



Anti-Discrimination
New South Wales

Anti-Discrimination NSW further submission to the NSW Law Reform Commission review on the effectiveness of section 93Z of the *Crimes Act 1900* (NSW) in addressing serious racial and religious vilification in NSW.

27 June 2024

1. Introduction

1.1. Anti-Discrimination NSW (**ADNSW**) thanks the NSW Law Reform Commission (**NSWLRC**) for the opportunity to make this further submission in response to the Serious Racial and Religious Vilification Options Paper published in June 2024 (**Options Paper**).

1.2. The Options Paper presents the following options for potential reform of section 93Z (**s 93Z**) of the *Crimes Act 1900* (NSW):

Option 1: Should the definition of “public act” be changed in s 93Z? If so, should it incorporate the approach of the definitions of “public place” in the *Summary Offences Act 1988* (NSW) and the Criminal Code (Cth) to capture communications made to limited numbers of people? Are there any other changes that should be made?

Option 2: Should the mental element of recklessness be removed from s 93Z?

Option 3: Should an offence of inciting hatred on the ground of a protected attribute be introduced?

Option 4: Should the term “incite” in s 93Z be replaced with terms such as “promote”, “advocate”, “glorify”, “stir up” or “urge”? Should s 93Z be amended to provide that the meaning of “incite” incorporates these? Should any other amendments be made to address this issue?

Option 5: Should the maximum penalty for s 93Z be increased? If so, what should be the new maximum penalty?

Option 6: Should there be aggravated versions of offences where the offence is motivated by hatred, which attract a higher penalty?

Option 7: Should an objective harm-based test be introduced into s 93Z?

- 1.3. ADNSW notes the NSWLRC’s ongoing review of the *Anti-Discrimination Act 1977 (NSW) (ADA)* and that options for reform of the civil vilification framework will be addressed through that review. ADNSW’s comments on the reform of s 93Z are limited to those areas with the potential to interact with the current ADA and any updated version arising out of the NSWLRC review. Specifically, our comments are limited to the Options Paper’s exploration of the definitions of “public act” and “incite” in s 93Z.

2. Public Act

- 2.1. As outlined in its first submission to the review of s 93Z in April 2024, ADNSW supports harmonising the civil protections in the ADA with the criminal provisions of s 93Z. ADNSW repeats and refers to its April 2024 submission.
- 2.2. As legislation which confers rights, the ADA should be construed broadly in order to maximise protections from discrimination and vilification. It is important that any amendment to the s 93Z definition of “public act” in 93Z is able to operate seamlessly alongside the ADA, including any updated version thereof arising out of the NSWLRC review.
- 2.3. Given the proliferation of hate speech online, through social media and online platforms, ADNSW supports a broad and clear definition of “public act” that is capable of capturing a wide range of ‘partially public’ scenarios, such as those described in the Options Paper, including livestreamed events or conferences.

3. Incite

- 3.1. In relation to the term “incite” ADNSW considers it preferable to expand, rather than replace, this term, as it has a well understood meaning and there is established case law on vilification. ADNSW supports expanding the definition of “incite” to incorporate terms such as “promote”, “advocate”, “glorify”, “stir up” or “urge”.

ADNSW thanks the Commission for the opportunity to make this further submission in response to its Review of s 93Z of the *Crimes Act 1900 (NSW)*.

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