

Submission to Inciting Racial Hatred Parliamentary Inquiry

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About the Justice and Equity Centre

The Justice and Equity Centre stands for a society that is fair and free from discrimination and disadvantage. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we use the law and policy advocacy to challenge injustice and inequality. We do this through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We collaborate and partner in our work with people and communities who are experiencing marginalisation and disadvantage and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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Recommendations

Recommendation 1 – Expanding the scope of protected attributes covered by s93ZAA

That the Committee call on the NSW Government to implement Recommendation 2 of the Sackar Review, including that:

- *Section 93ZAA of the Crimes Act 1900 should be amended to include all attributes currently protected by section 93Z, and*
- *Both section 93ZAA and section 93Z should be amended to include disability as a protected attribute.*

Recommendation 2 – Repeal the ‘religious text’ carve-out in sub-section 93ZAA(2)

That the Committee call on the NSW Government to repeal sub-section 93ZAA(2) of the Crimes Act 1900, that currently provides that the offence of inciting racial hatred ‘does not apply to an act that consists only of directly quoting from or otherwise referencing a religious text for the purposes of religious teaching or discussion’.

1. Introduction

The Justice and Equity Centre welcomes the opportunity to provide this submission to the Review of Division 8A of Part 3A of the *Crimes Act 1900* (NSW) (Inciting racial hatred).

The recent release of the Final Report¹ of the ‘Sackar Review’ by the NSW Government makes the current inquiry a timely opportunity to consider the effectiveness of the offence created in section 93ZAA, and make recommendations for its improvement.

The Justice and Equity Centre has engaged extensively in law reform processes and public policy debates about how the law should respond to rising hate speech against vulnerable groups in the community. This has included providing a submission to the Sackar Review.²

We agree that the policy objectives of this division – to respond to recent increases in dangerous and harmful hate speech against vulnerable groups, particularly based on race, and to increase social cohesion – remain valid.

However, the terms of the offence are not appropriate for securing this objective, for two main reasons.

First, the limitation of this offence to inciting racial hatred, while excluding other attributes, fails to offer necessary protections to other vulnerable groups that are also frequently subjected to serious hate speech. This selective approach undermines social cohesion, by sending the message that some groups are more worthy of protection than others.

Second, the ‘religious text’ carve-out, in sub-section 93ZAA(2), is unnecessary and unjustified. It also undermines social cohesion by treating religiously-motivated hate speech less seriously than other kinds.

2. The scope of protected attributes in section 93ZAA

To achieve the objectives of preventing harm and promoting social cohesion, a criminal prohibition on inciting hatred should protect *all vulnerable groups equally*. Section 93ZAA fails to do so.

Our submission to the review conducted by the Honourable John Sackar AM KC called for section 93ZAA to be expanded to ‘include the attributes of sex, sexual orientation, gender identity, sex characteristics, HIV/AIDS status, disability and religious belief or affiliation’.³

¹ *Criminal law protection against the incitement of hatred Independent review led by the Honourable John Sackar AM KC, Final Report*, November 2025, available at: https://dcj.nsw.gov.au/documents/legal-and-justice/laws-and-legislation/review-of-criminal-law-protections-against-incitement-of-hate/final_report_protections_review.pdf

² Justice and Equity Centre, *Submission to the Review into Hate Speech Protections for Vulnerable Communities*, 6 August 2025, available at: <https://jec.org.au/publication/submission-to-the-review-into-hate-speech-protections-for-vulnerable-communities/>

³ Recommendation 1, Justice and Equity Centre, *Submission to the Review into Hate Speech Protections for Vulnerable Communities*, 6 August 2025.

This would recognise the history of hate crimes against the LGBTIQ+ community and the disturbing increase in acts of violence and intimidation against LGBTIQ+ people. It would extend protection to people with disability, in line with the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.⁴ It would respond to the rise of violent misogyny and make clear that inciting hatred against women and girls is not tolerated in NSW. And it would ensure that all people of faith are protected against the incitement of hatred against them on the basis of their religious beliefs.

