

19 April 2024

NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124
By email: nsw-lrc@justice.nsw.gov.au

Dear Chairperson,

NSW Law Reform Commission review: s 93Z Crimes Act 1900 (NSW)

The Inner City Legal Centre ('**ICLC**') thanks the NSW Law Reform Commission and the NSW Attorney General for the opportunity to provide a submission on the Terms of Reference of the section 93Z *Crimes Act 1900* (NSW) ('**s93z**') review.

The bulk of this submission was drafted by First Nations Intern Xander Mains. We thank Xander for his work and for Community Legal Centres NSW for supporting Xander's placement with the ICLC.

Acknowledgement

The ICLC sits upon the unceded traditional lands of the Gadigal People of the Eora Nation. We pay our thanks and respects to Elders past and present for their continued care and custodianship of these lands.

About the ICLC

For more than 40 years, the ICLC has proudly stood amongst leading legal advocates for the LGBTQIA+ and sex worker communities in NSW. We provide the only specialist legal services for these communities in NSW.

The ICLC is also one of the most underfunded Community Legal Services in NSW, as the LGBTQIA+ and sex worker communities are not priority populations under the National Legal Assistance Partnership. We have addressed this critical oversight in detail in our 2023 submission to the NLAP review, which we attach for your reference.

The ICLC is frequently and appropriately invited to provide our feedback on the issues that impact the communities we support. We do not have a dedicated policy and law reform position within our organisation. Nevertheless, we attempt to fit Law Reform in within our primary frontline duties.

In line with our submission to the NLAP Review, the ICLC requests an urgent increase in resourcing from the NSW Government. This would support our comprehensive and equitable engagement in policy and law reform work. Any NSWLRC report on improving outcomes for people experiencing vilification must also acknowledge the need for dedicated funding for Community Legal Centres to provide frontline support.

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Consideration of all relevant protected attributes

The current review of s93z is limited to 'Serious racial and religious vilification'.

The Commission should expand its inquiry to investigate the effectiveness of the whole part. This would necessarily include incitement and vilification involving sexual orientation, gender identity, people who are intersex and HIV/AIDS status.

We question why the Inquiry has specified only racial and religious vilification given that the part extends to protect a broader array of attributes. The Commission will note that it has invited the ICLC to participate in this Inquiry while excluding the communities that we serve from the Terms of Reference. The Commission ought to recognise the intersectional nature of vilification as well as the purpose of the introduction of s93z in 2018, which aimed to increase safety for all those within its prescribed scope. In our experience, queer and transgender people of colour and sex workers of colour are the most at risk of violence, abuse and vilification. Victimisation of these groups is not confined to characteristics of race and religion.

This submission calls for inclusion of all communities within in the existing scope of s93z within this inquiry.

We further note that the criminal vilification provisions in the ACT extend to include people with a disability. This is reflective of the documented harassment and abuse experienced by people with disability in the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2023. In the report, 55% of adults with disability aged between 18 and 64 were found to have experienced physical or sexual violence in public places since the age of 15 alongside multiple experiences of discrimination and unfair treatment; including harassment and abuse, in public places from strangers. People with disability experienced online hate speech in the last 12 months at higher rates (19 per cent) than the national average (14 per cent).

S93z protections against hate speech must be extended to include the attribute of disability.

Sanctions for vilification on the basis of sex are also not available under s93z. The inclusion of such a provision with extend to protect women and transgender people.

Women in Australia are disproportionately more likely to physical, sexual and family violence as a result of manifestations of inequality and discrimination based on gender, race and class. Without addressing the rise in hate speech and vilification targeted at women, Australia will remain ill equipped to address ongoing issues of domestic violence, assault and murder that targets women and transgender people.

The ICLC support the passing of the Equality Legislation Amendment (LGBTIQA+) Bill 2023 as a matter of urgency. We have made numerous submissions to consultations with Independent Member Alex Greenwich and to the NSW Government to that effect.

The LGBTIQA+ Bill introduces sex worker as a protected attribute within the NSW Anti-Discrimination Act and inserts this occupational characteristic within s93z to protect against vilification.

Sex workers form a substantial proportion of our client base. They experience the worst forms of stigma, discrimination, social exclusion and violence, frequently without recourse under existing criminal or civil avenues.

