

NSW Women's Advisory Council

Re: Submission to the independent review of criminal law protections against the incitement of hatred

To the Honourable John Sackar AM KC,

The NSW Women's Advisory Council (the Council) was established to provide policy advice to the NSW Government and represent the diversity of voices, experiences and priorities of women across NSW. The Council works with the Minister for Women and Women NSW to advise on the issues affecting women and girls across the state and promotes equitable policy outcomes across the work of government.

The Council's membership includes expertise in gender equality, workplace diversity and inclusion, and community services delivery. Members reflect the focus communities within NSW and ensure that the perspectives of those community groups are considered in policy discussions that are relevant to them. Information on member backgrounds is available [here](#).

The Council values the opportunity to provide a submission to the Independent Review of Criminal Law Protections Against the Incitement of Hatred (the Review), which will review and report on the criminal law protections against the incitement of hatred following the introduction of the Crimes Amendment (Inciting Racial Hatred) Act 2025 (Inciting Racial Hatred Act). The Review will consider:

- 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 will be structured according to the focus discussion questions provided for the Council's consultation with the Review and in line with the Review's Issue paper.

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

Experiences of hatred and racism towards vulnerable groups in NSW continue to undermine social cohesion, inclusion and safety. Nationally, reported experiences of interpersonal racial discrimination have nearly doubled from 9 per cent in 2007 to 17 per cent in 2024 (O'Donnell, 2024). In 2024, more than one in three people born in a non-English-speaking country reported experiencing racism. These trends are mirrored in NSW, where Settlement Services International's (SSI) programs regularly see migrants, refugees and CALD women facing harassment, intimidation and vilification in both public and institutional settings.

Racism intensifies in different moments. During the COVID-19 pandemic, temporary migrants were excluded from economic supports, while racism directed at Asian-Australians rose sharply (Berg & Farbenblum, 2020; Markus, 2021). More recently, the Israel–Gaza conflict has fuelled hostility towards Jewish and Muslim communities in Sydney (Nichols, 2024; Human Rights Watch, 2025).

The impacts are far-reaching. Almost a third of Aboriginal and Torres Strait Islander adults experience high or very high psychological distress compared with 13 per cent of non-Indigenous adults, with nearly half of this gap linked to interpersonal racial discrimination (Thurber et al., 2022). Asian-Australians who experienced racism during COVID reported higher rates of stress, anxiety and depression, yet very few incidents were reported to authorities (Kamp et al., 2021).

The *Can Do Better Report* (Dunn et al., 2024) showed that while four in five Australians value cross-cultural contact, fewer feel prepared to intervene against racism in public. Islamophobia remains the strongest form of targeted intolerance, alongside prejudice towards African, Jewish and Aboriginal Australians.

Systemic and institutional racism further compounds interpersonal abuse. A lack of cultural safety in healthcare, education, housing and employment settings continues to limit CALD communities' access to rights and services (AHRC, 2024). As Race Discrimination Commissioner Giridharan Sivaraman noted: *"Interpersonal racism is one symptom of the disease of systemic racism. Even if you don't see that symptom, the disease still causes much damage across people's lives and needs to be treated."*

For CALD women in particular, discrimination is often compounded by gender, disability, religion or visa status, creating multiple barriers to full participation in civic life. This erodes trust in institutions, discourages reporting, and contributes to poorer health and wellbeing outcomes.

Summary of Discussion:

Hatred and vilification disproportionately affect women, particularly those who experience intersectional discrimination. This includes:

- Aboriginal and Torres Strait Islander women, who face racism compounded by gendered violence and systemic marginalisation.
- Culturally and linguistically diverse (CALD) women, who are often targeted for their ethnicity, religion, or language.
- LGBTQ+ women, who experience hate speech and threats based on sexual orientation or gender identity.
- Women with disability, who are subjected to ableist abuse and exclusion.
- Muslim and Jewish women, who face religious vilification, often in public spaces or online.

The impact includes psychological harm, social withdrawal, reduced civic participation, and barriers to accessing services. Hate-based conduct also reinforces gender inequality and undermines social cohesion.

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?

Current laws are too narrow and set the bar too high. Division 8 of the *Crimes Act* focuses on incitement to violence, leaving serious vilification and intimidation unaddressed if they fall short of that standard. This allows damaging rhetoric to persist unchecked, often under the cover of free speech. Division 8A, which has not commenced, only addresses racial hatred and does not extend to other groups.

Reform should expand the definition of vulnerable groups, so no community is excluded. It should also recognise intersectionality, for example, women of colour, LGBTQ+ refugees and migrants with disability who face compounded risks. Clarifying and lowering thresholds for incitement would make the law more effective without undermining essential freedoms. Victims also need culturally safe reporting pathways and access to legal assistance. Regular reviews will help ensure laws remain fit for purpose, particularly in tackling online hate. Public education about the harm of hate speech and the importance of inclusion should accompany any reform.

