

SUBMISSION TO  
THE INDEPENDENT REVIEW OF CRIMINAL LAW PROTECTIONS AGAINST  
INCITEMENT OF HATRED

6 AUGUST 2025

## Introduction

I am pleased to provide this submission on the Issues Paper on the topic of criminal law protections against the incitement of hatred (**Issues Paper**.)

At a time of increasing tensions both global and domestic, I commend the desire to address the hostility faced by vulnerable groups in our community.

The need to address this hostility must be balanced with the freedom of the individual to express their own beliefs and to challenge beliefs contrary to their own.

For this reason, any proposed limitation on freedom of speech, particularly when it comes to the discussion of matters of religious faith and the search for truth must not be taken lightly.

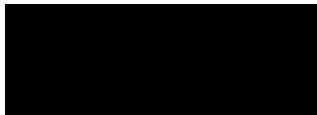
The key problem with criminalising the 'incitement of hatred' is that defining these terms is necessarily ambiguous and subjective in a way that is contrary to the requirement of natural justice that criminal laws be clearly understandable.

Moreover, there are additional and more effective ways to discourage the incitement of hatred and promote social cohesion that do not require criminal penalties.

If a lack of understanding of vulnerable groups is the cause of some of the hostility directed towards these groups, education is more important than sanctions. It would be preferable if a person refrained from vilification or other forms of incitement out of understanding, rather than the threat of legal consequences.

I appreciate the invitation to provide comment on the Issues Paper.

Yours faithfully



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## Criminal law protections against hatred for vulnerable groups

There is little official data of the extent of hatred towards vulnerable groups in the NSW community, partly because “hatred” is not an easily defined term and there is no universally applicable list of “vulnerable groups.”

Even so, it is clear that hatred can have significant impact on its subject, because it rejects the inherent dignity of each and every person, fosters division, dehumanisation and even violence.

*“Deliberate hatred is contrary to charity. Hatred of the neighbor is a sin when one deliberately wishes him evil. Hatred of the neighbor is a grave sin when one deliberately desires him grave harm.”<sup>1</sup>*

However, the criminal law is not the most appropriate avenue to protect against hatred or its incitement. While criminal actions might stem from feelings of hatred, hatred is an inner disposition that may not ever be manifested in action. Additionally, the most appropriate corrective for hatred or its incitement is often not the threat of criminal sanction, but conversion of heart and mind.

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

The appropriate balance between the incitement of hatred and the protection of other freedoms is to maintain the mechanism for dealing with vilification and incitement within anti-discrimination law, rather than criminal law.

Criminal laws require clarity so that a person knows if they are engaging in conduct that could result in a deprivation of their liberty. However, given hatred is both difficult to define and highly subjective, and vastly differing opinions as to what constitutes “hate speech,” the criminalisation of hatred will likely result in arbitrary and inconsistent application.

As the NSW Law Reform Commission wrote in its exploration of the potential expansion of section 93Z of the *Crimes Act 1900*:

*“Many of the terms proposed to be included as criminal elements are difficult to define precisely. They can mean different things to different people. For instance, there are differences of opinion in the community about what hatred means... this ambiguity makes hatred an inappropriate standard for the criminal law.”<sup>2</sup>*

Additionally, any proposal to introduce a criminal offence of inciting hatred will necessarily impact the freedom of the individual to express their own beliefs and to challenge beliefs contrary to their own.

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<sup>1</sup> Catholic Church. Catechism of the Catholic Church. 2nd ed. 1997. Vatican. [online]. Available at: [http://www.vatican.va/archive/ENG0015/\\_INDEX.HTM](http://www.vatican.va/archive/ENG0015/_INDEX.HTM), no 2303.

<sup>2</sup> New South Wales Law Reform Commission. Report 151: Serious Racial and Religious Vilification. NSW Government, September 2024, [https://lawreform.nsw.gov.au/documents/Publications/Reports/Report\\_151\\_Serious\\_racial\\_and\\_religious\\_vilification.pdf](https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf).

This balancing of competing rights has often been dealt with by means of exemptions. While it is imperfect to characterise the exercise of legitimate rights as exceptions to the general application of the law, it has been a useful tool in limiting the law's infringement of recognised human rights. In the case of criminal law, rights such as the implied freedom of political communication and freedom of religion would need to be protected by broad exemptions by way of defences to the law.

