

5 August 2025

The Hon. John Sackar AM KC
Reviewer
Independent Review: criminal hate speech

Via email: prlindependentreviewsecretariat@dcj.nsw.gov.au

Dear Mr Sackar,

The Advocate for Children and Young People welcomes the opportunity to provide feedback to the Independent Review into criminal hate speech laws (the Review), including the effectiveness of existing protections for vulnerable communities and opportunities to improve protections.

The role of the Advocate of Children and Young People

Established under the *Advocate for Children and Young People Act 2014*, the Advocate for Children and Young People is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. The Advocate promotes the safety, welfare and wellbeing of children and young people aged 0-24 years and their participation in decisions that affect their lives. The Act requires the Advocate 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 the Advocate for Children and Young People's work can be found at: www.acyp.nsw.gov.au.

Children and young people's experiences of discrimination and hate speech

Discrimination is a key concern for children and young people, with more than 1 in 4 children and young people reporting experiences of discrimination.

In the 2024 Strategic Plan for Children and Young People Polling, 27% of children and young people reported experiencing discrimination in the past year, with 23% of those reporting they experienced discrimination weekly. Although the number of children and young people reporting discrimination has decreased in recent years, from 1 in 3 (33%) in 2021, discrimination is still a significant concern for children and young people in NSW.

The most common reason for discrimination was ethnicity or cultural background which raised by 40% of children and young people, 63% of whom were current university students.

Vulnerable children and young people were most likely to experience discrimination, including:

- individuals living with physical disabilities (57%);
- neurodiverse children and young people (51%);
- those with a mental illness (44%); and
- Aboriginal or Torres Strait Islander children and young people (42%).

These sentiments are reiterated throughout the Advocate and team's broader engagement and consultation, with children and young people sharing experiences of racism and/or discrimination due to a range of factors including age, disability, religion, gender, sexuality and ethnicity or cultural background.

Hate speech is prominent online and is more likely to impact already vulnerable cohorts.

The 2023 Youth Week poll explored the experiences of young people with hate speech including the extent of their exposure to hate speech online, their responses to hate speech and how they could be encouraged to take action against hate speech. 82% of young people who participated in the survey reported seeing some form of hate speech online at least occasionally and half (52%) reported encountering it on a weekly basis. While it was mainly targeted at others, 3 in 5 regularly encountered hate speech online that was targeted at them directly, or a group of people they identify with. Those more likely to have seen hate speech directed at them personally, or had hate speech directed at a group of people they identify with include those:

- identifying as LGBTQIA+ (89%);
- with mental illness (75%);
- living with disabilities (70%);
- struggling financially (69%); and
- in the workforce (67%).

There are still improvements required to raise awareness for children and young people regarding reporting mechanisms for hate speech.

In the 2023 Youth Week poll, 64% of children and young people reported taking some action in response to hate speech including reporting it to the platform they saw it on (46%). However, only a minority responded directly (16%) or stopped using the platform (17%), while around one third (36%) did nothing at all. Young people reported looking to their peers and role models to demonstrate appropriate behaviours in response to hate speech, and were more likely to take some action if they had seen hate speech either directed at them personally or a group of people they identify with (71%) or had seen hate speech directed at others (64%) compared to those who had not seen hate speech (38%).

The poll also asked children and young people about their awareness of existing formal avenues to make complaints about discrimination. The results indicate that there are currently relatively low levels of awareness amongst children and young people. The most cited agencies were the Australian Human Rights Commission (19%), Anti-Discrimination NSW (24%) and NSW Fair Trading (27%). Meanwhile, the majority (36%) of children and children and young people responded 'none of the above' when rating their awareness of existing complaints avenues. While young people were not specifically asked about their awareness of criminal law prosecution as a recourse mechanism, only 7% indicated awareness of assistance from community legal centres or legal aid as a support mechanism in response to discrimination. There is significant room to improve young people's awareness and understanding of the formal avenues they can use to report and seek recourse for discrimination and hate speech, particularly for those aged under 18 years, 46% of whom had no awareness of any existing channels to make a complaint.

Children and young people want more support, information and guidance when it comes to reporting hate speech, and these resources should be tailored for their needs.