On the other hand, failing to protect all vulnerable groups equally would suggest that people in communities who are excluded are less deserving of protection against hate crimes.

As the Committee will be aware, the independent Sackar Review concluded that the inciting hatred offence 'should be amended to include all attributes currently protected by section 93Z'⁵ (thereby adding religious belief or affiliation, sexual orientation, gender identity, intersex status and HIV/AIDS status), and 'should be amended to include disability as a protected attribute'.⁶

Mr Sackar found that 'is difficult to dispute the principle that vulnerable groups should receive equal treatment under the criminal law'.⁷ He further found that limiting s93ZAA to racial hatred, despite a wider range of groups being covered by s93Z, is detrimental to social cohesion – both offences ought to protect the same groups to prevent any perception of a 'hierarchical, two-tier model of protection'.⁸

The NSW Government's decision to reject this recommendation⁹ entrenches this inequality, leaving some groups exposed to hate speech without the same protections that shield others in similar circumstances.

The Government recognised that '[t]here is no place for hatred in NSW' and that '[e]veryone deserves to feel safe, respected and free from intimidation, regardless of their background, faith, sexuality or identity'.¹⁰ However, it justified its refusal to amend the law to reflect this principle on the basis that 'expanding the racial hatred offence to cover other attributes raises complex questions about freedom of expression, freedom of religion, and the consistent application of the criminal law across the community'.¹¹

The Committee should reject these arguments.

⁴ Recommendation 4.30, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report, Volume 4: Realising the human rights of people with disability, 2023, available at: <https://disability.royalcommission.gov.au/publications/final-report-volume-4-realising-human-rights-people-disability>

⁵ Recommendation 2.1, *Criminal law protection against the incitement of hatred Independent review led by the Honourably John Sackar AM KC, Final Report*, November 2025.

⁶ Recommendation 2.2, *ibid.*

⁷ *Ibid*, page 2.

⁸ *Ibid*, page 2.

⁹ 'After careful consideration of the Sackar Review and its recommendations, the NSW Government has decided not to expand the existing criminal offence of inciting racial hatred to apply to additional protected attributes.' Media Release, *NSW Government responds to Sackar review*, 4 August 2026, available at: <https://www.nsw.gov.au/ministerial-releases/nsw-government-response-to-sackar-review>

¹⁰ *Ibid.*

¹¹ *Ibid.*

While freedom of expression is a valid consideration in determining whether to impose a criminal sanction for acts of hate speech, the Government *has already made the choice to limit this freedom by making the incitement of hatred on the basis of race a criminal offence*.

The proposal to protect people with additional attributes does not raise different or more complex considerations of freedom of expression.

The right to freedom of religion is not absolute. Genuine religious freedom does not extend so far as to protect deliberately engaging in acts of hatred that cause other people to legitimately fear for their own safety – which is the behaviour prohibited by s93ZAA.

The Committee will also recognise that the Government's stated concern about 'the consistent application of the criminal law across the community' is actually an argument *in favour of expanding the offence's coverage* to protect other groups, rather than maintaining a narrow (and inconsistent) scope.

If everyone deserves to feel safe, respected and free from intimidation, 'regardless of their background, faith, sexuality or identity', the law should say so. Instead the law in s93ZAA suggests that some members of the NSW community have a greater right to feel safe than others.¹²

We urge the Committee to find that, in order to meet the policy objectives of this provision – particularly to respond to rising hatred against vulnerable groups in the community, and to increase social cohesion – the Sackar Review recommendation should be implemented.

