

NSW Government Independent Review: Criminal Hate Speech

About MDAA

The Multicultural Disability Advocacy Association of NSW (MDAA) is the peak body in NSW for all people with disability (PWD) and their families and carers, with a particular focus on those from a culturally and linguistically diverse (CaLD) and non-English Speaking (NES) backgrounds with disability.

Our vision is a society where everyone regardless of background or disability feels welcomed, included and supported.

Our aim is to promote, protect, and secure the rights and interests of people with disabilities.

MDAA works within a cultural sensitivity framework to ensure the safety, comfort, and well-being of our diverse consumers.

At MDAA, we provide support in the form of Individual Advocacy, with the aim to build the capacity of CaLD people with disability and ensure that the rights of individuals are promoted, protected, and secured. MDAA's other services include Systemic Advocacy, NDIS Appeals and Reviews, and ongoing projects including the Aged Care Volunteer Visitor Scheme (ACVVS).

About This Submission

MDAA welcomes the opportunity to provide this submission to the New South Wales parliament's *independent review of criminal law protections against the incitement of hatred*. As a peak body representing CaLD people with disability and their families and carers across NSW, MDAA is uniquely positioned to offer insights into the challenges and racism faced by our consumers and community.

Our submission is informed by consumer and staff consultation through their lived experiences, as well as organisational data highlighting the clear need for properly enforced anti-discrimination and criminal laws. This includes a significant shift in systemic structures and societal attitudes toward people of colour and those exercising their right to freedom of religion. Additionally, the exclusion of people with disability from the review is problematic and ignores the scale and impact ableism has on individuals, families, carers, and communities.

Criminal law protections against hatred for vulnerable groups

Criminal law is selective and inequitable in the way it offers protections to vulnerable groups. This is often determined by the political and social discourses of the time. Sentiments from our community highlight a consistent failure to equitably enforce hate speech laws, with reports routinely ignored and individuals or groups facing no prosecution or consequences. The core issue with hate speech and incitement legislation is that it is rarely prosecuted, often overlooked, and narrowly defines both offenders and victims, leaving many affected individuals without protection or recourse. MDAA finds it particularly concerning that current legislation fails to include protections for people with disability, creating a serious gap where disability-based discrimination is not met with the same legal consequences. It is especially concerning when viewed through an intersectional lens where individuals who are both disabled and members of other oppressed communities, such as people of colour or LGBTQ+ individuals, face compounded discrimination yet remain inadequately protected. Legislation must be explicit and inclusive: if we can name HIV/AIDS status and transgender identity in the law, we can and must do the same for disability.

MDAA is concerned by the lack of accessible information on what groups are intentionally excluded by the proposed changes. If our current understanding is correct—that the amendment may protect some from the offence of inciting racial hatred such as antisemitism, other types of prejudice “*regularly covered by anti-discrimination laws (including Islamophobia) are not covered*”¹—we consider this increasingly concerning. Importantly, seemingly prioritising one form of hatred over others is deeply damaging to community wellbeing and will be in direct conflict to any efforts towards social cohesion. Rather than promoting unity, it fuels disconnect and exacerbates political, social and religious tensions between communities. What’s more, it sends a concerning message from both the government and the legal institutions about who is deemed worthy of protection, and who is not.

As an established community organisation, MDAA wishes to highlight the community sentiments that it is the way these laws are interpreted and enforced that determine who they benefit, and who is demonised. Although under the *Anti-Discrimination Act 1977 (NSW)* anti-vilification laws are included, the scope is extremely narrow and excludes a multitude of identities. The anti-vilification laws criminalise vilification based on race, homosexuality, HIV/AIDS status, and transgender status. However, other vulnerable groups such as people with disability, religious minorities, and women are not specifically protected under the criminal vilification provisions.

¹ <https://jec.org.au/civil-rights/new-criminal-offence-for-inciting-hatred-excludes-more-groups-than-it-actually-protects/>

Community sentiment among our client cohort reflects a widespread belief that hate crimes are not taken seriously by those responsible for delivering justice and driving change. Concerns about the systemic neglect of people with disability are well documented, highlighting a deep lack of trust in law enforcement and the judicial system². A consequence of which is a deep sense of isolation and marginalisation as many may feel that these support systems are inaccessible or at worst, working against them³. These feelings only further the distrust in law enforcement and leaves victims with deep psychological wounds, unresolved trauma, and isolation⁴.

2. Does the criminal law adequately protect against the incitement of hatred towards all vulnerable groups in NSW? If not, how could the criminal law better protect against the incitement of hatred towards these groups?

