



**Submission NSW Law Reform Commission  
Re Consultation into Crimes Act 1900 No 40 Current version for 27  
May 2024, Section 93Z**

Offence of Publicly threatening or inciting violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/Aids status

Catholic Women's League Australia – New South Wales Incorporated (CWLA-NSW) thanks you for the opportunity to contribute to this important discussion.

**About the Catholic Women's League in New South Wales:**

1. CWLA-NSW has been present in New South Wales (NSW) for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1600 active members in the seven (7) Catholic dioceses in New South Wales. Our organisation fosters the spiritual, cultural, intellectual and social development of women and promotes the role of lay women in the mission of the Church.
2. This submission is made on behalf of CWLA-NSW, a member organisation of the Catholic Women's League Australia Incorporated (CWLA), the national peak body representing the League's six member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

**Introduction**

It is well known that fear and misunderstanding are common drivers of aggression and hostility, societal responses to this problem, and particularly legislative responses, should seek to address these drivers while prizing rigorous debate as a feature of a healthy, free society. Incitement which promotes physical violence, however, should always be met with criminal sanction.

Freedom to share and speak beliefs and respond to others' beliefs contributes to the growth and development of society. It is part of the universal quest for truth. Since we respect the sincerity of other persons' religious beliefs, we advocate for better understanding and

knowledge of the different faiths. Dealing with hostile expressions - aggression, mockery or ridicule - arising from differences in beliefs, however, requires an approach which does not oppress freedom of religion or the previously accepted rights to freedom of speech and association. At the same time, such an approach must respect each person's right to live free of fear of violence or of actual violence or of threats of violence. Persecution from fellow countrymen and persecution under the Law are both to be avoided.

## **Executive summary**

CWLA-NSW has considered the impact of suggested options for change to section 93Z of the *Crimes Act 1900 No 40* and is not in agreement with these changes.

Our concerns are:

1. Suggested changes of expanded criminality, such as the introduction of 'verbal violence' criminality, could severely crush exchanges of thought and ideas, restricting freedom of expression, freedom of Religion and freedom of association.
2. Extending criminal sanctions would increase societal mistrust. Sanctions would be seen as retributive and engender resentment and a sense of persecution within multiple areas of society.
3. Imposing penal harshness into areas of the exchange of ideas, beliefs and convictions would stifle these exchanges and override the functions of understanding and forgiveness that bind us together as a multiculturalist and pluralist society.
4. The immaturity and impetuosity of youth, the growing maturity of those raised in less-than-ideal environments, the differences in ethnic temperaments and in individual personalities are not respected or accommodated within the proposed change options as outlined below. They could harm our children, and grandchildren.

## **Option 1 A mending the definition of 'public act' to incorporate 'public place' ie the Definition of a 'public act'**

CWLA-NSW believes that the definition of "public act" should not be changed in s 93Z as the definition is non-exhaustive. The suggested incorporation of 'public place' would significantly affect all gatherings where opinions are expressed to a group (size not specified) and hence, potentially, all persons communicating in such gatherings. Due to the ability of such a broad net of a serious criminal offence to be cast over free communication in schools and churches and other faith gatherings,

Differing media and technologies could also publish and disseminate communications beyond an intended audience and into the public space. CWLA-NSW believes that a definition of

“public place” should not be incorporated into s 93Z. Its newly extended breadth would oppress freedom of speech and could significantly impinge on freedom of religion.

## **Option 2 Mental element of recklessness**

CWLA-NSW would favour the removal of the mental element of ‘recklessness’. The requirement of intentionality to ‘incite’ violence is more appropriate to a designated serious criminal offence. It is noted in section 3.3.5 of the LRC Options Paper that criminality attributed to an unintentional act (‘recklessness’) may “encourage people to think about the possible consequences before making potentially inflammatory remarks”. While this argument is intended to defend the inclusion of ‘recklessness’ in criminality, it highlights the dangers of its inclusion. Many strong convictions could be considered ‘inflammatory’ to those who do not share them. Expressing such convictions or beliefs without intention to incite could be captured as a criminal act by retaining the word ‘recklessness’.

This would engender fear and threateningly stifle freedom of speech and freedom of religion and freedom of association.

## **Option 3 – Incitement to violence**

CWLA-NSW understands that the term ‘Incite’ has already been interpreted in Australian Law, despite the absence of a specific definition. Those existing interpretations cover ‘proposing’ and ‘spurring on’. Such usages of the word ‘incite’ would be appropriate to maintain. Broader application could embrace a wide and unintended range of predictions of ‘violence’ or envisaged potential violent consequences. The Latin derivation of ‘incite’ can mean ‘to set in motion’. This could apply to a wide range of unintended and unforeseeable events following innocent communications. CWLA-NSW would be concerned at any expansion of the currently listed interpretations of the term ‘incite’ already listed in the LRC Options Paper and used in Australian Law under the Oxford dictionary definition.

## **Option 4 An offence of inciting hatred**

CWLA-NSW does not believe that an offence of inciting hatred on the grounds of a protected attribute should be introduced. It is difficult to define “hate speech” – there may be different opinions about whether a person’s speech is “hate speech”. The NSW LRC Options Paper does not define hatred. Speech may be labelled ‘hate speech’ by those who simply do not agree with it or who dislike it. Hatred is in the mind of the person who holds the hatred and bears it. ‘Inciting hate’ should not be a criminal offence. The malice borne is largely the responsibility of the person who carries it and acts upon that malice.

