



6 August 2025

Independent Review Secretariat: criminal hate speech
By email: PRLIndependentReviewSecretariat@dcj.nsw.gov.au

Dear the Honourable John Sackar AM KC,

Independent Review: criminal hate speech laws in NSW

The Australian Human Rights Commission condemns vilification of any person or group, including for reasons of race, religious belief, sex, sexual orientation, gender identity, disability, or age. Protecting and promoting the rights of all vulnerable groups is core work of the Commission. The Commission welcomes the opportunity to make a submission to this review and provide input to the adequacy of the criminal law in protecting vulnerable groups in New South Wales.

New South Wales has existing civil prohibitions against vilification on the grounds of race, religion, sexual orientation, gender identity and HIV/AIDS status in the *Anti-Discrimination Act 1977* (NSW). These provisions prohibit the incitement of hatred towards, serious contempt for, or severe ridicule of a person or persons because they have a protected attribute. Each of those provisions are subject to a range of free speech exceptions. New South Wales also has existing criminal provisions against threatening or inciting violence towards a person or group on the grounds of race, religion, sexual orientation, gender identity, or intersex or HIV/AIDS status in s 93Z of the *Crimes Act 1900* (NSW). Conduct involving hatred, such as offensive language, damaging property, stalking or intimidation, may also trigger a range of other general offences in NSW.

In its [submission](#) to the New South Wales Law Reform Commission's (NSWLRC) review of serious racial and religious vilification, the Commission highlighted the challenges of reviewing the effectiveness of s 93Z of the *Crimes Act 1900* (NSW) without a clear understanding of the reasons why prosecutions under that provision had not succeeded. This presents a difficulty in being able to assess the adequacy of the existing prohibitions against threatening or inciting violence on prohibited grounds and the extent to which they strike the right balance between protecting against hate-based conduct and other rights. While acknowledging the impact that hate-based conduct has on individuals, groups and the wider community, the NSWLRC concluded that s 93Z should not be amended.

Section 93ZAA, which provides for a new criminal offence of inciting hatred towards a person or group on the ground of race, received Royal Assent in March 2025. The new criminal offence is narrower than the existing civil provisions in that it: focuses only on race (but not other attributes), deals only with the incitement of hatred (but not serious contempt or severe ridicule), requires an additional harm element, and will require proof to a criminal standard. It is broader than the existing civil provisions in that there are no free speech exceptions other than directly quoting from or referencing a religious text.

The new laws, made in the context of a recent surge in antisemitic violence in Australia, will be subject to statutory review after 12 months and automatic repeal after three years unless extended. Despite the cautious approach, and although these laws are yet to commence, it has been suggested they should now be expanded to also include other vulnerable groups. While the laws are directed towards an important human rights issue, there has been a lack of clarity about the gap in existing legal protections that they are intended to fill, and whether they strike the right balance in relation to other human rights issues, notably in relation to freedom of expression. Any further reform expanding criminalisation should be underpinned by a demonstrated necessity for greater protection of rights through criminal laws that are proportionate, having consideration for, among other things, resulting limitations on freedom of expression.

In February 2025, amendments to federal legislation also expanded hate crime provisions in the *Criminal Code Act 1995* (Cth). These provisions include prohibitions on urging force or violence against certain groups. In its [submission](#) to the Senate Legal and Constitutional Affairs Legislation Committee inquiry on the Criminal Code Amendment (Hate Crimes) Bill 2024 (Cth), the Commission advocated for the expansion of existing offences to consistently include 'disability' as a protected attribute. The Commission outlined specific human rights concerns with respect to new offences of threatening force or violence, particularly in relation to freedom of expression, the right to peaceful assembly, and mandatory minimum sentencing.

That laws should be accessible and understandable is a crucial aspect of human rights, particularly the right to a fair trial and the right to equality before the law. In this respect, the Commission notes the desirability to ensure harmony and consistency between hate speech laws within Australia, as outlined in its submission to the NSWLRC. Any further reform of hate speech laws should avoid increased fragmentation and complexity in the law.

Furthermore, criminal offence provisions should be drafted with precision to ensure that prosecutions are clearly targeted and within the intended scope. Terms central to criminal provisions such as 'hatred' must be well-defined to remove potential uncertainty about the scope and applicability of protections and the appropriate balance of rights.

As stated in its submission to NSWLRC, the Commission views criminalisation as only one mechanism to address vilification, and insufficient, in isolation, to tackle the issue. The Commission highlights the need for a comprehensive approach towards addressing vilification that extends beyond criminalisation – with policy, education and community solutions working together with legal provisions. This is a key aim of the Commission's [National Anti-Racism Framework](#).

Yours sincerely



Lorraine Finlay
Human Rights Commissioner