No. The 2023 Disability Royal Commission revealed that people with disability are 1.8 times more likely to be victims of violent crime than able bodied individuals⁵ – this is further exacerbated by the lack of understanding of the intersection of disability and CaLD identity. Despite this, existing laws are narrowly focused and rarely enforced, leading to criticism that they are inadequate in addressing serious hate speech. Effective enforcement requires clear legal definitions, adequate resourcing for law enforcement and judicial bodies, and mandatory training on recognising and addressing hate crimes. When the law is actively upheld, it sends a clear message that inciting hatred, whether based on race, religion, disability, or any other protected attribute, is not tolerated in a democratic society.

MDAA is concerned that since hate crimes have become a criminal offence in NSW, there have been zero charges and convictions even though we see countless race, gender, sexuality, and religious based crimes being committed every day. Abuses often are left unreported to police as communities and individuals see ‘no point’ in reporting considering the persistent bias and shortcomings within our police and judicial systems. This can be attributed to deeply entrenched institutional racism that upholds and centres ‘whiteness,’ influencing all areas of society, from politics and media to the judiciary and systemic structures. No one group should have a racial advantage over the other when it comes to enforcing such laws based on reactionary measures, and racial profiling must be eliminated from the workings of the police, our judicial court systems, our media, and politicians. In light of the above, MDAA rejects the assertion that ‘the criminal law adequately protects against the incitement of hatred towards all vulnerable groups in NSW’.

² Free and Equal Australia 2024, ‘No Room for Hate: Disability and Hate Crime’

³ Taylor, S 2022, *Hate Crime Policy and Disability: From Vulnerability to Ableism*

⁴ Free and Equal Australia 2024, ‘No Room for Hate: Disability and Hate Crime’

⁵ Free and Equal Australia 2024, ‘No Room for Hate: Disability and Hate Crime’

Interaction between criminal law protections against hatred and relevant rights and freedoms

3. How can the criminal law strike an appropriate balance between protecting against the incitement of hatred towards vulnerable groups and protecting other important freedoms, including the implied freedom of political communication and freedom of religion?

Criminal laws must be introduced within the greater dialogue that acknowledges that there is no connection between peaceful protest and hate crimes. Social institutions, including religious institutions still hold significant power within our society. As such, peaceful gatherings of any kind, but including outside places of worship are important in a democracy to hold these institutions to account.

Freedom of religion and protection from religious discrimination must be upheld for all communities, not just those who hold social or economic power, influence. Here we refer back to our concerns that while the amendment may protect some from the offence of inciting racial hatred such as antisemitism, other types of prejudice regularly covered by anti-discrimination laws (including Islamophobia) are not covered. There is a real risk here of protecting some against hatred, while sacrificing important freedoms of others.

MDAA considers it crucial to, above all, have all laws reflect the fact that Australia has both signed and ratified the International Covenant on Civil and Political Rights (ICCPR), which affirms fundamental freedoms, including the right to peaceful assembly (Article 21) and freedom of expression (Article 19)⁶. As a party to the ICCPR, Australia has committed to upholding these rights under international law. Still, the Australian Constitution does not contain an explicit right to protest, nonetheless the High Court has recognised an implied freedom of political communication, which protects protest activity as a vital part of democratic participation. Additionally, states and territories have legal frameworks that permit public demonstrations, provided certain conditions, such as public safety and order, are respected.

Above all, criminal law must consider our commitment to international conventions and must uphold human rights standards.

⁶ United Nations (1966). *International Covenant on Civil and Political Rights*.

Promoting social cohesion

4. Would reforming criminal law protections against the incitement of hatred towards vulnerable groups assist with promoting social cohesion in NSW?

MDAA is strong in its belief that reform on its own will be insufficient. We consider it necessary to consider international examples when planning a comprehensive response. Discussions with our community highlight the need to target societal attitudes that promote acceptance between differing communities. This starts with carefully chosen political rhetoric, review of policies and laws with deliberate, well-intentioned consultations and serious intent to listen to **all** vulnerable communities including PWD, and CaLD and Muslim communities. Further, media and news outlets should be held accountable when projecting micro and macro-aggressions, overt racism and bigotry in their reporting, with a change in the destructive and often dehumanising rhetoric used against people of colour⁷. The ANU's SOAR (Speak Out Against Racism) Project examined the experiences and attitudes toward racism and racial bullying among Australian students. It uncovered insights into how racial discrimination manifests in educational settings, which can then be influenced by media portrayals. The findings highlight the prevalence of racism and the need for interventions.

Stronger legal safeguards would help deter hate speech and actions that foster division, discrimination, and violence against marginalised communities. By explicitly recognising and criminalising incitement targeting all vulnerable groups, such as racial, religious, ethnic, and sexual minorities, the law would better affirm society's commitment to equality, respect, and inclusion.

