



**AUSTRALIAN EDUCATION UNION
NEW SOUTH WALES TEACHERS FEDERATION BRANCH**

SUBMISSION TO

Law Reform Commission

ON

Serious Racial and Religious Vilification

Authorised by

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Introduction

The Australian Education Union NSW Teachers Federation Branch (the Federation) represents teachers, executives and principals in NSW public preschools, infants, primary and secondary schools, schools for specific purposes and teachers working in consultant/advisory positions. Teachers in TAFE and Corrective Services are also represented by the Federation. The current financial membership totals 64,000 practising teachers and student members.

As a social justice union, the Federation rejects racism and reiterates the contents of its earlier submission into the effectiveness of section 93Z of the *Crimes Act 1900* (NSW) in addressing serious racial and religious vilification in NSW.

In preparing this submission the Federation refers to the specific questions raised in the Options Paper which were included under the following headings:

- Definition of 'public act',
- Mental element of recklessness,
- Incitement to violence,
- An offence of inciting hatred,
- Increase maximum penalty,
- Aggravated offences, and
- A harm-based test

Definition of 'public act'

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?

As a social justice union, the Federation is committed to paving the way for future generations to continue working harmoniously and free from racism and hatred.

In its previous submission the Federation communicated the need for legislative change which clearly indicates that any forms of hatred or vilification towards people protected by the Act are not acceptable. The Federation noted the impact that hateful communication via media outlets and social media platforms has on society, including on education communities.

The Federation supports the definition of "public act" being changed to "public place" to strengthen the law and deter acts that contribute to broader, more significant hate-based issues.

The Federation also reiterates that schools do not operate independently of their local and broader communities but in fact are deeply embedded within them. Schools and TAFE campuses should be supported by strong messages and actions from governments that signal unacceptable community standards of behaviour, in relation to racial and religious vilification, are not tolerated.

Mental element of recklessness

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

Noting the significance of the offence in question, the Federation believes it is appropriate to keep the mental element of recklessness in section 93Z.

As outlined in its earlier submission, the Federation reiterates the need for legislation to clearly articulate that acts of hatred and vilification against people protected by the Act are not tolerated or accepted in NSW.

The Federation maintains that the main purpose of changes to the criminal offence of vilification should not be to provide a significant increase in opportunities for arrests and convictions, but rather to strengthen the law as a deterrent, and in doing so, to provide the necessary architecture for what is acceptable in society and to explicitly state what is not. Maintaining the mental element of recklessness ensures that the seriousness of the offence is acknowledged.

Incitement to violence

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 terms? Should any other amendments be made to address this issue?

The Federation acknowledges the considerations presented by the NSW Law Reform Commission in relation to the term incite as opposed to other possible replacement terms.

While replacing the term "incite" with an alternative would broaden the definition, the Federation feels it is appropriate to maintain the term "incite", as this ensures consistency of meaning across a range of other laws.

An offence of inciting hatred

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

The Federation is in favour of introducing an offence of inciting hatred on the ground of a protected attribute.

Racism and hatred are significant threats to the psychological safety and overall health of staff and students in schools and TAFE campuses, with a subsequent flow-on effect to the communities they serve. There is no place for inciting hatred in NSW and there is a need for legislative support to create and maintain communities that foster cohesion and inclusion.

The Federation reiterates its concerns about the significant impact of disinformation and "free speech" comments promoted by individuals and media outlets. Reported correlations between disinformation and increases in acts of hate and violence, both online and in-person, reinforce the need to protect vulnerable groups against those who profess "free speech" when they are in fact inciting hatred and violence.

Increase maximum penalty

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

When looking at increasing the maximum penalty, the Federation reiterates its earlier comments that these provisions should strengthen the deterrent effect of the law in relation to race hate, and in doing so, provide the necessary architecture for what is acceptable in society and to explicitly state what is not.

Making the community aware that racial and religious vilification could lead to a conviction and imprisonment, sends a clear message that such behaviour is unlawful and contrary to community standards. This messaging also supports people protected under the Act, by instilling confidence that they are protected by legislation when deciding to act against extreme views of others.

To recognise the severity of these crimes and the impact they have on communities, the Federation recommends that consideration be given to increasing custodial and financial penalties to reinforce that the behaviour is both unlawful and contrary to community standards. The offence of intimidation, identified in the option paper, has a maximum custodial sentence of five (5) years imprisonment. A sentence of this magnitude would appear to the Federation to be worthy of consideration.

It is pertinent to note that, consistent with similar offences including intimidation, in accordance with the *Criminal Procedure Act 1986* (NSW) the offences under section 93Z would continue to be dealt with summarily unless the prosecutor or accused person elects otherwise.

Aggravated offences

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

The Federation believes that acts of hatred and vilification towards the groups of people protected by the section 93Z must be treated seriously, and that aggravated versions of offences should be adopted. The message provided to the community, individuals and corporations needs to be clear that these behaviours and actions are not acceptable or tolerated in any way.

The Federation notes the considerations raised by the NSW Law Reform Commission in applying and sentencing on aggravated offences, and acknowledges the associated complexities, however the importance of recognising the severity of offences that are motivated by hatred should be recognised.

A harm-based test

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

The Federation acknowledges that there is potential merit in the application of an objective harm-based test in relation to section 93Z. However, the Federation believes that the Act should first be amended to strengthen the provisions as outlined above, to protect communities and see a reduction in behaviours that fuel hatred and vilification. In future reviews of this Act and section 93Z, the Federation anticipates that it will be appropriate to review the effectiveness of such change and consider harm-based testing in this context.

Final Remarks

The Federation has a proud history of promoting and advocating for acceptance, inclusion and participation of diverse people and communities in society. Diversity of communities in NSW is something to be celebrated and championed, and recognises the positive impacts of harmonious living. The Federation rejects all forms of discrimination including towards the groups specified in section 93Z of the *Crimes Act 1900* (NSW) and has a proud history of fighting against discrimination in schools and the wider community.

The Federation reiterates the need to have legal consequences for acts of hatred and vilification towards people protected by the Act, not only as a deterrent to individuals and organisations but to empower protected people to take action and have the confidence that they will be taken seriously, and the matter will be attended to.

The Federation does not view that the existing provisions of section 93Z impact significantly on freedoms, including freedom of speech, association and religion. The Federation recognises that individual rights must be balanced so that one person's right to be free from racism is of equal importance to the freedom of another to hold religious and political beliefs.

The Federation reiterates the importance of protections being applicable to all LGBTQ+ people and draws attention to the proposed legislative changes within the Equality Legislation Amendment (LGBTIQA+) Bill 2023.