For those children and young people who were aware of existing complaints mechanisms in the 2023 Youth Week poll, over half reported they would be comfortable using them. Children and young people told us that providing clear examples and information targeted to them which explain the process and next steps are good ways to encourage them to make a complaint. In addition, children and young people in NSW have highlighted the importance of resources to help them understand what discrimination is and emphasise that there are supports available to those of them who have experienced discrimination.

Across the Advocate and the team's work, children and young people have regularly 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 for support through a formal complaints' mechanism. When they do use formal pathways, children and young people have expressed their preference for modernised processes that allow them to submit an online form, send an email or engage with a chat service. Children and young people also want to be included in the development of complaints processes to ensure they are youth-friendly.

Adequacy of current criminal law protections against hatred, and interaction with other relevant rights and freedoms

Any protections to reduce discrimination and hate speech requires a nuanced approach that is broader than racial discrimination alone.

The Advocate echoes concerns raised by other stakeholders about the narrow scope of the new *Crimes Amendment (Inciting Racial Hatred) Act 2025*. In line with recommendations the Advocate has previously made in regard to opportunities for related legislated reform (e.g. the Anti-Discrimination Act), any new criminal law should be expanded to not only focus on race, but also include religion, sex, sexual orientation, gender identity, sex characteristics and disabilities as protected attributes.

In 2024, the NSW Law Reform Commission (NSWLRC) undertook a related review, focused on reviewing s93z of the *Crimes Act 1900 (NSW)* and reporting on its effectiveness in addressing serious racial and religious vilification in NSW. While the NSWLRC's final report, *Report 151 – Serious racial and religious vilification* acknowledged the impact of hate-based conduct on individuals, groups and the wider community, it ultimately recommended that criminal vilification offences included in the Crime Act should remain unchanged. In coming to this conclusion, the NSWLRC noted that 'expanded criminalisation comes with risks and is not always the best tool to achieve social policy aims'.¹ The NSWLRC Review noted also concerns with the potential unintended consequences of criminalising a wider range of conduct including impacts on already marginalised communities.

While recently introduced laws are intended to promote non-discrimination and safe-guard individuals from violence and intimidation, the Australian Human Rights Commission and other key

¹ NSW Law Reform Commission (2024). *Report 151 – Serious racial and religious vilification*. September 2024. Accessed online via: https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf. p.8.

organisations have highlighted concerns that the laws also raise a number of specific human rights concerns, notably in relation to freedom of expression, the right to peaceful assembly and issues relating to mandatory sentencing. The Advocate urges caution in the development of any legislation, to ensure young people and vulnerable communities are not unduly criminalised.

Broader measures to promote social cohesion

Measures outside the criminal law are needed to promote social cohesion.

The review undertaken by the NSWLRC also highlighted the limitations of criminal offences in achieving and maintaining social cohesion, and the need for measures outside of criminal law reform to support with promoting social cohesion in NSW.

In the Advocate and the team's consultations, children and young people regularly speak about the importance of belonging, connection and community cohesion. This was a particular theme in recent consultations with young people from refugee and migrant backgrounds. Young people's recommendations to increase social and community cohesion included intercultural education and awareness as a strategy to address racism, discrimination and exclusion in communities, schools and workplaces. Existing examples of this type of work include Multicultural NSW's (MNSW) '#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 MNSW's flagship program COMPACT, which is aimed at inspiring and empowering young people to stand up and stand united against hate, fear and division as champions for community harmony.

Throughout consultations, young people also recommended that there be increased cultural awareness within NSW Police and programs and activities aimed at strengthening community trust, particularly in high settlement areas. An existing example includes the Multicultural Community Liaison program run by NSW Police.

"Racism needs to be called out. What needs to change is that we need to start building connections... Education about cultural practices and normalising these as much as anyone else has freedom to be who they are." – Young person from a refugee or migrant background.

Thank you once again for the opportunity to provide feedback to the Independent Review of criminal law protections against the incitement of hatred. 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

Advocate for Children and Young People
Ground Floor, 219-241 Cleveland Street, Strawberry Hills
NSW 2012
Locked Bag 5000 Parramatta NSW 2124
ABN 80 597 369 676

P 02 9248 0970
E acyp@acyp.nsw.gov.au
W www.acyp.nsw.gov.au

