

19th April 2024

Mr Tom Bathurst
Chairperson
NSW Law Reform Commission
Locked Bag 5000
Parramatta NSW 2124

Via email: nsw-lrc@dcj.nsw.gov.au

Dear Mr Bathurst,

Re: Review of the effectiveness of Section 93Z of the Crimes Act 1900 (NSW) (Crimes Act) in addressing serious racial and religious vilification

The Advocate for Children and Young People welcomes the opportunity to provide feedback on the Review of Section 93Z of the *Crimes Act*, and its effectiveness in addressing serious racial and religious vilification.

Established under the *Advocate for Children and Young People Act 2014 (the Act)*, the Advocate for Children and Young People is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. The role of the Advocate is to advocate for and promote the safety, welfare, wellbeing and voice of all children and young people in NSW aged 0-24 years and promotes their participation in decisions that affect their lives. The Act requires ACYP to 'give priority to the interests and needs of vulnerable and disadvantaged children and young people' and to 'focus on systemic issues affecting children and young people.' Further information about ACYP's work can be found at: www.acyp.nsw.gov.au.

The Office of the Advocate for Children and Young People (ACYP) regularly conducts polling and in-depth consultations with children and young people on the issues that are relevant to them.

ACYP's research with children and young people has found that discrimination and hate speech are experiences that are shared broadly amongst children and young people in NSW. This includes racial and religious vilification.

ACYP data indicates discrimination is an issue faced by some children and young people in every aspect of their lives, including those who are part of priority populations such as children and young people who have been in contact with the out-of-home-care system or justice system, Aboriginal children and young people, those who identify as LGBTQIA+, those who have experiences of homelessness and children and young people from culturally and linguistically diverse backgrounds. In ACYP's 2023 Youth Week polling, three in five respondents said they have seen hate speech either directed at them or directed at a group of people they identify with regularly or occasionally.

This letter addresses the following Terms of Reference:

- Term of Reference 1: the impact of racial and religious vilification on all parts of the NSW community.
- Term of Reference 5: the need to promote community cohesion and inclusion.
- Term of Reference 7: any other matter that the Commission considers relevant.

Respect and Acceptance is a key pillar of the *Strategic Plan for Children and Young People 2022-2024* (the Plan) which bridges the gap between government policies and initiatives, and children and young people's voices and perspectives. The goal of the 'Respect and Acceptance' pillar is that children and young people feel respected, accepted, and included in society. Respect and acceptance means children and young people are part of a supportive community and are free from discrimination, racism and structural violence. ACYP has also committed to undertaking and publishing results from an annual quantitative survey that tracks the experiences and perceptions of children and young people in NSW between the ages of 10-24, across the six key pillars.

In the *NSW Strategic Plan Tracking Report 02 (2023)*, approximately one in three children and young people in NSW reported experiencing discrimination in the past 12 monthsⁱ as well as bullying and harassment in a variety of settings. Children and young people who were asked where they experienced discrimination, told us it primarily occurred at school (81%), in the community (45%), online (31%) and at work (40%).

Concerningly, a quarter of those who have been discriminated against in the last 12 months experienced this at least weeklyⁱⁱ. This was higher among those, who had an interaction with the justice system (34%), young parents (59%), those with a disability (50%), those who identify as LGBTQIA+ (49%), those who identify as First Nations (48%), as well as those aged under 18 years (30%)ⁱⁱⁱ. Overall, children and young people have also reported increasing occurrences of discrimination from 2021 to 2023 for all time periods, except for those experiencing discrimination monthly which has decreased in 2023. Discrimination is an issue that continues to impact on all parts of the NSW community progressively and over time.

Prior to Youth Week, ACYP commissions the annual Youth Week Poll, with SEC Newgate Research (from 2021 – 2024) to explore the perspectives of young people between the ages of 10 – 24 on a range of topics that are of strategic importance to ACYP and the NSW Government.

In the 2023 Youth Week Survey, ACYP asked children and young people about their experiences of hate speech. Most children and young people, who participated in the survey, told us they regularly saw hate speech online^{iv}, with two thirds (66%) saying that the hate speech they saw was directed at a group of people due to their gender, disability, sexuality, and particularly; race and/or religion. Three in five children and young people said they have seen hate speech either directed at them or directed at a group of people they identify with on a regular to occasional basis. Meanwhile, among the top-

rated issues that children and young people experienced discrimination experiencing relation to, were ethnic/cultural background or skin colour (39%) and religion (10%)^v.