Clear and comprehensive protections for all groups can create a safer environment where individuals from diverse backgrounds feel valued and protected under the law. This legal clarity can empower victims to seek justice and discourage harmful rhetoric that undermines trust and harmony between communities. However, legal reform must be carefully balanced with protecting fundamental freedoms, such as freedom of speech and religion, ensuring that restrictions target only harmful, inciting conduct without suppressing legitimate expression. When properly crafted and enforced, improved criminal law protections can serve as an essential tool in reducing prejudice, preventing social fragmentation, and building a more cohesive, inclusive society in NSW.

⁷ Findings from the 2017 Speak Out Against Racism (SOAR) student and staff survey

5. Could reforming criminal law protections against the incitement of hatred towards vulnerable groups have potentially negative or unintended consequences? If so, are there any further safeguards that could reduce this risk?

Yes. Reforming criminal law protections against the incitement of hatred towards vulnerable groups could carry potential negative or unintended consequences if not carefully structured. One concern is the risk of infringing on freedom of speech, where overly broad or vague provisions might suppress legitimate expression, including political, religious, or social discourse. The result of which would discourage open dialogue and debate, which are vital in a democratic society. Without sufficient resources put into targeting unconscious bias, and conflicting personal and professional ethics within our law enforcement, we know such laws are subject to being selectively enforced among various vulnerable cohorts, potentially targeting certain groups unfairly or becoming tools in political or social conflicts. Challenges in proving intent to incite hatred could also lead to inconsistent or ineffective application of the law.

To mitigate these risks, it is important to incorporate clear and precise definitions of hate incitement that apply equally to all vulnerable groups, focusing strictly on speech or conduct posing a real threat of harm or violence, rather than protecting some groups over others. There should be transparent oversight and robust appeals processes, to prevent misuse or selective enforcement. It is equally important to carve out exemptions for legitimate speech, including academic, artistic, political, and religious expression, ensuring freedom of expression is protected, so as not to form an authoritarian approach. Engaging with diverse communities during the reform process like we have in this submission can help tailor the laws to respect cultural differences and avoid disproportionate impacts. Complementing legal measures with education, awareness campaigns, and community support initiatives can also address the root causes of hatred, promoting social cohesion beyond the scope of criminal sanctions.

Legislating against hate speech must not impede on the democratic right to protest, a right which recently had to be defended and fought for in the NSW Supreme Court. This followed the actions of NSW Police who applied to the Supreme Court to block Sunday's March for Humanity across the Sydney Harbour Bridge. Where NSW Police states that this push to ban the public assembly was due to 'safety concerns', this push followed the undemocratic calling for a ban on the protest from NSW Premier Chris Minns. There were no reports of violence or danger after the protest. Although the march would have likely proceeded without the legal protection from the courts, this protection granted protester rights to assemble with no fear of being charged with violations and offences such as those relating to blocking roads and traffic. Justice Belinda Rigg determined the planned event qualified as a peaceful, authorised public assembly, and that mere disruption alone does not justify prohibiting protest.

She rejected NSW Police's bid for a prohibition order, emphasising that democratic rights to free assembly and communication must not be unduly curtailed simply because the protest might inconvenience the public⁸.

We must not forget that in the quest for social cohesion and rightful consequences of those engaging in harmful rhetoric and hate speech, that we must also uphold Australia's democracy.

It can be a slippery slope into the denial of democratic rights of protest and freedom of religion and expression, and legislation and enforcement of such should be created with patience, and sensitivity. Hate speech must not be conflated with criticism.

The actions taken by the government in its review of these social issues have contributed to increased division and have hindered efforts toward social cohesion. A recent report commissioned by SafeWork NSW, funded by the government and public resources classified elements such as Arabic script and Palestinian flags as antisemitic. The findings of this report raise significant concerns, particularly given the lack of transparent explanation or evidence supporting these claims. The approach taken by the inspector involved appears to reflect an underlying bias, particularly towards the movement and, more broadly, Arab communities, which warrants further scrutiny and dialogue. Universities are hubs of innovation, social justice, and political movements. It is deeply troubling and morally indefensible that a taxpayer funded investigation has deemed a language spoken by over 300 thousand Australians and 420 million people worldwide as antisemitic. There is nothing inherently antisemitic about a language or a state flag, similarly, as decided by Australia's High Court, a criticism of Zionism is not a criticism of Judaism, and any rational person could make that distinction.

Does the government view this vilification of Arabic writing as a hate crime? In the eyes and experiences of many in Sydney's communities, it is.

