

Sydney Anglicans

2026: Issue 4 - Anti-Discrimination Act NSW **FREEDOM MATTERS**

Religious Freedom Update



Informing and equipping you to
take action to protect religious freedom

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Reflection

The NSW Anti-Discrimination Act Review: Procedures & Compliance

The NSW Law Reform Commission (NSWLRC) is currently conducting a review of the *Anti-Discrimination Act NSW 1977* (NSW) ('the ADA'). A review of the substantive provisions occurred last year. The current review covers the complaints and enforcement procedures, although the consultation paper also proposes changing the substance of anti-discrimination law in a number of significant ways.

Complaints under the ADA are administered at the first instance by Anti-Discrimination NSW (ADNSW) the same body which receives complaints under the *Conversion Practices Ban Act 2024* (NSW). Complaints may then be referred to the NSW Civil and Administrative Tribunal (NCAT) if not resolved. Our concern with the ADA complaints process is that for many Christians the 'process is the punishment', whereby frivolous, vexatious or baseless complaints are accepted and the respondent is forced to engage with a conciliation process or appeal to the NCAT, costing them anxiety, time and expense addressing baseless claims. This has a chilling effect on speech, where people self-censor for fear of being the recipient of a complaint. ADNSW's 2024-2025 Annual Report showed that over 76% of all complaints to ADNSW were eventually declined or did not proceed, but many respondents had to engage in conciliation or appear before a Tribunal before the matter was eventually resolved.

This edition outlines some of our key concerns with the ADA and current Review. I encourage you to make a submission to the ADA Review before the deadline of 2 October. Information on the Review and a link to make a submission can be found below. **Michael Stead** (Bishop of South Sydney)

Taking Action

NSWLRC Review of the ADA and link to make a submission:

<https://lawreform.nsw.gov.au/projects/anti-discrimination-act-review.html>

For more information on current issues, go to: www.freedomforfaith.org.au/current-issues/

This document sets out a summary of threats to religious freedom in Australia. The **Overall** threat level to freedom of expression in Australia is **HIGH**



Review of the Anti-Discrimination Act, NSW



Why does this matter for Christians? The Current Process is the Punishment

- Even without any proposed changes, the current process means that a respondent is 'punished' by being forced to engage in a conciliation conducted by ADNSW or arbitration at NCAT even if the complaint is frivolous, vexatious or has no merit (ie it is not a breach of the ADA).
- The current process is unfairly balanced in favour of a complainant against a respondent as:
 - a complaint can be made with very little detail – a bare allegation;
 - it costs nothing to make a complaint;
 - ADNSW can assist a complainant to make a complaint (no assistance is given to a respondent);
 - ADNSW is not required to decline a complaint that is frivolous, vexatious or unmeritorious/baseless;
 - *even if* ADNSW declines a complaint on the grounds that it is 'frivolous, vexatious, misconceived or lacking in substance', a complainant can force ADNSW to refer the complaint to NCAT for a Tribunal hearing;
 - no costs are awarded at NCAT – so if a respondent successfully defends a claim, they cannot recover costs against a complainant, but they still have to pay their own legal costs;
 - ADNSW does not consolidate multiple claims against a respondent (even if they are based on similar facts or alleged incidents) – one respondent had 37 individual (vexatious) complaints made against him by the same complainant (16 overlapping) and they were dealt with as individual complaints;
 - NCAT can make orders for compensation up to \$100,000 so there is a financial incentive to making complaints.

Review of the Anti-Discrimination Act, NSW



What needs to change to better balance the rights of complainants and respondents?

- A complaint should have sufficient detail that ADNSW can determine (if the facts were proven) that the complaint is a breach of the Act or falls within an exception.
- ADNSW should be *required* (currently a discretionary decision) to decline complaints that are frivolous, vexatious, misconceived (not a breach) or lacking in substance.
- A complainant should not be able to force ADNSW to refer frivolous, vexatious etc complaints to NCAT if they are declined (which they are currently able to do).
- There should be a better balancing of costs – a respondent should be able to claim indemnity costs against a complainant if they successfully defend a claim at NCAT or if an appeal to NCAT fails.
- ADNSW should be required to consolidate complaints which are based on similar facts, or involve the same complainant and respondent.

Why does this matter?

- Some vexatious complainants (including activists) have made multiple overlapping claims with the express intention of bankrupting a respondent with whom they disagree.
- In the case of *Burns v Gaynor*, Garry Burns filed 41 complaints of discrimination and vilification against Bernard Gaynor (36 of them over a period of just 32 months). Defending these claims has cost Mr Gaynor over \$600,000 forcing him to sell his house to defend himself. Costs orders even by the High Court have been ignored by Mr Burns, leaving Mr Gaynor out of pocket. Mr Gaynor won every case.
- ADNSW continued to accept complaints against Mr Gaynor despite them clearly being vexatious and refused to consolidate any of the claims into one matter – forcing Mr Gaynor to defend each individual claim.
- Mr Burns made multiple vexatious claims at NCAT against residents of other States. The High Court determined that NCAT was not entitled to hear such claims as it was not a 'court of the State' and did not have jurisdiction. The current proposals attempt to turn NCAT into a 'court of the State' through giving it court-like powers, opening up the possibility of such cross border complaints.

