

7 August 2025

The Honourable John Sackar AM KC
Independent Review Secretariat
Department of Communities and Justice
By email: PRLIndependentReviewSecretariat@dcj.nsw.gov.au

Re: Review of Criminal Law Protections Against the Incitement of Hatred

Dear Mr Sackar,

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) regarding the Review of Criminal Law Protections Against the Incitement of Hatred in NSW.

The ALS is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the primary legal assistance provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

More than 350 ALS staff members based at offices in 21 communities support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver a variety of wrap-around programs including bail support, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth detention centres, represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, assistance with fines and fine-related debt, and discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations and a key partner in Closing the Gap in NSW and the ACT. As an ACCO, we represent community interests in our advocacy for the reform and transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

This submission is informed by the experiences of the clients and communities we serve, and the experiences of solicitors in our legal practice.

We recognise that Australia is bound by the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights (ICCPR)* to prohibit certain hate speech and incitement without unduly infringing upon freedom of expression (per Article 19 of the ICCPR). As an ACCO, we also take seriously the impact of racial vilification and racism on Aboriginal and Torres Strait Islander people in NSW.

Our submission addresses focus questions 4 and 5 of the Issues Paper.

Q4. Would reforming criminal law protections against the incitement of hatred towards vulnerable groups assist with promoting social cohesion in NSW?

We acknowledge the symbolic importance of criminalising racial hatred for members of communities who disproportionately experience racism, like the communities we serve. However, the ALS is of the

view that criminalisation responses are not effective for producing societal change and reducing incitement of hatred. Investment should be redirected away from criminalisation, and into research to support evidence-based and effective policy responses, public education and engagement, social media and media regulation, and investment in anti-racism strategies and strategies to reduce and prevent discrimination, social exclusion and violence of all kinds on the basis of other protected attributes.

The new offence of intentionally inciting racial hatred, which is yet to commence, was introduced via the *Crimes Amendment (Inciting Racial Hatred) Bill 2025* in February 2025. The ALS is concerned that this offence was introduced without meaningful or adequate consultation with key stakeholders, including Aboriginal and Torres Strait Islander people, communities and organisations.

The offence was introduced despite the NSW Law Reform Commission having previously recommended against the introduction of new vilification offences, including an offence of inciting hatred.¹ The NSW Law Reform Commission was of the view that offences based on hatred would introduce ‘imprecision and subjectivity into the criminal law’.² The ALS also opposed the introduction of a new criminal offence of inciting hatred due to our concerns that such an offence may unduly be charged against marginalised groups who are overrepresented in police interactions, including Aboriginal and Torres Strait Islander people, people experiencing homelessness, and people with disability.

The ALS acknowledges the desirability of ensuring that different protected groups in the community are treated equally under the law, including where the law is intended to protect them from incitement of hatred. As noted above, however, our position is that criminalisation is not an effective tool for reducing incitement of hatred, and reforms to the new offence, particularly any expansions to include hatred on the ground of other protected attributes, are both premature and unnecessary. Such conduct is already captured by s 93Z of the *Crimes Act 1900* and the civil vilification provisions contained within the *Anti-Discrimination Act 1977*. As set out in the Issues Paper, there are also a number of NSW and Commonwealth offences that may cover situations where a person engages in conduct involving hatred.³ In addition, if a criminal offence was partially or wholly motivated by hatred or prejudice on the basis of a broad range of protected attributes, this will increase the seriousness of the offence and may increase the penalty imposed at sentence.⁴

Any proposals to reform the new offence of intentionally inciting racial hatred or to introduce additional similar offences would be premature given that it has not commenced operation and there is no evidence as to how it will operate in practice to achieve the espoused objectives of the legislative reform. As noted in the Issues Paper, new s 93ZAB of the *Crimes Act 1900* requires a statutory review of the new offence in s 93ZAA to be undertaken by the NSW Legislative Council Portfolio Committee No. 5 – Justice and Communities, 12 months after the offence commences.

Any consideration of potential reforms to criminal law protections against the incitement of hatred would be more appropriately conducted after the outcome of that review is published and data is available on the operation of the new offence. This information would be crucial to the development of evidence-based law reform in this area.

¹ New South Wales Law Reform Commission, *Serious Racial and Religious Vilification* (Report 151, Sep 2024) [4.27].

² New South Wales Law Reform Commission, *Serious Racial and Religious Vilification* (Report 151, Sep 2024) [4.30].

³ See e.g., *Crimes Act 1900* (NSW) s 93ZA (knowingly displaying a Nazi symbol), *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 13(1) (stalking or intimidating another person), *Summary Offences Act 1988* (NSW) ss 4(1), 4A(1) (acting in an offensive manner or using offensive language), *Criminal Code* (Cth) ss 80.2A (advocating force or violence against groups), 80.2BA (threatening force or violence against groups).

⁴ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(h).

Q5. 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?

We urge caution about the use of criminalisation as a tool for achieving social policy objectives generally because of the proven risk of disproportionate harms flowing to the communities we serve through adverse police interactions, the exercise of punitive police powers, imprisonment and entrenchment in the criminal process. All criminalisation responses risk increasing the likelihood that Aboriginal and Torres Strait Islander people will be criminalised due to the structural and systemic racism that remains present at every stage of the NSW criminal process, from policing through to sentencing.

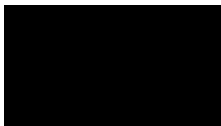
For example, offensive language provisions are frequently used by police to oppress the speech of our clients when responding to police racism. We routinely see police-client interactions escalate and result in 'trifecta' charges such as offensive language and resist arrest. As noted in the report, Police Responses to People with a Disability:⁵

Heavy handed police responses can very clearly escalate risks for a person with disability. These include the risks of 'fight or flight' behaviours, risks to the personal safety of the person and importantly the risk of criminalisation, where minor issues result in charges against a person with disability for what might be understood as minor 'offending' but which is, in essence, for behaviour that police themselves provoke.

As the United Nations has observed, "failure to act on 'real' incitement cases" and "overzealous reactions to innocuous cases" can create "a climate of impunity for some and a climate of intimidation for others".⁶

Thank you for the opportunity to provide a submission. Please contact [REDACTED] if you would like to discuss our submission further.

Yours faithfully,



Lauren Stefanou
Acting Principal Legal Officer
Aboriginal Legal Service (NSW/ACT) Limited

⁵ Leanne Dowse, Simone Rowe, Eileen Baldry, Michael Baker, 'Police responses to people with disability' (Research Report, The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021) 11.

⁶ Heiner Bielefeldt, Report of the Special Rapporteur on Freedom of Religion or Belief, UN Doc A/HRC/31/18 (23 December 2015) [63].