

Review into hate speech protections for vulnerable communities

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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Recommendations

Recommendation 1

The NSW Government should amend section 93ZAA of the Crimes Act 1900, as introduced by the Crimes Amendment (Inciting Racial Hatred) Act 2025, to include the attributes of sex, sexual orientation, gender identity, sex characteristics, HIV/AIDS status, disability and religious belief or affiliation (using the definition in s93Z) in protections against hate crimes.

Recommendation 2

The NSW Government should remove the exemption of quoting or referencing a religious text from section 93ZAA of the Crimes Act.

Recommendation 3

The NSW Government should ensure that the offence of inciting hatred is complemented by non-legal measures to address the drivers of hatred – including community education initiatives, public awareness campaigns and improved research and data collection.

1. Introduction

The Justice and Equity Centre welcomes the opportunity to make a submission to the review of criminal law protections, in particular section 93ZAA of the *Crimes Act 1900* (NSW), as introduced by the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (NSW).

While our submission follows the review's terms of reference, we note that a comprehensive assessment of the effectiveness of hate speech protections for vulnerable communities requires consideration of:

- all attributes currently included in section 93Z of the *Crimes Act 1900* (NSW) (noting that the Law Reform Commission's recent review was narrowly focused on only two of the six attributes under this section), including whether additional attributes such as sex and disability should be added to this offence; and
- the concurrent review of the *Anti-Discrimination Act* (NSW) which already requires consideration of harmonising vilification protections (see term of reference 5: 'the adequacy of protections against vilification, including (but not limited to) whether these protections should be harmonised with the criminal law').

2. Hatred towards vulnerable groups

Hatred directed towards vulnerable groups is a pressing issue both in NSW and across Australia, with significant impacts on the wellbeing, safety and inclusion of members of the community. Hate speech can silence marginalised voices, undermine equality within society and encourage harmful and violent conduct.¹

A concerning rise in anti-semitic, Islamophobic and racial hate speech was noted by the NSW Law Reform Commission in their report on serious racial and religious vilification.² Other communities have also experienced an increase in hate speech, including including LGBTIQ+ people and people with disability.

LGBTIQ+ people

The past few years have seen a disturbing increase in acts of violence and intimidation against the LGBTIQ+ community, including public displays of anti-LGBTIQ+ hatred by neo-Nazis and other extremist groups. This has included:

- Targeted group attacks on homosexual men in 2024;³

¹ Tanya D'Souza et al, 'Harming Women with Words: The Failure of Australian Law to Prohibit Gendered Hate Speech' (2018) 41(3) *UNSW Law Journal* 961-2.

² Law Reform Commission, 'Serious racial and religious vilification' (September 2024, Report 151) 33-34.

³ "Pedo hunts": Gay-bashing teen gangs in wave of Sydney attacks'. *Sydney Morning Herald*, 11 December 2024: <https://www.smh.com.au/national/nsw/pedo-hunts-gay-bashing-teen-gangs-in-wave-of-sydney-attacks-20241129-p5kulk.html>

- A widely-reported Neo-Nazi demonstration against transgender rights on the steps of Victorian Parliament in March 2023;⁴
- A less-well reported violent attack against LGBTIQ rights protesters and NSW Police in Sydney in March 2023;⁵ and
- Repeated threats of violence and other forms of intimidation against LGBTIQ community events, such as Drag Story Times at local libraries, such as the cancellation of a planned ABC event in the lead-up to the 2024 Sydney Gay and Lesbian Mardi Gras following death threats against staff involved in its organisation.⁶

People with disability

The issue of public abuse and harassment of people with disability was highlighted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Commission found:⁷

The evidence shows that many people with disability experience harassment in a range of places and circumstances not covered by the [*Disability Discrimination Act 1992* (Cth)]. This includes harassment in public places and by strangers. At Public Hearing 28, people with disability shared their experiences of harassment in public places and said they have come to expect some form of abuse and harassment whenever they leave their homes.

The Commission considered the issue of hate speech against people with disability, and recommended the introduction of serious vilification offences for acts that:

- involve threats to perpetrate or encourage violence or serious abuse;
- are reasonably likely, in all the circumstances, to incite hatred; and
- are done on the basis of disability.⁸

The Commission also recognised that in some jurisdictions, people with disability are excluded from protections against vilification. It recommended:

⁴ 'Nazi salutes performed on steps of Victorian parliament as protesters clash over trans rights', *SBS News*, 18 March 2023: <https://www.sbs.com.au/news/article/nazi-salutes-performed-on-steps-of-victorian-parliament-as-protesters-clash-over-transgender-rights/yr7gzkevn>.

⁵ 'Two arrested as mob sets upon protesters outside Mark Latham event in Sydney', *Guardian Australia*, 22 March 2023: <https://www.theguardian.com/australia-news/2023/mar/21/two-arrested-after-mob-charges-rights-activists-outside-mark-latham-event-in-sydney>.

⁶ 'ABC boss details abuse staff received over Drag Queen Storytime event', *OutinPerth*, 14 February 2024: <https://www.outinperth.com/abc-boss-details-abuse-staff-received-over-drag-queen-storytime-event/>.

⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Volume 4: Realising the human rights of people with disability, 2023, page 319, available at: <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Volume%204%2C%20Realising%20the%20human%20rights%20of%20people%20with%20disability.pdf>.

⁸ Recommendation 4.30, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report.

States and territories that already have legislation imposing criminal penalties for vilification of people on grounds that do not include disability should extend the legislation to vilification of people on the ground of disability.⁹

3. Including other attributes in hate crimes legislation

We note the NSW Law Reform Commission recommended that NSW should not adopt a criminal offence of inciting hatred, citing concerns about the subjectivity of the term hatred and the risk of disproportionate impacts on disadvantaged groups.¹⁰

Nevertheless, given the NSW Government has determined that criminal penalties for hate crimes are necessary, we recommend the attributes included in section 93ZAA of the *Crimes Act 2025* are expanded to protect other vulnerable communities impacted by hate crimes.

A failure to do so suggests that people in these communities are less deserving of protection against hate crimes.

Victoria has recently recognised the need to protect a broader range of vulnerable groups from hate speech by expanding the range of attributes protected.¹¹

We recommend that NSW hate speech protections are expanded to include the attributes of sex, sexual orientation, gender identity, sex characteristics, HIV/AIDS status, disability and religious belief or affiliation.

While some religions are currently protected against the incitement of hatred under the ground of race, others remain vulnerable. The decision in *Faruqi v Hanson*¹² clarified that some anti-Muslim comments come within the broader definition of racial vilification, but the Federal Court confirmed that other Islamophobic comments may continue to fall outside these laws.

To equally protect all faiths, religious belief or affiliation should be added to the inciting hatred offence in 93ZAA. In our view, this should be done using the same definition as contained in 93Z: 'religious belief or affiliation means holding or not holding a religious belief or view'.

The inclusion of these attributes must be on the same basis as the existing offence for inciting racial hatred. Penalties and exemptions must be uniform in recognition of the equal seriousness of hatred towards all vulnerable communities – subject to our recommendation to remove the exemption for quoting or referencing a religious text, discussed below.

⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Volume 4: Realising the human rights of people with disability, 2023, page 327, available at: <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Volume%204%2C%20Realising%20the%20human%20rights%20of%20people%20with%20disability.pdf>.

¹⁰ Law Reform Commission, 'Serious racial and religious vilification (September 2024, Report 151) 50-56.

¹¹ *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic).

¹² *Faruqi v Hanson* [2024] FCA 1264.

Recommendation 1

The NSW Government should amend section 93ZAA of the Crimes Act 1900, as introduced by the Crimes Amendment (Inciting Racial Hatred) Act 2025, to include the attributes of sex, sexual orientation, gender identity, sex characteristics, HIV/AIDS status, disability and religious belief or affiliation (using the definition in s93Z) in protections against hate crimes.

4. Removing the religious exemption for hate-based conduct

Section 93ZAA provides an exemption against the offence of inciting hatred on the basis of race where the conduct is directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion.¹³

This is an unnecessary exemption which privileges religious-based incitement of hatred over the right to live free from harassment, intimidation and violence. A key element of the offence of inciting hatred on the basis of race is intent.¹⁴ If the conduct was intentional and was sufficiently serious to 'cause a reasonable person...to fear harassment, intimidation, violence or for their personal safety' it should be irrelevant that a person was quoting or referencing religious text.

Although the discussion paper for this inquiry cites the need to 'recognise that some religious texts contain out-dated language',¹⁵ any quotes or references to such out-dated language would already be protected – so long as they did not *intentionally* incite hatred.

The right to practice and teach religion is not an absolute one. It can be subject to proportionate limitation necessary for, amongst other things, the protection of public safety and the fundamental rights and freedoms of others. This is clearly such a situation.¹⁶

Permitting this form of intentionally inciting hatred undermines the protections for vulnerable groups and must be removed.

Recommendation 2

The NSW Government should remove the exemption of quoting or referencing a religious text from section 93ZAA of the Crimes Act 1900.

5. Other measures to promote social cohesion

We also support non-legal measures to address the drivers of hatred in our community. This inquiry should consider expanding:

¹³ S 93ZAA Crimes Amendment (Inciting Racial Hatred) Bill 2025 (NSW).

¹⁴ S 93ZAA(1) Crimes Amendment (Inciting Racial Hatred) Bill 2025 (NSW).

¹⁵ NSW Government, 'Issues Paper: Review of criminal law protections against the incitement of hatred' (June 2025) 5.

¹⁶ Article 18(3), *International Covenant on Civil and Political Rights*.

- Public awareness campaigns;
- Education – including resourcing of community education initiatives; and
- Research and improved data collection on the causes and incidences of hatred.

While we acknowledge the narrow terms of reference for the current inquiry, we also highlight that promoting social cohesion in NSW will also benefit from a modernised *Anti-Discrimination Act 1977*, with expanded protections against discrimination, significantly revised and limited exceptions for religious organisations, and supported by increased powers and resources for Anti-Discrimination NSW to carry out their vital functions in combatting prejudice.

Recommendation 3

The NSW Government should ensure that the offence of inciting hatred is complemented by non-legal measures to address the drivers of hatred – including community education initiatives, public awareness campaigns and improved research and data collection.