Review of the Anti-Discrimination Act, NSW



The proposal to change ADNSW & NCAT into investigative, enforcement bodies with Court like powers

The current process is meant to enable 'quick, low cost, and informal' conciliation of complaints via ADNSW. The process has the following features:

ADNSW

- informal – no lawyers and nothing said can be used as evidence in future proceedings
- conciliatory – it is non-adversarial aimed at achieving conciliation
- easy access for a complainant – ADNSW can help them make a complaint
- no costs – no cost orders are awarded – each party bears their own costs
- ADNSW is a 'neutral' facilitator – they can't make enforceable orders or issue fines
- if conciliation can't be reached, the matter can be referred to NCAT

NCAT

- low cost Tribunal – not a Court – not bound by the rules of evidence
- NCAT can only order damages up to \$100,000
- NCAT cannot hear disputes involving Federal jurisdiction (esp complaints made by someone living outside NSW or against someone living outside NSW).

The proposed changes

- Purport to turn ADNSW into an investigative and enforcement body with the power to investigate on its own behalf without a complaint being made, and with power to issue fines
- Introduce the concept of a 'positive duty' to prevent discrimination
- Allow access to NCAT without first going through conciliation
- Turn NCAT into a court like body with power to determine questions of law, make enforceable orders and allow direct access to NCAT without going through ADNSW conciliation first.
- Create further imbalance against a respondent making the process even more of a 'punishment'

Review of the Anti-Discrimination Act, NSW



We are concerned with the proposed changes to ADNSW and NCAT powers to:

ADNSW

- compel production of evidence beyond its existing powers
- investigate without a complaint being made of the policies and operations of any person or body
- investigate a breach of a 'positive duty' to prevent discrimination and promote equality (see below)
- prosecute or refer for criminal prosecution breaches of the Act (breaches are currently not crimes)
- seek penalty orders as a means of coercing conciliation and settlement agreements (which are currently voluntary) or to punish respondents for failing to meet a 'positive duty'
- investigate withdrawn complaints

NCAT

- hear cross-jurisdictional complaints (ie made by or against people outside NSW) – which only a court of the state can do under the Constitution
- exercise the same powers available as District or Supreme Courts as an alternative pathway to the Courts
- determine questions of law regarding fundamental breaches of agreements
- make compensation orders which cover loss or damage including psychological harm, exemplary and vindictory damages

Why is this a problem?

- The high numbers of cases which are ultimately rejected show that there needs to be a filter on complaints via ADNSW. Allowing direct access to NCAT will force people who have done nothing wrong through a punishing process unfairly.
- Giving ADNSW and NCAT court-like powers counters their purpose for quick, informal and low cost dispute resolution and gives an inappropriate level of power to these bodies which are not governed by the usual rules of evidence etc
- Such investigative and compulsion powers will interfere with a religious body's ability to operate according to their doctrines, tenets and beliefs.

Review of the Anti-Discrimination Act, NSW



Concerning proposals to expand the ADA to include a 'positive duty', systemic discrimination and intersectional discrimination concepts in an Objects Clause

- The Consultation Paper proposes including an objects clause to be inserted into the ADA which specifically refers to a 'positive duty' to prevent discrimination and promote equality.
- This is not a procedural matter – it fundamentally changes the nature of discrimination law from prohibiting an act of discrimination/vilification (direct or indirect) to an obligation on everyone to promote equality and prevent discrimination.
- The proposal also includes references to 'systemic discrimination' – so even if there is no discrimination against an individual – if a class of people may be affected by words or conduct or a failure to promote equality – this would potentially be a breach of the ADA.
- It is proposed that NCAT could make orders that have 'systemic effect' (including developing or reviewing a policy/practice, removing or amending publicly available material, providing access to premises or facilities etc).

Why does this matter?

- The implementation of a 'positive duty' in the *Equality Act 2010* (UK) has had serious adverse effects.
 - eg Employers cannot anticipate what may later be regarded as discriminatory conduct – an employee who is not performing well may rely on a protected characteristic to immunise themselves against criticism and future discipline or discharge. It leaves the employer and fellow employees walking on eggshells to avoid future complaints of discrimination.
 - For more information you can read the Prosperity Institute's report on the *Equality Act* (UK) [here](#)
- This gives power to ADNSW and NCAT to investigate and make orders even if no act of discrimination has taken place, severely impacting the ability of people of faith and religious bodies to speak and act in accordance with their beliefs.
- ADNSW or NCAT should not have powers to compel a church or faith-based organisation, for example, to implement programs or policies or allow access to their facilities on the basis of 'systemic' discrimination or to promote equality.

Review of the Anti-Discrimination Act, NSW

What next?

- For more information, you can read the Consultation Paper *Procedures & Compliance* [HERE](#)
- Submissions on the Review of the Anti-Discrimination Act are due by 2 October 2026.
- Please consider making a submission to the NSWLRC:
 - opposing the proposed changes to introduce a positive duty to prevent discrimination, the concepts of systemic discrimination
 - opposing changes to ADNSW and NCAT's powers and nature
 - in support of a better balance of rights between complainants and respondents especially people of faith.

Past Religious Freedom Issues

To read past issues of Freedom Matters and an update on other religious freedom issues, go to the Freedom for Faith website: <https://freedomforfaith.org.au/articles/freedom-matters/>

You can watch previous podcasts and download past issues.

Disclaimer

The content of this document is intended only to provide a summary and general overview on religious freedom matters. It is not intended to be comprehensive nor does it constitute legal advice. If you need advice in relation to a particular situation you should seek your own independent legal advice.