



WITH:



**June 2024**

**SUBMISSION - OPTIONS PAPER**

**RE: NSW Law Reform Commission review of section 93Z of the Crimes Act 1900 (NSW) in addressing serious racial and religious vilification in NSW.**

**By email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)**

Thank you for the opportunity to provide further comment and perspective from the Faith Communities of NSW, in reference to the review of 93z and the Options Paper presented.

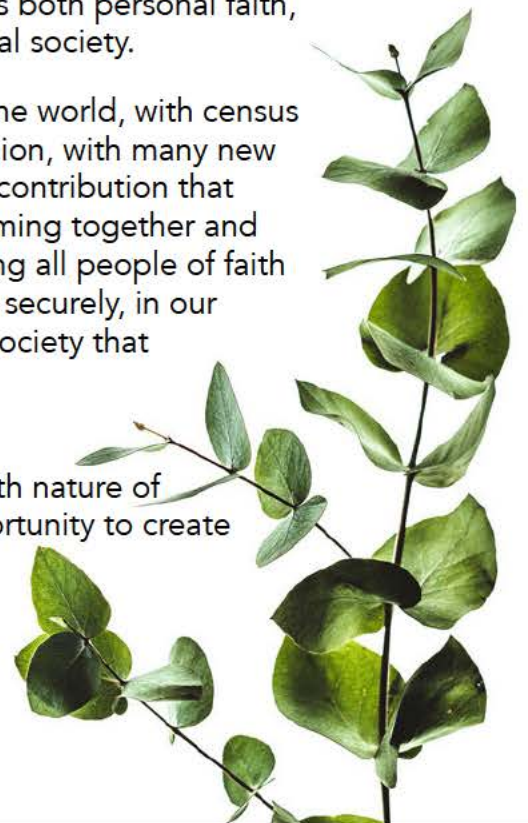
Faith NSW, together with Better Balanced Futures (BBF) as research partner, brings together various faith communities of the people of NSW. Our faith leaders work respectfully with one another, and with all levels of government and political leaders, on issues that matter to people of faith. During COVID, BBF was the go-to point for the government and health department to liaise with faith communities – and our strong advocacy played an important, recognised role in providing health and wellbeing to so many, as we wrestled with the pandemic.

Faith NSW and BBF represent our ongoing multi-faith collaboration, engagement, advocacy, and commitment to providing opportunities for faith to flourish in NSW, recognising the invaluable contributions both personal faith, and the faith communities, make to our diverse multicultural society.

NSW is one of the strongest multicultural communities in the world, with census data showing that 60% of NSW people identify with a religion, with many new migrants also sharing a strong faith. We celebrate the rich contribution that multicultural and multifaith communities bring to NSW, coming together and learning to live harmoniously. We are committed to ensuring all people of faith have the freedom to practice that faith, and live safely and securely, in our remarkable home of Australia – creating a more cohesive society that promotes better understanding, respect and acceptance, enriching our strong multicultural NSW.

We represent the broad, diverse, multicultural and multifaith nature of the faith communities in NSW – and we welcome the opportunity to create this submission. Thank you for your consideration.

**Murray Norman**  
**CEO, Better Balanced Futures**  
**CEO, Faith NSW**



# Submission to the Review of Section 93Z of the NSW Crimes Act 1900 – Response to the Serious racial and religious vilification Options Paper

## OPTION 1: 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?*

We oppose changing the definition of ‘public act’. The definition of ‘public act’ in s 93Z is:

*public act includes –*

- (a) any form of communication (including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods) to the public, and*
- (b) any conduct (including actions and gestures and the wearing or display of clothing signs, flags, emblems and insignia) observable by the public, and*
- (c) the distribution or dissemination of any matter to the public.*

*For the avoidance of doubt, an act may be a public act even if it occurs on private land (1).*

We believe that this definition is sufficient and broad enough to capture offences appropriately.

Specifically, we oppose the change to “public space”. If this change were to occur, it would have significant impact on private conversations held in public spaces, and also impact on legitimate discussion and teaching of doctrines and beliefs in Churches, Synagogues, Mosques and Temples – when such teaching and discussion is conducted in good faith, amongst religious group members or attendees, and not inciting violence.

In summary, we believe the current provision of “public act” to be sufficient, and we strongly oppose the inclusion/extension of “public space”. We believe this speaks to item 4 in terms of reference, as it would have a negative effect on “freedom of speech, association and religion”.



## **OPTION 2: MENTAL ELEMENT OF RECKLESSNESS**

*Should the element of recklessness be removed from s93Z?*

Whilst we maintain that s93Z should remain in its present form, without alteration, if there was to be an alteration, we would accept the option to remove 'recklessness'.