The Oxford dictionary defines hatred as ‘bearing malice, loathing, hostility’. Currently, however, any type of controversial statement, criticism or difference of opinion or argument is called ‘hate speech’ and can be interpreted as or could come to be defined as ‘hate speech’. Also, existing civil vilification legislation imposes penalties on what is perceived to be “hate speech”. Civil vilification legislation, such as s 20C(1) of the *Anti-Discrimination Act*,

already makes it unlawful to incite hatred toward, serious contempt for, or severe ridicule of, a person or group on the grounds of race or another protected attribute.

### **Option 5 Increase maximum penalty for s 93Z**

CWLA-NSW does not believe that the maximum penalty should be increased. Prosecutors are already able to impose higher penalties under different pieces of legislation if they consider an offence warrants a higher penalty. As has been stated increasing the maximum penalty carries risks of unintended consequences on disadvantaged groups, including young people and Indigenous people and those for whom English is their second language who may not realize fully the meaning of words used.

### **Option 6 Introduce aggravated offences**

CWLA-NSW does not believe that there should be aggravated versions of offences where the offence is motivated by hatred, which attracts a high penalty. As noted in option 4, “hate speech” is difficult to define. Accusing another of ‘hate speech’ has become a common retaliatory term. There is a risk that any type of controversial viewpoint or statement, criticism or disagreement could be regarded as “hate speech”.

The aggravated offence may, as stated, be rarely raised by prosecutors but there is still embedded scope to do so, and this is already covered in existing legislation.

### **Option 7 Introduce a harm-based test**

CWLA-NSW strenuously objects to the introduction of a harm-based test into s 93Z. We believe that it should be dealt with by civil law. CWLA-NSW believes that a harm-based test is not appropriate for criminal law. This blurs demarcation between criminal offence and religious and other freedoms. It is not possible to clearly determine offence in whether conduct is reasonably likely to insult, humiliate, intimidate and/or ridicule a person with a protected attribute. One may take offence, or suggest offence exists, simply from disagreement. This could capture perceived disapproval and contradiction as vilification falling short of threatening or inciting violence. This may be significant where there is not always agreement on what words or acts amount to hatred. It could also be used against traditional religious teaching.

## **Discussion**

No individual who meets the stated standard of the protected attributes detailed in this section should face violence and ridicule or threats thereof. We are all God’s people, and this fact alone means that all people, whatever their particular attributes, should be treated with dignity and respect.

Threats and violence are already subject to a rigorous level of criminal sanction under the Law. CWLA-NSW believes that only physical violence and threats of violence towards the

persons with the stated attributes in this section should be subject to criminal sanctions. A broadening of criminal sanction to include the subjective concept of 'verbal violence' is vulnerable to very wide-ranging interpretation. Such interpretation, and indeed its meaning, will differ among community members. Therefore CWLA-NSW disagree with introducing a new, widened understanding of violence to include non-physical behaviour. Due to its broad interpretability and application, accusations of 'verbal violence' could diminish the significance of physical violence and threats of violence. Such accusations could also engender fear of retribution in the community associated with any disagreements. Similarly, the vague and extensive latitude of interpretation would harm social rights and freedoms to practice one's religion, to have free speech and to associate with others in a group. It would diminish the level of trust and collaboration within the community.

Speech that may have significant harmful consequences on those persons with the stated particular attributes, should be dealt with through civil sanctions alone.

Upholding family concerns, and mindful of the pitfalls of youth and of the disadvantages many young persons have experienced growing up without the tempered guidance of loving wise adult role models, CWLA-NSW prefers to uphold the Christian concept of forgiveness. If we abandon this, we are dealing harshly and cruelly with the impetuosity of youth. We are also dealing roughly and harshly with the convictions, beliefs and temperaments of others. Some ethnic temperaments differ from the 'stiff upper lip' British tradition. Some concepts of courtesy overlap and are common to all societies, but others differ. This should be respected in a racially and ethnically diverse society. All persons need time and developmental growth to mellow, and we all hope to improve our communication skills and demeanour over the course of a lifetime. Meanwhile, critiques made in good faith are beneficial to all of us.

CWLA-NSW upholds the historically orthodox Christian definitions of sex, sexuality, and marriage. We believe that humanity is best served by definite two sexes of male and female. We also believe that sexuality should be expressed between these definite two sexes in the form of heterosexual marriage.

The Catholic Church in Australia as a major world religion believes that it has the right to teach these historically orthodox Christian definition of sex, sexuality and marriage not only to its followers but to society at large. CWLA-NSW is glad that Section 93Z includes religion as a protected characteristic.

## **Conclusion**

CWLA-NSW believes that all physical violence and threatened physical violence against those people with the stated attributes in Section 93Z should be, and should remain, criminalised. Other concerns of speech, however, against these same people should be dealt with in the civil jurisdiction. Under our established civil offence standards, 'hatred, serious contempt and sever ridicule' are adequate enforceable boundaries. Lesser transgressions can be addressed and modified in self-reflection promoted by family and peers and communal feedback over time. Hence, suggested amendments to religious vilification laws and promoting and opening up society to new 'verbal violence' concept-fuelled accusations, will not protect religious attributes but will likely reduce freedoms and could promote increased aggression and incite

religious distrust and recriminations. Understanding differing personalities, temperaments and ethnicities is a duty incumbent on us all in a pluralist society. If society teaches that retribution is preferable to forgiveness in these lesser transgressions, we are regressing as a people. Our multistrand community will flourish more from understanding and forgiveness. Forgiveness is a key Christian attribute.

Community debate and discussion and the exchange of ideas and beliefs should be encouraged as the foundation of societal development. To proceed with courtesy and respect and with forgiveness is far preferable to penal harshness, retribution and the building up of resentment. It has been upheld in Catholic Women's League that 'Courtesy is Christlikeness', and in this we should persevere with each other.

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