The government consistently pushes the narrative of positive social cohesion as a priority; however, how can we achieve social cohesion when the NSW government is actively attempting to drive a wedge between prominent communities? By demonising and vilifying people and language, social cohesion cannot and will not be achieved. Further to this, promotion of social cohesion will be almost impossible when government agencies and the media continue to demonise religion and language while simultaneously victimising another.

⁸ Mckinnell, J 2025, 'Pro-Palestinian march across Sydney Harbour Bridge allowed to go ahead, judge rules'.

Recommendations:

Based on the above insights, MDAA puts forward the following recommendations:

- Introduce mandatory CaLD and cultural safety training run by industry professionals and organisations specifically serving CaLD communities and people with disability
 - o We must acknowledge and see the intersection of ethnic and cultural identity and disability as together they exacerbate barriers to access and inclusion, access to judicial and health systems, and increase likelihood of racism, ableism, and hate crimes.
- Clear protections for all groups – the legislation must be specific and must include all identities. We cannot single out one group as more deserving or in greater need of protection or enforcement of rights, as the published position paper has done.
- Clearer definitions of hate crime in legislation are necessary to mitigate some risks that come with enforcing such legislation. This includes the likely risk of misinterpretation of the law, laws misapplied or inconsistently applied or selectively applied to cohorts.
- Legislation must be clear on political and religious freedoms – what that constitutes and what it excludes. For example, a genuine critique of world events, governments and military would be protected under this legislation. Adversely, the legislation must be careful to not absolve hate speech under the guise of political and religious freedoms – free speech should not and does not absolve anyone of their wrong doings.
- Clarify and include in legislation that free speech does not and should not absolve anyone of their wrongdoings. Free speech is not an open invitation for racism and bigotry.
- Enactment of the recent Australian Federal Court ruling of Wartheim V. Haddad – Criticism of the Israeli government is not antisemitic.
 - o The legislation must be clear and concise on what the government and the law define and considers a hate crime and hate speech. This ruling has set an incredibly important precedent for Australian courts, and our legislation should reflect this permission of political freedom.
 - o The above ruling notes that disparagement of Zionism is disparagement only of a philosophy and ideology, not of a race or ethnic group.
- We must target societal attitudes to promote acceptance between differing communities.

- This starts with carefully chosen political rhetoric, review of policies and laws with deliberate, well-intentioned consultations and serious intent to listen to our most vulnerable communities including PWD.
- Education and community support initiatives can drastically aid in manifesting and maintaining social cohesion
 - Must be done in collaboration with grassroots organisations, multicultural and CaLD organisations, and leaders in the community to ensure authenticity, participation, and delivery of a more effective project.

References

Connor, S 2024, *No Room for Hate: Disability and Hate Crime*, Free and Equal Australia, Sydney.

https://polis.cass.anu.edu.au/research/publications/findings-2017-speak-out-against-racism-soar-student-and-staff-surveys?utm_source=chatgpt.com

Justice and Equity Centre 2025, *New criminal offence for inciting hatred 'excludes more groups than it actually protects'*, viewed 4 August, available at: <<https://jec.org.au/civil-rights/new-criminal-offence-for-inciting-hatred-excludes-more-groups-than-it-actually-protects/>>.

McLeod, C 2024, 'NSW premier says police should be able to ban pro-Palestine protests because they are too expensive', *The Guardian*, 8 October, viewed 4 August, available at: <<https://www.theguardian.com/australia-news/2024/oct/08/chris-minns-nsw-premier-police-pro-palestine-protests-cancel-power-ntwnfb>>

Priest, N, Chong, S, Truong, M, Sharif, M, Dunn, K, Paradies, Y, Nelson, J, Alam, O, Ward, A & Kavanagh, A. 2017, *Findings from the 2017 Speak Out Against Racism (SOAR) student and staff surveys*, POLIS: The Centre for Social Policy Research, viewed 4 August, available at: <<https://polis.cass.anu.edu.au/research/publications/findings-2017-speak-out-against-racism-soar-student-and-staff-surveys>>.

Taylor, S 2022, *Hate Crime Policy and Disability: From Vulnerability to Ableism*, 1st ed, Bristol University Press.

United Nations (UN) 1966, *International Covenant on Civil and Political Rights*, viewed 4 August, available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

McKinnon, A 2025, 'SafeWork NSW report labels 'Arabic writing', Palestinian flags 'antisemitic'', *Deepcut News*, viewed 6 August, available at: <<https://www.deepcutnews.com/p/safework-nsw-report-labels-arabic>>.

McKinnell, J 2025, 'Pro-Palestinian march across Sydney Harbour Bridge allowed to go ahead, judge rules', *ABC News*, viewed 5 August, available at: <<https://www.abc.net.au/news/2025-08-02/nsw-sydney-bridge-pro-palestinian-march-supreme-court-outcome/105603000>>.