Recommendation 1 – Expanding the scope of protected attributes covered by s93ZAA

That the Committee call on the NSW Government to implement Recommendation 2 of the Sackar Review, including that:

- *Section 93ZAA of the Crimes Act 1900 should be amended to include all attributes currently protected by section 93Z, and*
- *Both section 93ZAA and section 93Z should be amended to include disability as a protected attribute.*

3. The 'religious text' carve-out in sub-section 93ZAA(2)

The offence currently contains a 'religious text' carve-out: it 'does not apply to an act that consists only of directly quoting from or otherwise referencing a religious text for the purposes of religious teaching or discussion'.¹³

¹² See further Alastair Lawrie 'NSW Govt Rejects Sackar's Key Recommendation on Hate Laws – Why are only some worthy of protections?', *CityHub*, 24 August 2026, available at: <https://cityhub.com.au/nsw-govt-rejects-sackars-key-recommendation-on-hate-laws-why-are-only-some-worthy-of-protections/>. Alastair Lawrie is the Director of Policy and Advocacy at the Justice and Equity Centre.

¹³ Sub-section 93ZAA(2) *Crimes Act 1900* (NSW).

This should be repealed.¹⁴ It is an unnecessary exemption which privileges religious-based incitement of hatred over the right to live free from harassment, intimidation and violence.

We urge the Committee to closely scrutinise the exemption and how it operates in the context of the offence.

The offence applies only to *intentional* conduct that is sufficiently serious to ‘cause a reasonable person... to fear harassment, intimidation, violence or for their personal safety’. In these circumstances, it should be irrelevant that a person is quoting or referencing a religious text.

While it is true that some religious texts contains ‘out-dated’ language that may be considered hateful, any quotes or references to such out-dated language would not fall within the scope of the offence unless the person citing them does so *with the intention to incite hatred*. The offence simply does not apply to legitimate references to historical religious texts.

We note again that the right to practice and teach religion is not an absolute one. It can be subject to proportionate limitations necessary for, amongst other things, the protection of public safety and the fundamental rights and freedoms of others. This is clearly such a situation. Permitting this form of intentionally inciting hatred undermines the protections for vulnerable groups and must be removed.

We acknowledge that the Sackar Review did not recommend that the ‘religious text’ carve-out be repealed,¹⁵ although it did find that:

the reference in section 93ZAA(2) only to texts and purposes of a religious nature – omitting, for example, academic, historical, scientific or journalistic texts or purposes – may be perceived as privileging certain interests over others. This may also be counterproductive for social cohesion.¹⁶

In the interests of social cohesion, we urge the Committee to find that directly quoting from or otherwise referencing a religious text for the purposes of religious teaching or discussion should *not* provide a lawful excuse for intentionally inciting hatred towards others that causes the target of their actions to fear harassment, intimidation or violence, or fear for their safety. This carve-out should be repealed.

¹⁴ This is also a recommendation we made to the Sackar Review: Justice and Equity Centre, *Submission to the Review into Hate Speech Protections for Vulnerable Communities*, 6 August 2025. And in a submission in response to the Commonwealth Government’s Exposure Draft Combatting Antisemitism, Hate and Extremism Bill 2026, which proposed an offence of inciting racial hatred, with the same carve-out: Justice and Equity Centre, *Submission to Parliamentary Inquiry into the Combatting Antisemitism, Hate and Extremism Bill 2026*, 15 January 2026, available at: <https://jec.org.au/publication/submission-to-parliamentary-inquiry-into-the-combatting-antisemitism-hate-and-extremism-bill-2026/>

¹⁵ Instead, Sackar only recommended that ‘[i]n conjunction with expanding the attributes protected by the offence in section 93ZAA(1) of the *Crimes Act 1900*... the NSW Government should re-evaluate the clarity and coverage of section 93ZAA(2)...’ Recommendation 3, *Criminal law protection against the incitement of hatred Independent review led by the Honourably John Sackar AM KC, Final Report*, November 2025.

¹⁶ Ibid, page 3.

Recommendation 2 – Repeal the ‘religious text’ carve-out in sub-section 93ZAA(2)

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