Overall, religious institutions must be protected and be able to publicly continue to teach and encourage adherence to their tenets, doctrines and beliefs – without this being seen as an act of violence. We support the submission from Bishop Michael Stead in this regard, and endorse all of his points raised on this option.

## **OPTION 3: 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 incorporate these terms? Should any other amendments be made to address this issue?*

We believe the term “incite” is sufficient and should not be replaced with the other suggested terms.

## **OPTION 4: AN OFFENCE OF INCITING HATRED**

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

We oppose this change which would in effect raise the bar for conviction. Part of the basis for this review was the lack of successful prosecutions under s93Z. However, given the recent successful conviction (2) under s93Z, the reservation that the law may not be sufficient has been dealt with. We strongly oppose the introduction of a new offence, which only requires the incitement of hatred on the ground of a protected attribute.

## **OPTION 5: INCREASE MAXIMUM PENALTY FOR s93Z**

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

We do not support the increase of maximum penalty. We maintain that the current penalty is sufficiently educative to dissuade the behaviour it is intended to address.



## **OPTION 6: INTRODUCE AGGREGATED OFFENCES**

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

We do not support the introduction of a version of the section 93Z offence where if the offence is motivated by hatred, it would attract a higher penalty. It is concerning that a court, lacking religious knowledge, could misconstrue legitimate religious teaching to be motivated by hatred. We also support Bishop Michael Stead's point raised in his submission:

*"We oppose the introduction of an offence that would require a court to consider the existence of a motivating hatred for these reasons. Additionally, a court already must consider the existence of aggravating factors, including hatred as a motivating factor, by reason of section 21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 (NSW). It is therefore unnecessary to add to the offence what is already available to the court in sentencing procedure."*

## **OPTION 7: INTRODUCE A HARM-BASED TEST**

*Should an objective harm-based test be introduced into s93Z*

We are opposed to the introduction of a harm-based test, and refer to (and support) Bishop Michael Stead's submission:

*"Furthermore, a civil standard applied at a criminal level with no necessary protections for good-faith religious activity, preaching and teaching would be seriously detrimental to religious freedoms in the state of NSW. Such lowering of standards would restrict legitimate religious activity and debate.*

*With respect to international jurisdictions, we strongly oppose any amendments modelled on the Public Order Act 1986 (UK). This Act creates offences that relate to threatening, abusive or insulting words or behaviour, or display of visible representations, which:*

- (a) Are likely to cause fear of, or to provoke, immediate violence: section 4;*
- (b) Intentionally cause harassment, alarm or distress: section 4A; or*
- (c) Are likely to cause harassment, alarm or distress (threatening or abusive words or behaviour only): section 5.*

*It is a defence to section 4A and section 5 for the accused to demonstrate that their conduct was reasonable, which must be interpreted in accordance with the freedom of expression and other freedoms. If these freedoms are engaged, a justification for interference (by prosecution) with them must be convincingly established. A prosecution may only proceed if necessary and proportionate.*



*The scope of the terms “threaten”, “abusive”, “harassment”, alarm and “distress” accompanied with the vague tests of “reasonableness” and “proportionality” have created a plethora of litigation in the UK. This litigation has arisen under the offences that don’t require incitement to violence or require threats of violence, but regulate threatening or abusive words that that cause harassment, alarm or distress; similar to the proposals put forward in the Options Paper of a test that asks whether conduct is ‘reasonably likely to offend, insult, humiliate, intimidate and/or ridicule a person with a protected attribute.’”*

In conclusion, while the current provisions do have their challenges – and consideration should be given to addressing them – based on the recent successful s93z prosecution case, and the very delicate balance required to achieve communal acceptance of the legislation so that they meet broader community expectations, any amendments should be made with absolute caution.

Thank you for the opportunity to make submissions on these presented options, from the perspective of the multi-faith communities of NSW. We would also like to express our support of the submissions of both Bishop Michael Stead (Anglican Church Diocese of Sydney), and also Bilal Rauf (ANIC). We welcome any further opportunity to discuss and consult on this review.

**Murray Norman**  
**CEO, Better Balanced Futures**  
**CEO, Faith NSW**

REFERENCES:

(1) Crimes Act 1900 (NSW), s93Z(5).

(2) <https://www.theaustralian.com.au/nation/nsw-breaks-judicial-ground-with-first-successful-hatespeech-conviction-under-section-93z/news-story/17148ad3fe1accee517f612d9b140601>