Our clients consistently report that police or essential service providers do not take instances of vilification, abuse or assault against sex workers seriously. The introduction of criminal sanctions would introduce an increase in protections and an offence under which police could lay charges for perpetrators of vilification against sex workers.

Victoria, Queensland and Northern Territory have introduced anti-discrimination protections for sex workers. Tasmania protects vilification against sex work through civil remedies. Although NSW was one of the first jurisdictions in the world to decriminalise sex work, the lack of civil and criminal protections provide no recourse for the persistent discrimination and vilification against sex workers.

We urge the NSW Law Reform Commission to adopt the recommendations made in the *LGBTQIA+ Bill*.

Intersectional perspectives

This submission focuses on the experiences of LGBTQIA+ people and sex workers, many of whom experience vilification and harassment on the basis of that identity as well as their gender, religion, race, migration status or disability.

An improved s93Z must protect people in this complexity, and provide specific protection against religiously motivated vilification of LGBTQIA+ communities and from instances where racial, religious, disability and other forms of vilification overlap.

The **Royal Commission** into Violence, Abuse, Neglect and Exploitation of People with Disability 2023 found that LGTBQI + people who also lived with a disability were subject to significant public physical and non-physical harassment and assault. They were spat on and more likely to be targeted by offensive gestures and words. Women with a disability experienced higher rates of online abuse compared with those without a disability.

Any recommendations must consider a significantly expanded set of protected attributes with the addition of sex workers, people with disability and women.

Use of section

Proceedings under s93z must be commenced by the DPP or a police officer. At the time of writing, only six people have been charged with the offence with no successful prosecutions; of the 6, 2 were annulled, were withdrawn and 2 are subject to adjournment.

The lack of charges and prosecution to date may be partially attributed to the existing definition of 'vilification' being overly complex and unhelpful for community members and inaction by NSW Police.

Reporting to and Police inaction

ICLC have heard from trans and gender diverse clients who have been refused police assistance when experiencing vilification. We have also heard from our LGBTQIA+ clients and broader community strong concerns and fears when reporting harm, including LGBTQIA+ vilification to Police.

In some of these cases, it is then left to the community legal centre sector to commence private apprehended personal violence order applications for our client's experiencing vilification and prolific online hate speech, which given our under-resourcing, remains a difficult gambit.

In another cases, we have heard from LGBTQIA+ people and/or sex workers of instances of being 'doxed' and vilified online – having their personal and contact information published, their sex work and/or LGBTQIA+ status shared, that information sent to family, communities and employers, and calls made for violence, harassment or ostracization against the person on the basis of their sex worker and/or LGBTQ status.

We have heard from clients there is a significant reluctance to report to Police due to expectation of further stigmatisation. In cases where individuals have reported, they have disclosed experiences of police inaction, unhelpfulness and/or victim-blaming attitudes.

It is submitted that the provision should provide clarity as to the elements of the offence, and definitions of relevant wording, allowing clearer navigation to and understanding of the degree of vilification needed for the provision to be used. This would assist both Police in identifying relevant matters, but also improve the confidence and education of community members in explaining how their experience of vilification does meet the criteria in s93z.

The ICLC calls for the clarification of what vilification constitutes which should encompass doxing and the publication of information as to a person's location or contact information, especially in the inflammatory context of social media (e.g. hatred, harassment or vilification published on a highly viewed platform, or in a way that generates significant traction online).

Civil vilification provisions

Reflective of our submission is the current review of the Anti-Discrimination Act by the NSW Law Reform Commission. We advocate for increased accessibility of existing civil vilification provisions, as well as their extended application to sex workers.

As noted, we advocate for Anti-Discrimination NSW to have positive obligations and additional powers to address vilification. We would suggest that in many instances, this would also be a better platform for addressing vilification instead of police prosecution.

Further we believe there needs to be a more robust structure to current complaint procedures and remedies, which currently are inadequate in ensuring the process is trauma-informed and without stress for complainants, and outcomes are meaningful and equitable.

If these changes are implemented alongside criminal reforms allowing s93z thresholds to be clarified and also made available to sex workers, our clients would with greater ability combat vilification and discrimination experienced.

These submissions were written in large part by our fantastic student volunteer Xander Mains, as part of our ongoing volunteer program.

We thank you for the opportunity to provide these submissions and would be more than happy to discuss further.



Katie Green
Managing Principal Solicitor

INNER CITY LEGAL CENTRE