The defence provided in the *Crimes Amendment (Inciting Racial Hatred) Act 2025* is far too narrow, permitting an exception only for "directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion."

This is far narrower than the exemptions for civil vilification laws, which also include an exemption for religious, academic, educational, artistic, literary or scientific purposes<sup>3</sup>.

If a criminal offence was to be introduced, the appropriate balancing of rights would need to include defences that have much broader applicability than what was provided in the *Crimes Amendment (Inciting Racial Hatred) Act 2025*. These defences would need to not only protect a small proportion of people vested with some type of religious teaching authority, but that were capable of being pleaded by any person who made statements or engaged in conversation in good faith and for religious, academic, educational, artistic, literary or scientific purposes.

## Promoting social cohesion

Reforming criminal law protections against the incitement of hatred would not assist with promoting social cohesion in NSW and could indeed be counterproductive as it might be seen by some as an intolerable imposition on free speech.

The protection of the freedom of belief and its expression is not just about safeguarding a fundamental right, it is necessary to a flourishing society because human beings are both impelled by their own nature and "bound by moral obligation to seek the truth, especially religious truth."<sup>4</sup> Part of the search for truth necessarily involves "communication and dialogue, in the course of which [people] explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth."<sup>5</sup>

Social cohesion will be assisted in ways where we can learn to discuss important matters and disagree, even vehemently disagree, while still maintaining respect for one another. Attempts to criminalise hatred will not give people the tools to discuss but rather result in self-censorship that does not solve disagreements but suppresses them.

As Pope Francis wrote:

*"When conflicts are not resolved but kept hidden or buried in the past, silence can lead to complicity in grave misdeeds and sins. Authentic reconciliation does not flee from conflict,*

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<sup>3</sup> *Anti-Discrimination Act 1977* (NSW), s. 49ZE.

<sup>4</sup> Second Vatican Council. *Dignitas Humanae* [Declaration on Religious Freedom]. 7 December 1965. Vatican. [online]. Available at: [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html), no 2.

<sup>5</sup> *Ibid.*

*but is achieved in conflict, resolving it through dialogue and open, honest and patient negotiation. Conflict between different groups “if it abstains from enmities and mutual hatred, gradually changes into an honest discussion of differences founded on a desire for justice”.*<sup>6</sup>

It is not clear that the blunt instrument of criminal sanctions will support such a gradual change.

The goal is not simply to prevent vilification, but to promote love. For this, there needs to be a program of education and encounter that does not paper over conflict, but rather accepts it and promotes a culture of fraternity.

To cite Pope Francis again:

*“Renewed encounter does not mean returning to a time prior to conflicts. All of us change over time. Pain and conflict transform us. We no longer have use for empty diplomacy, dissimulation, double-speak, hidden agendas and good manners that mask reality. Those who were fierce enemies have to speak from the stark and clear truth. They have to learn how to cultivate a penitential memory, one that can accept the past in order not to cloud the future with their own regrets, problems and plans. Only by basing themselves on the historical truth of events will they be able to make a broad and persevering effort to understand one another and to strive for a new synthesis for the good of all.”*<sup>7</sup>

While this is obviously a more difficult task and one that requires time and goodwill, it is the only approach that will ultimately be effective.

The desire to promote social cohesion and limit the targeting of vulnerable groups is commendable but is better done through education and encounter.

## Conclusion

The desire to protect vulnerable groups and reduce hostility is commendable and is an important step in ensuring that diversity is not only tolerated, but valued, in New South Wales.

Unfortunately, the proposal to ensure this through changes to the criminal law is unhelpful, because it would require provisions that are ambiguous and subjective, and so are not appropriate for criminal law. Any law that both seeks to limit the freedom of expression and contains the threat of a deprivation of liberty must be clear and objective.

Instead of focusing on changes to criminal law, it would be preferable to consider how a culture of education and encounter will be more effective in protecting vulnerable groups and promoting social cohesion.

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<sup>6</sup> Pope Francis. Fratelli Tutti [Encyclical Letter on Fraternity and Social Friendship]. 3 October 2020. Vatican. [online]. Available at: [http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20201003\\_fratelli-tutti.html](http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_fratelli-tutti.html), no. 244.

<sup>7</sup> Ibid, no. 226.