



# Periyar Ambedkar Thoughts Circle

## Australia

### Submission to the Independent Review of Criminal Law Protections Against the Incitement of Hatred

Submitted by: Periyar Ambedkar Thoughts Circle of Australia (PATCA)

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#### About PATCA

Periyar Ambedkar Thoughts Circle of Australia (PATCA) is a grassroots organisation dedicated to eliminating caste-based discrimination and advancing social justice through the teachings of E.V. Ramasamy Periyar and Dr B.R. Ambedkar. We work in solidarity with caste-oppressed communities across Australia, particularly Dalits, advocating for legal, social, and educational reform that recognises and addresses structural exclusion.

PATCA has actively contributed to policy and legislative reform efforts to protect vulnerable communities from hate-based conduct. Notably, we have made formal submissions to:

- **The 2023 review of the NSW Anti-Discrimination Act 1977**, focusing on unlawful conduct, including systemic discrimination;
- **The NSW Law Reform Commission's 2024 review** of section 93Z of the Crimes Act 1900 (NSW) concerning serious racial and religious vilification;
- **National consultations such as the Australian Human Rights Commission's Anti-Racism Framework** and broader inquiries into multicultural and human rights policy.

In each of these submissions, PATCA has consistently argued for the explicit inclusion of caste-based discrimination and descent-based hatred as protected grounds, in line with international human rights standards such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Our contributions have highlighted lived experiences, structural gaps in current law, and the ongoing harm to caste-oppressed communities in NSW.

PATCA welcomes this Review and urges the NSW Government to acknowledge caste-based hatred as a serious, pervasive form of discrimination that warrants explicit protection under the criminal law framework.

This submission responds to the Review's focus questions and outlines specific recommendations for reform.

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## Our Responses to the Focus Questions

### 1. What is the extent and impact of hatred towards vulnerable groups in the NSW community?

Caste-based hatred in NSW remains structurally invisible, yet its impacts are persistent and profound for caste-oppressed communities, particularly Dalits. This has been well documented in Australian Human Rights Commission reports, parliament budget estimates, community consultations, and grassroots testimony.<sup>1 2 3 4 5</sup>

PATCA, alongside other civil society organisations, has identified the following recurring harms:

- **Systemic exclusion** in housing, education, and employment contexts, driven by implicit caste biases.
- **Caste-based slurs and hate speech** in public and online spaces that reinforce historical hierarchies.
- **Discrimination through technology**, such as caste filtering mechanisms on Australian dating platforms.
- **Social isolation and economic marginalisation**, which result in reduced participation, loss of trust in institutions, and deteriorating community cohesion.

These documented harms are consistent with the NSW Law Reform Commission's conclusion that vilification causes "significant harm to victims and the community.

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<sup>1</sup> National Anti-Racism Framework Scoping Report 2022. See Pages 73-74 - <https://humanrights.gov.au/our-work/race-discrimination/publications/national-anti-racism-framework-scoping-report>

<sup>2</sup> An Anti-Racism Framework: The Perspectives of Multicultural Australia. See Pages 20 -21 - <https://humanrights.gov.au/our-work/race-discrimination/publications/anti-racism-framework-perspectives-multicultural>

<sup>3</sup> Caste in Australia: A Phenomenology of Casteism - <https://www.ambedkarmission.net/ncccd/>

<sup>4</sup> Hindu SRE classes teaching caste system in NSW public schools, claims report - <https://rationalist.com.au/hindu-sre-classes-teaching-caste-system-in-nsw-public-schools-claims-report/>

<sup>5</sup> NSW education department investigating caste-based discrimination in SRE classes - <https://rationalist.com.au/nsw-education-department-investigating-caste-based-discrimination-in-sre-classes/>

**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 criminal law currently fails to protect caste-affected communities:

- **Section 93ZAA** limits the definition of “race” to “colour, nationality, descent, and ethnic, ethno-religious or national origin,” but does not explicitly include caste.
- **Section 93Z** criminalises threats or incitement to violence on other grounds (e.g., religion, gender identity) but does not list caste.
- Civil remedies under the **Anti-Discrimination Act 1977 (NSW)** are outside the scope of this Review and do not fill the gap.

**Recommendation:** Amend both sections 93Z and 93ZAA of the Crimes Act 1900 (NSW) to explicitly recognise caste as a standalone attribute or include it explicitly within the definition of “descent.”

This would bring NSW law into alignment with Australia’s international obligations under the **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD), which explicitly calls for the prohibition of descent-based discrimination, including caste.

**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?**

**PATCA supports maintaining existing safeguards within s 93ZAA to ensure balance:**

- **Retain the intent requirement:** Only intentional incitement should be criminalised, ensuring protection against overreach.
- **Preserve religious exemptions:** Maintain protections for quoting or referencing religious texts in genuine theological discussions.
- **Maintain the harm-based test:** The requirement that a “reasonable person” would fear harassment or violence adds a necessary threshold of seriousness.

This approach is consistent with the **Rabat Plan of Action**, which encourages using criminal law only in the most severe cases of incitement, while respecting core freedoms.

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

Yes. Explicitly protecting caste-affected communities would:

- **Validate the lived experiences** of caste-oppressed people, improving trust in public institutions.
- **Deter hate speech and vilification**, reducing public hostility and reinforcing norms of equality.
- **Signal institutional commitment** to inclusion, thereby supporting the NSW Government's stated intent to address "hate speech based on other attributes."
- Enhance the **educational and symbolic value** of criminal law in shaping social norms.

**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, but they can be effectively mitigated:

**Potential Risks:**

- Misuse claims suggesting that caste protections unfairly target South Asian communities.
- Subjective enforcement, especially if "hatred" is not clearly defined.

**Safeguards:**

- Adopt Victoria's model (section 195Q of the Crimes Act 1958 (Vic)), which requires the DPP to consider social, cultural, and historical context before initiating prosecution.
- Engage caste oppressed community organisations in the statutory definition of caste-based hatred.
- Retain the intent requirement to ensure only serious, deliberate acts are criminalised.

**6. Are there other measures related to criminal law reform that may promote social cohesion?**

Yes. Legal reforms should be complemented by targeted, preventive strategies:

- **Mandatory anti-caste training** in schools, public service agencies, and workplaces.
- **Expand the NSW Social Cohesion Grants Program** to specifically support caste-affected communities.
- **Public awareness campaigns** as part of anti-racism efforts that include caste alongside race, religion, and other protected attributes.

These measures are essential to embedding the reforms in broader community education and institutional change.

## **Conclusion**

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We urge the NSW Government to amend ss 93Z and 93ZAA of the Crimes Act to include caste as a protected attribute. This is essential to fulfilling Australia's international human rights obligations (under CERD and ICCPR), ensuring equal protection for all vulnerable communities, and promoting genuine social cohesion.