The *NSW Strategic Plan Tracking Report 02 (2023)* also makes the recommendation that a priority for children and young people, that they believe government should address, should be to address the strong need for initiatives and activities^{vi} within their communities to promote social cohesion due to their positive impacts, and that there is currently lack of such spaces or groups. Community safety was also amongst the top 15 issues children and young people felt it important for the NSW Government to address^{vii}. ACYP's consultations with children and young people from refugee and migrant backgrounds show the importance of social cohesion and inclusion within the community as it positively impacts their access to work opportunities; their ability to establish relationships; and their feelings of connectedness and belonging within their communities^{viii}.

In the *2023 Youth Week Survey*, children and young people were asked about their awareness of existing formal avenues to make complaints about discrimination. The most cited agencies were The Australian Human Rights Commission (19%), Anti-Discrimination NSW (24%) and NSW Fair Trading (27%)^{ix}. Meanwhile, the majority (36%) of children and children and young people commented 'none of the above' when rating their awareness of existing complaints avenues. This data demonstrates relatively low levels of awareness about discrimination amongst children and children and young people in the NSW community, and that there is significant room for improvement in awareness of the formal avenues used to report discrimination.

For those children and young people who were aware of existing complaints mechanisms, over half reported they would be comfortable using them. Children and young people told us that providing examples and information, specifically for children and young people, which explain the process and next steps are good ways to encourage them to make a complaint^x. This should include advertising campaigns to children and young people, especially those who are more likely to be discriminated against such as LGBTQIA+, children and young people with a disability, First Nations people and those from culturally diverse backgrounds. Children and young people in NSW have expressed a necessity for resources to help them understand what discrimination is and emphasise that there are supports available to those of them who have experienced discrimination.

Across ACYP's consultation and polling work, children and young people have also told us they are much more likely to confide in a trusted friend or adult when they have concerns about their safety or wellbeing, rather than reaching out via a formal complaints' mechanism.^{xi} Children and young people have also expressed their preference in making complaints through modernised processes that allow them to submit an online form, send an email or engage with chat service^{xii}. Children and young people also want to be included in the development of these process to ensure it is youth friendly. Qualitative data from ACYP's work referred to above in this area also demonstrates that children and young people highly value opportunities to have a support person assist them or represent them to make a complaint when navigating additional barriers to access such as disability and language.

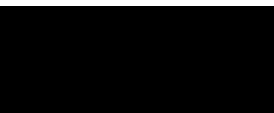
The Advocate would be supportive of any expansion and modernisation of legislated protections for all people regardless of their race, religion and many other factors involved in their beliefs, activities, and identity.

The Advocate also supports work across all areas of government in this space, including the great work of Multicultural NSW (MNSW), particularly their '#RemoveHateFromTheDebate' campaign which informs and provides advice to young people encountering online attacks based on race, religion, ethnicity, sexual orientation, disability, and/or gender. Also, of note is COMPACT, the MNSW flagship program aimed "to inspire and empower young people to stand up and stand united against hate, fear and division as champions for community harmony.

Thank you once again for the opportunity to provide feedback on the Review of Section 93Z of the *Crimes Act*. We note that we would be happy to share existing data or facilitate feedback from children and children and young people, in order to inform the development, implementation and monitoring of amendments in the future.

Should you wish to discuss these matters further, please do not hesitate to contact my office via acyp@acyp.nsw.gov.au or phone: (02) 9248 0970.

Yours Sincerely,



Zoë Robinson

Advocate for Children and Young People

Office of the Advocate for Children and Young People

ⁱ ACYP NSW Strategic Plan for Children and Young People Tracking Report 02, 2023 pp 8

ⁱⁱ ACYP NSW Strategic Plan Research, 2023 pp 40; ACYP Youth Week Poll, 2023 pp 45

ⁱⁱⁱ ACYP NSW Strategic Plan Research, 2023 pp 41-42

^{iv} ACYP Youth Week Poll 2023 pp 41

^v *Ibid* pp 46

^{vi} ACYP NSW Strategic Plan for Children and Young People Tracking Report 02, 2023 pp 11

^{vii} *Ibid* pp 11

^{viii} ACYP Consultations with Refugee and Asylum Seeker Children and Young People, 2019 pp 8, 14

^{ix} ACYP Youth Week Poll, 2023 pp 47

^x *Ibid* pp 43

^{xi} *Ibid* pp 48

^{xii} *Ibid* pp 49