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**By email to: [PRLIndependentReviewSecretariat@dcj.nsw.gov.au](mailto:PRLIndependentReviewSecretariat@dcj.nsw.gov.au)**

**Submission to Review of Criminal Law Protections against the Incitement of Hatred  
by the Honourable John Sackar AM KC ('the Review')**

Thank you for your email of 25 June 2025 inviting a written submission in relation to the Review. The Public Defenders are pleased to be able to provide the following submission.

Context

This submission is made in response to the call for stakeholder feedback in the June 2025 Issues Paper ('the Issues Paper').

The submission is made noting that the Review has been established following the passing, in February 2025, of the *Crimes Amendment (Inciting Racial Hatred) Act 2025* ('the Act'). The Act creates a new offence of "public incitement of hatred on the ground of race": s 93ZAA *Crimes Act*. The commencement date of the Act is yet to be proclaimed and, accordingly, the s 93ZAA offence is not yet in force.

The Review's terms of reference require consideration of:

- the sufficiency of criminal law protections against hatred for vulnerable groups in the NSW community, including any improvements that could be made;
- the interaction between these protections and existing rights and freedoms, including the implied freedom of political communication and freedom of religion;

- any other matters related to criminal law reform that the Government could consider to enhance social cohesion.

This submission also notes the focus questions provided in the Issues Paper. While not answering each explicitly, the submission endeavours to address the matters raised by those questions from a legal perspective.

### Submission

As regards the matters for consideration framed by the terms of reference, the Public Defenders submit that:

- (i) the current criminal law protections against hatred for vulnerable groups in the NSW community are sufficient;
- (ii) the commencement of s 93ZAA, and its creation of an offence of public incitement of hatred on the ground of race, risks encroachment upon existing rights and freedoms, such as the implied freedom of political communication and freedom of religion;
- (iii) that encroachment may adversely impact social cohesion rather than enhance it.

Consistent with the above, the Public Defenders do not support retention of the Act.

In formulating the above views, the Public Defenders took into account matters including:

- (i) The Act was introduced and passed hastily and apparently with little or no consultation. A Bill was introduced on 18 February 2025 and the Act had passed through both houses of Parliament by 21 February 2025.
- (ii) The Act was passed against the background of a perceived increase in hate-based violence during late 2024 (November – December) and January 2025 and a corresponding concern that social cohesion was threatened.<sup>1</sup>
- (iii) It seems to have become commonly accepted shortly after the passing of the Act that a significant proportion of the attacks, initially thought to be hate-based, were carried out at the behest of organised criminals.<sup>2</sup>

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<sup>1</sup> 2025 Second Reading Speech, *Crimes Amendment (Inciting Racial Hatred) Act*. Legislative Assembly: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-149763'>

<sup>2</sup> Select Committee Hearing on the Relationship Between the Dural Caravan Incident and the Passage of Relevant Bills Through the Legislation Council, Hearing Transcript of 27 June 2025. Australian Federal

- (iv) The circumstances of the passing of the Act appear to have been the source of some controversy and may be the subject of a select committee (*On the Relationship between the Dural Caravan Incident and the Passage of Relevant Bills Through the Legislative Council*) and a parliamentary inquiry (*Antisemitism in New South Wales*). It is understood that, at the time of writing, neither the select committee or the inquiry have reported to Parliament.
- (v) Although passed in on 21 February 2025 and receiving assent on 2 March 2025, the proclamation of the Act's commencement has yet to occur.
- (vi) In the months since the passing of the Act there seems to have been a decline both in alleged hate-based attacks and in consequent concerns about social cohesion.
- (vii) In the experience of the Public Defenders, new offences with complex elements often give rise to unnecessary litigation and uncertainty. The present state of the law is clear and the conduct of concern is already criminalised.
- (viii) Most significantly, the recent conclusion of the NSW Law Reform Commission (NSWLRC) that the current coverage of the criminal law is sufficient (Report No.151: *Serious racial and religious vilification*, September 2024 ("the NSWLRC Report")).

The NSWLRC Report (and its conclusion) followed a detailed review of virtually all the matters posed by the questions in the Issues Paper. In particular, the NSWLRC review explicitly considered, and / or formulated conclusions in respect of, pertinent issues including:<sup>3</sup>

- (i) The fact that, while criminal vilification offences can play an important role as part of a wider strategy for maintaining social cohesion, that they are not the only tool – and their significance should not be overstated (at [3.54]).
- (ii) Expanding the criminal law in this area could threaten social cohesion, rather than promote it (at 3.55], [3.64]).

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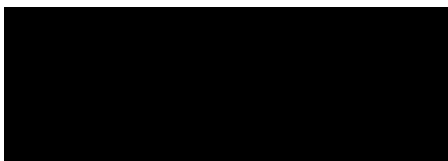
Police Press Release 10 March 2025: <https://www.afp.gov.au/news-centre/media-statement/afp-deputy-commissioner-national-security-krissy-barrett-statement>

<sup>3</sup> Paragraph references are to the NSWLRC Report No.151.

- (iii) Expanding the criminal law in this area could limit fundamental freedoms, particularly the freedom of expression and the freedom of religion (at [3.65], [4.44], [4.48]).
- (iv) Racial discrimination laws can be used by culturally dominant groups to litigate against culturally marginalised groups (at [3.71]).
- (v) The inclusion of “hatred” in a vilification offence, such as s 97ZAA, will “introduce imprecision and subjectivity into the criminal law”. Hatred is an inappropriate standard for the criminal law given the serious penalties that apply (including possible deprivation of liberty) and the higher standard of proof (at [4.30] - [4.32], [4.38]).
- (vi) Existing offences already cover hated-based conduct (at [4.41] – [4.42]).
- (vii) The criminal law already recognises the fact that, if motivated by hatred, an existing offence is more serious and will ordinarily attract a more severe penalty (at [2.48], [4.43], [8.37]).
- (viii) There are less far-reaching ways of improving the visibility of hate crime, and the criminal justice response to it. One example would be investigating options for introducing a new Law Part Code to better track incidents of hate crime (at [8.78]-[8.82]).

In summary, we generally agree with the analysis of the Law Reform Commission and their conclusions.

Your sincerely



Ian Nash  
Public Defender

On behalf of the Public Defenders