

To: The NSW Law Reform Commission

Re: Serious Racial and Religious Vilification Review (Review of section 93Z of the Crimes Act 1900 (NSW))

June 2024

Dear Commission,

Please find following my submission to the above Review, based on the Options Paper you have released.

I make this submission as a private citizen with an interest in civics, ethics, and Freedom of Speech.

Thank you for the opportunity to make a submission to this Review.

Yours faithfully,

David A W Miller.

SUBMISSION

Serious Racial and Religious Vilification Review (Review of section 93Z of the Crimes Act 1900 (NSW))

Introduction

I would like to limit my comments to chapters 5 and 8 of the Options Paper, as I believe the proposals in those chapters are the most controversial, subjective, and potentially dangerous.

Chapter 5 – “An offence of inciting hatred”

In recent years society has become increasingly focused on the importance of not offending or insulting people.

However, I believe the focus has started to move too far from encouraging good manners, to criminalising bad manners. This shift in emphasis is seriously endangering freedom of speech.

The distinction between expressing disagreement with or even hatred of an idea, policy, or lifestyle, etc, is being confused with expressing hatred of a person or a group. It appears that certain groups are deliberately conflating hatred or disagreement of an idea with hatred of the person promoting the idea, to attack free speech and shut down any public debate on or criticism of some issue. In other words, such people implicitly make the equation that “free speech” = “hate speech” (if it disagrees with their way of thinking about some issue). This is a false equation that none the less is being legislatively confirmed around the country – and indeed around the western world - and is an attack not only on Freedom of Speech, but also on logical reasoning.

Homosexuality is a good example. It is now already unsafe to say or write publicly that one believes that the homosexual lifestyle is unnatural or unhealthy or is against the teaching of religion or whatever, without risking being charged with some sort of vilification or hate speech. This is not only against the principles of Freedom of Speech, but is not rational. Disagreeing with a person about an issue or idea does NOT imply hatred of the person promoting the issue or idea, let alone inciting others to hate the person.

Anyone who holds a strong opinion on some issue is going to be offended by the opinion of someone else who holds an equally strong opinion the other way. This does not imply that either party has engaged in hate speech. Disagreement does not equal hatred, bigotry, vilification, etc.

You can be pretty sure that if a criminal offense of inciting hatred is created, that it will be abused and will further chill public debate and damage freedom of speech.

You have said in point 5.6 that “there may be different opinions about whether a person’s speech is ‘hate’ speech”. There certainly are, and this is one of the things that makes targeting “hate speech” in legislation, so dangerous.

Here are some further examples of differences of opinion regarding hate speech. Is quoting the Bible on some topical issue hate speech? No, it is not – it is quoting classical literature - but according to some people, yes, it is – if it disagrees with their opinion. Is quoting valid medical research hate speech? No, it is not, but according to some people,

yes, it is – if it casts doubt on some case they are making, such as the safety or lack of safety of certain vaccines.

One could go on and on, but the point should be clear that increasingly, hate speech is being accidentally or deliberately conflated with free speech. That is, if the information in question conflicts with someone else's views or the majority opinion of the day, then it can be labelled as "hate speech" and censored or punished. This is exceedingly dangerous.

Illustrating how absurd and harmful this is, is one of the examples that has been brought to my attention. It is the case of a woman who is a breast-feeding advocate, and who posted online her opinion that a "transgender" woman who is attempting to breastfeed a baby will not be able to effectively do so, and that it could be harming the baby, and that it should not be attempted.

According to the information I have, this breastfeeding advocate was informed that she had "broken the law" by expressing her opinion, and had caused the "transgender" person offense by "inciting hatred, contempt and serious ridicule" through expressing her opinion, and she has been charged under the Queensland Anti-discrimination Act, and now must face the Queensland Civil and Administrative Tribunal to defend herself. All for expressing the common belief that biological men cannot breastfeed. What a laughable fiasco and a travesty of justice! Even if this breast-feeding advocate is ultimately proved to be incorrect, the way to do so is to present medical knowledge or research, not to resort to the legal system, and to judges who probably have no scientific or medical knowledge of the issue.

So, any view that the authorities or some person does not like can be arbitrarily labelled as "hate speech" and censored or punished. If this is already happening, then it is only going to make the situation worse to further tighten control of "hate speech" as is being proposed.

There is already other legislation in place to control things such as slander and vilification – and that legislation is already being abused. We do not want further legislation that can also be weaponised against free speech and against individuals or organisations that someone doesn't like.

So, in answer to the question (Option 4) at the end of chapter 5 of the Options Paper, "Should an offence of inciting hatred on the ground of a protected attribute be introduced?", the answer is, No, it should not – it is too subjective, dangerous, and open to abuse.

Chapter 8 – "A harm-based test"

I am very much against this because a harm-based test shifts the focus from what the accused has objectively done or said, to the subjective feelings of the alleged victim. No one can control another person's reactions or feelings. What some people will take offence at, will not worry, or concern other people.

As I pointed out for chapter 5 regarding hate speech - anyone who holds a strong opinion on some issue is going to be offended by the opinion of someone else who holds an equally strong opinion the other way. Conversely, someone who does NOT hold another opinion strongly is not likely to be offended or "harmed" by what someone else says about a matter. This could mean that an accused could be charged or not charged under criminal law depending on the reaction of the supposed victim. This is "variable justice" and is irrational and unjust.

Similarly to having an offence of “inciting hatred”, a harm-based test is likely to have a negative impact on free speech, because no one will be able to predict another person’s reaction to what is done or said - and some people will take offence at anything!

So, in answer to the question (Option 7) at the end of chapter 8 of the Options Paper, “Should an objective harm-based test be introduced into s 93Z?”, the answer is as per option 4, No, it should not – it is too subjective, dangerous, and open to abuse.

Indeed, whether an OBJECTIVE harm-based test is even possible is in my opinion, highly doubtful. Thus, in this context the term “objective harm-based” is a contradiction in terms.

Thank you.