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Submission to Review of criminal law protections against the incitement of hatred

Feminist Legal Clinic Inc. is a community legal service focused on advancing the human rights of women and girls.

We are opposed to criminal law protections against the incitement of hatred since such provisions are an unreasonable infringement on freedom of speech and freedom of thought and are likely to be used as a weapon in ideological warfare rather than providing protection to genuinely vulnerable individuals.

While it is reasonable to have laws against conduct that incites violence, legislation criminalising incitement of hatred establishes a new regime of Orwellian 'thoughtcrime'. While 'violence' frequently involves the commission of criminal offences against persons or property, the act of 'hating' does not necessarily imply criminal conduct. It also resists easy definition. Some people are likely to regard passionate disagreement as an act of hostility or hate.

We submit that any criminal law protections of this type constitute an unreasonable infringement of civil liberties and human rights as articulated in various international human rights instruments. This is particularly the case if fluid characteristics such as 'gender identity', 'political opinion' or 'religious belief' are included as protected attributes, as this would constrain critique of these social constructs.

We do not accept that this problem can be remedied by providing an exception to allow for the quoting of religious texts. Any such exceptions are themselves discriminatory since they inevitably favour established patriarchal religions, and fail to make an equivalent exception for those wishing to quote directly from scientific and feminist texts.

For example, a religious group may quote religious texts suggesting that medical and surgical interventions to alter secondary sex characteristics are unnatural or sinful,

but opponents to this experimentation who quote scientific or feminist texts will receive no such protection. They will instead risk being accused of inciting hatred should they question the validity of a 'gender identity'.

The ideological and evidential basis for 'gender identity' is flawed and inadequate. Questioning the fraudulent sex change industry should not be regarded as inciting hate. If hate speech laws are passed protecting 'gender identity' this will have the effect of further obstructing public scrutiny and debate about this harmful ideology, which is undermining women's sex-based human rights as well as exposing young and vulnerable people to unconscionable medical experimentation.

Equally, introducing hate speech provisions in protection of religious belief is likely to silence robust feminist critique for fear of hate speech accusations. Is it incitement of hatred to discuss how major world religions are implicated in the oppression of women and are known to harbour paedophiles within the ranks of their leadership? We suggest that at very least provision should be made for 'truth' as a defence which does not appear in existing hate speech provisions.

It would also be inconsistent to protect 'gender identity' and 'religious belief' without providing protection against hate speech in relation to women and feminists, yet to do so would criminalise large swathes of the public, since sexist and misogynistic language is endemic in Australian society. Any hate speech provisions that do not provide protection to women and girls generally, and feminists specifically, would themselves be deeply discriminatory and demonstrate that the fundamental purpose of such legislation is to create a weapon to advance the interests of the dominant male group at the expense of the female population.

In summary, we strongly oppose the extension of criminal law to protections against the incitement of hatred. However, if such provisions are to be introduced, they must include equal protection for women and girls, and specifically feminists, as a group that arguably attracts greater hate and hostility than any other.

In addition, we attach our short responses to the focus questions identified in the Issues Paper.

Yours faithfully



Anna Kerr

Principal Solicitor

Feminist Legal Clinic Inc.

Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.

Criminal law protections against hatred for vulnerable groups

1. *What is the extent and impact of hatred towards vulnerable groups in the NSW community?*

Hatred can have a devastating impact, but not all social ills are best resolved through criminalisation. Education is a far better way to combat the fear and ignorance that fuels prejudice-based hate. It is also important to build resilience among the vulnerable rather than encourage a punitive approach. Draconian legal action is more likely to exacerbate existing hostilities than resolve them.

2. *Does the criminal law adequately protect against the incitement of hatred towards all vulnerable groups in NSW? If not, how could the criminal law better protect against the incitement of hatred towards these groups?*

The criminal law fails to protect many people but needs to focus on adequately addressing substantive crime (like the many reports of domestic violence and sexual offences that go unprosecuted) rather than creating a new regime of thought crime.

Interaction between criminal law protections against hatred and relevant rights and freedoms

3. *How can the criminal law strike an appropriate balance between protecting against the incitement of hatred towards vulnerable groups and protecting other important freedoms, including the implied freedom of political communication and freedom of religion?*

The criminal law should be confined to protecting against clearly identified harm inflicted on persons or property rather than creating new offences based on perceived 'hatred'. Unless there is a threatening component or incitement to violence, criminal charges are inappropriate. Speech that is considered likely to incite hate should be met with reasoned rebukes, support for those targeted and public education campaigns where appropriate. Balanced discussion to raise understanding will do more to foster respectful relationships than attempting to silence controversy with criminal penalties. Efforts to criminalise hate speech will merely drive it underground, where it may flourish in a more covert fashion.

Promoting social cohesion

4. *Would reforming criminal law protections against the incitement of hatred towards vulnerable groups assist with promoting social cohesion in NSW?*

No, criminal law protections are more likely to increase hostility and resentment towards the vulnerable groups needing protection. These kinds of tensions would benefit more from referral to a Community Justice Centre, but of course, in its wisdom, the NSW Government has decided to terminate this important service to the public.

5. *Could reforming criminal law protections against the incitement of hatred towards vulnerable groups have potentially negative or unintended consequences? If so, are there any further safeguards that could reduce this risk?*

Yes, prosecuting people for speaking their mind could result in increased hostilities towards those who these laws are designed to protect. Such provisions are likely to be seen as an infringement of freedom of speech, freedom of thought and freedom of political communication. Further safeguards with piecemeal exceptions are likely to further compound the problem.

6. *Are there other measures related to criminal law reform that may promote social cohesion?*

Social cohesion would be promoted by the government and various regulatory authorities, including the police and the courts, acting more conscientiously in prosecuting violent crimes against women and abstaining from proselytising and promoting gender identity ideology and other cult like activity that has the impact of undermining women's sex-based rights.