Summary of Discussion:

Currently, section 93ZAA of the Crimes Act 1900 only addresses racial hatred, excluding other attributes such as religion, gender identity, disability, and sexual orientation. This leaves many women unprotected under the new offence.

To better protect women in all their diversity:

- Expand section 93ZAA to include additional protected attributes relevant to women's lived experiences.
- Ensure intersectionality is considered in the application of the law.
- Provide training for police and prosecutors to recognise and respond to hate-based conduct affecting women.
- Improve reporting mechanisms that are culturally safe, accessible, and trauma-informed.

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?

Criminal law must protect communities from harm without stifling legitimate debate or religious expression. A clear distinction should be drawn between genuine political discourse or religious teaching, and public acts that deliberately incite hatred, fear or intimidation.

This balance can be supported by requiring proof of intent or recklessness, setting clear prosecutorial thresholds, and ensuring transparent oversight of prosecutions. Regular reviews and judicial guidance will help keep provisions proportionate and well understood. Public education is also vital, so communities know where the line lies between lawful expression and unlawful incitement.

Safeguarding freedoms cannot come at the expense of community safety. Protecting vulnerable groups and upholding rights are not in conflict, but together form the foundation of a safe, democratic society.

Summary of discussion

For women, especially those from marginalised communities, hate speech can silence participation in public life and erode trust in institutions. Legal protections must therefore:

- Be narrowly tailored to target serious hate-based conduct while preserving legitimate expression.
- Retain the intent requirement and harm-based test to ensure proportionality.
- Maintain the religious text exemption but monitor its use to prevent misuse as a shield for hate.
- Include clear prosecutorial guidelines to ensure consistent and fair application.

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

Yes. Stronger protections would send a clear message that NSW values diversity, dignity and safety. This would help rebuild trust in institutions, particularly among CALD and migrant communities, and give women and other vulnerable groups greater confidence to participate fully in civic life.

Reform also sets community standards by signalling that hate-driven rhetoric will not be tolerated. However, the law cannot achieve this alone. Reform should be coupled with education campaigns promoting respect and mutual responsibility, community-led initiatives that build understanding across cultural groups, and trauma-informed, culturally safe services for victims of hate incidents.

Summary of discussion:

Yes. Inclusive reforms would:

- Send a strong symbolic message that hate has no place in NSW.
- Empower women and marginalised communities to participate fully and safely in society.
- Reinforce community trust in the justice system.

- Support broader efforts to prevent gender-based violence and discrimination.

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?

Reforms could be misrepresented as “special treatment” for minorities, fuelling resentment or scapegoating. Migrants are often blamed for broader social issues such as housing stress or unemployment, and reforms could be used to reinforce those narratives. Past reforms, such as positive duty obligations, have also triggered claims of reverse discrimination.

There is also a risk that overly broad or vague provisions could discourage legitimate debate.

Safeguards include clear drafting and definitions, regular review and evaluation, and transparent communication that laws apply equally to everyone. Training for police, the DPP and courts is essential to ensure that the law is applied fairly and with cultural awareness. These measures will help protect against unintended consequences while reinforcing community safety.

Summary of discussion

Potential risks include:

- Over-policing of marginalised communities.
- Ambiguity in legal definitions leads to inconsistent enforcement.

Safeguards should include:

- Independent oversight and regular reviews.
- Community consultation, especially with women’s organisations.
- Transparency in prosecutions and the collection of disaggregated data.
- Education and training for law enforcement and the judiciary.

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

Criminal law reform must sit within a broader approach to tackling hate. Anti-racism and diversity education should be embedded in schools and workplaces to build cultural understanding and resilience. Public campaigns can reinforce values of respect and equality, and encourage safe bystander intervention.

Better data collection on hate incidents is needed so responses are evidence-based. Frontline organisations such as SSI should be resourced to continue providing culturally safe support and advocacy, drawing on our extensive experience supporting more than 50,000 people each year across settlement, employment, disability, aged care and foster care. Giving CALD and refugee women a stronger voice in designing solutions ensures that responses reflect lived experience and meet community needs.

Summary of discussion:

Yes. Complementary measures include:

- Public education campaigns addressing gendered and intersectional hate.
- Support services for victims, including legal aid and counselling.
- Funding for women-led community initiatives that build resilience and inclusion.
- Partnerships with local councils and schools to promote respectful relationships and diversity.

On behalf of the Council, I ask that you review our proposal and consider the diverse voices, experiences and priorities of women in NSW. If you wish to discuss this further, please contact the Council at [REDACTED].

Sincerely,

A large black rectangular redaction box covering the signature of Associate Professor Jill Duncan.

Associate Professor Jill Duncan OAM, Chair
The NSW Women's Advisory Council