

14 May 2024

Commissioner Kate Eastman AO SC
NSW Law Reform Commission
Via email: nsw-lrc@dcj.nsw.gov.au

Dear Commissioner Eastman,

Question on Notice from Stakeholder Consultation re Inquiry into Serious Racial and Religious Vilification

Thank you for the invitation to attend a stakeholder consultation session on Friday 3 May 2024 as part of the Commission's current inquiry into serious racial and religious vilification.

During this consultation, attendees were asked to consider a proposal to amend section 93Z of the *Crimes Act 1900* (NSW) so that it prohibits threatening or inciting 'hatred' against another person or group of persons, rather than the current approach which is limited to threatening or inciting 'violence'. We asked to respond after the opportunity to consider the issue further.

After this consideration, we do not support replacing or supplementing 'violence' with 'hatred' in section 93Z.

As indicated during the consultation, we support retaining the criminal offence of threatening or inciting violence in the *Crimes Act* to deal with the worst instances of hate speech, while making a broader range of actions – 'inciting hatred towards, serious contempt for, or severe ridicule of' others – unlawful under civil vilification provisions in the *Anti-Discrimination Act 1977*.

We view this bifurcated approach as providing an appropriate level of protection from the various forms of hate speech. We are reluctant to support extending criminal sanctions, particularly in the context of limiting the right of freedom of expression.

However, the success of this approach depends on at least two key factors which are not currently present in NSW.

First, the criminal offence in section 93Z of the *Crimes Act*, and civil vilification prohibitions in the *Anti-Discrimination Act*, need to offer protection to all relevant groups. As noted in our submission to the current inquiry, this includes amending the protected attributes in section 93Z to replace intersex status with sex characteristics, as well as adding disability, while the grounds covered under the *Anti-Discrimination Act* need significant expansion (to cover bisexual, non-binary and intersex people, and people with disability).

Second, as discussed during the stakeholder consultation, its success also depends on ensuring civil vilification protections are able to be accessed, in practice, by vulnerable groups.

This includes options to remove or alleviate the burden placed on the direct victims of vilification to bring complaints, including exploring stronger options for representative and third-party complaints. We look forward to these issues being investigated further as part of the Commission's ongoing comprehensive review of the *Anti-Discrimination Act*.

Thank you again for the invitation to participate in this stakeholder consultation. Please do not hesitate to contact me, at the details provided, should you wish to discuss or seek further information.

Yours sincerely

Alastair Lawrie
Director of Policy and Advocacy

