rights Law Sub-Committee comprises a group of all those interested in human rights law, including lawyers working in academia, for government, private and the NGO sectors and other areas of practice that intersect with human rights law, as well as law students. The objectives of the Sub-Committee are to raise awareness about human rights issues and provide education to the legal profession and wider community about human rights and their application under both domestic and international law. Subscribers of the Sub-Committee share a commitment to effectively promoting and protecting human rights and to examining legal avenues for doing so. The Sub-Committee takes a keen interest in providing comment and feedback on legal and policy issues that relate to human rights law and its development and support.

Summary of Recommendations

1. The Sub-Committee recommends that the Anti-Discrimination Act be amended to narrow the exemptions granted to religious bodies in the areas of employment and education in order to provide stronger and more consistent protection for teachers, staff and students against discrimination.
2. The Sub-Committee recommends that the Anti-Discrimination Act be amended to introduce a proportionality test when a religious body is relying on the exemption to ensure that any exemption is reasonable, necessary and proportionate to achieving a legitimate religious purpose. This will allow the Anti-Discrimination Act to only permit necessary discrimination as well as enable the Act to be forward thinking as religious beliefs and their application evolve.

Background to the Anti-Discrimination Act 1977 (NSW)

The *Anti-Discrimination Act 1977 (NSW) (ADA)* is a vital piece of legislation aimed at promoting equality and preventing discrimination within New South Wales. Since its inception, the ADA has played a pivotal role in protecting against various forms of discrimination; including discrimination on the grounds of race, sex, age, disability, and other protected attributes. However, as society evolves, so too must anti-discrimination legislation in order to protect against the ever-changing nuances and challenges of discrimination in a contemporary society. While the ADA has undoubtedly made significant strides in promoting equality and combating discrimination since 1977, it is no longer fit for purpose in the 21st century, owing to the limited scope of protected attributes, its utilisation of outdated language and ineffectiveness at enforcing the prohibition on discrimination. Addressing these challenges will ensure that the ADA remains relevant and effective in safeguarding the rights and dignity of all individuals in New South Wales, regardless of their background or characteristics.

On 29 September 2023, the NSW Young Lawyers Human Rights Sub-Committee provided a Preliminary Submission Regarding Issues Relevant to the Terms of Reference for the Review of the Anti-Discrimination Act 1977 (NSW) in response to the NSW Law Reform Commission's call for input. We reiterate the positions outlined in that submission and take this opportunity to expand on additional areas of the Terms of Reference below.

Exceptions for Religious Bodies

The current exceptions for religious bodies under section 56 of the ADA are overly broad, outdated, and incompatible with the Act's purpose of advancing equality and non-discrimination. This exception allows religious bodies to discriminate on the basis of sexual orientation, gender identity and other protected attributes. In practice, this means that LGBTIQ+ teachers, staff and students can be lawfully dismissed, excluded or otherwise mistreated solely because of their identity.

This legal framework has real and harmful consequences. In 2021 an English teacher working at a Christian school in Sydney was fired after she came out as a lesbian, and a student was expelled from a prestigious Catholic school because she was queer.¹ Such incidents are not isolated and create a broader culture of fear and exclusion within religious schools and other educational institutions. For LGBTIQ+ students and staff, the legal ability for religious educational institutions to discriminate against them reinforces stigma and prevents full participation in school or work life without fear of reprisal.

A 2023 national study that surveyed 1293 LGBTIQ+ students across Australia found that 35% of respondents attended religious schools.² A 2024 study further revealed that 2.9% of Christians in Australia also identify as lesbian, gay, bisexual or another non-heterosexual sexual orientation, demonstrating that religion and queerness are not mutually exclusive and that LGBTIQ+ individuals are also members of and contribute to religious communities.³ Permitting discrimination under the guise of religious belief undermines the dignity, safety and wellbeing of religious LGBTIQ+ students and staff and prevents them from fully embracing both their religion and their sexuality. As religion and sexuality are not mutually exclusive, and individuals can live authentically as both religious and LGBTIQ+, the claim by religious institutions that these identities conflict with core tenets of faith, and thereby warrant ongoing exemptions, is effectively nullified.

Furthermore, retaining such a broad exemption places NSW out of step with other states as

¹ 'A Sydney Teacher Lost Her Job Because She Came Out As Gay. She's Not the Only One', *ABC* (Web page, 13 August 2021) <<https://www.abc.net.au/triplej/programs/hack/a-sydney-teacher-lost-her-job-because-she-came-out-as-gay/13496032>>.

² Tiffany Jones 'LGBTIQ+ Students' Transformative 'Religious Freedom' Definitions' *Gender and Education* 35(6-7) 552-571.

³ Bronwyn Fielder and Angus McLeay, 'LGBTQ+ Christians in Australia' *Social Compass* 71(2) 326-346.

well as with Australia's international obligations. Both Queensland and the Australian Capital Territory have limited their religious exemptions contained in their respective anti-discrimination legislation in the context of employment and education.⁴ This reflects a modern understanding that religious freedom must be balanced against the rights of individuals to be free from discrimination; particularly in publicly funded institutions and services that are offered to the wider community.

In addition to aligning with domestic legal developments, narrowing this exemption is necessary to bring NSW into compliance with Australia's international human rights obligations, most notably respecting the right to privacy and protection from discrimination as outlined under the International Covenant on Civil and Political Rights (ICCPR).⁵

Article 18(3) of the ICCPR relevantly states:

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

The United Nations' Human Rights Committee (responsible for overseeing the ICCPR) has clarified that in interpreting this section of the ICCPR, States parties should:

Proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 16.⁶

This guidance makes it clear that the freedom of religion is not absolute, and that States have a duty to ensure that religious exemptions do not undermine other fundamental rights protected by the ICCPR.

In this context, introducing a proportionality test into section 56 of the ADA would give practical effect to Article 18(3). A proportionality test would require that any reliance on the religious exemption be reasonable, necessary and proportionate to achieving a legitimate religious purpose (i.e., necessary to avoid harm to the religion's ethos). Such a test would provide a critical safeguard against the misuse of religious exemptions to justify broad or arbitrary

⁴ *Anti-Discrimination Act 1991* (QLD) s 109(2); *Discrimination Act 1991* (ACT) s 32(2).

⁵ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

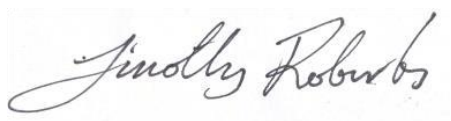
⁶ Human Rights Committee, General Comment No 22, [8].

discrimination, particularly in contexts unrelated to the core functions of religious observance or doctrine. This test would also allow the ADA to become forward thinking and adaptive, as the application of the proportionality standard can evolve in step with shifts in religious beliefs and practices. Religious doctrines are not static, and the way religious communities understand and apply their beliefs may change over time, particularly in relation to diversity and inclusion. By requiring that any reliance on an exemption be reasonable, necessary, and proportionate, the Act would not only protect against misuse in the present, but also provide a flexible legal framework capable of responding to the dynamic and pluralistic nature of both religion and society. Embedding a proportionality test would thus future-proof the ADA, allowing courts and decision makers to weigh legitimate religious interests against the rights of affected individuals in an evolving way, ensuring the law remains fair, relevant and just.

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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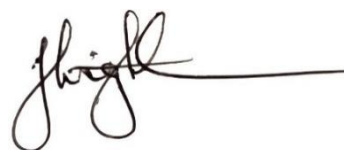
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