

15 August 2025

The Honourable Justice John Sackar AM KC
Reviewer
The Independent Review Secretariat
Department of Communities and Justice

By Email: PRLIndependentReviewSecretariat@dcj.nsw.gov.au

Your Honour,

Submissions on review of Criminal Law Protections against the Incitement of Hatred in NSW

We refer to the Independent Review of Criminal Law Protections against the Incitement of Hatred in New South Wales. We welcome the opportunity to contribute to this review and hope it will improve the way the criminal law in New South Wales deals with hatred against all vulnerable groups in NSW.

The HIV/AIDS Legal Centre (HALC) is the only not-for-profit, specialist community legal centre of its kind in Australia. We provide free and comprehensive legal assistance to people in NSW with HIV or hepatitis-related legal matters and undertake community legal education and law reform activity in areas relating to HIV and hepatitis. We make the following submissions on behalf of people living with HIV and hepatitis in NSW.

Many of the services we provide respond directly to the stigma, discrimination, fear and often vilification experienced by people living with HIV and hepatitis in NSW. This includes discrimination in key areas like healthcare, employment, and housing, as well as forms of domestic and family violence where a person's health status is weaponised against them. Our clients can also face vilification and public hostility, which can have serious impacts on their safety, dignity, and mental health.

Focus Question 1: What is the extent and impact of hatred towards vulnerable groups in the NSW community?

Stigma, discrimination, and vilification directly undermine public health outcomes and social inclusion. The 2022 HIV Stigma Snapshot revealed that:¹

¹ Centre for Social Research in Health, *Stigma Snapshot: People Living with HIV* (Report, 2022) <https://unsworks.unsw.edu.au/entities/publication/348af239-8ed4-405f-9adc-aa75c379f3a4>.

- In the past year, 37% of respondents with HIV had experienced stigma or discrimination in relation to their HIV status.
- 30% of respondents reported being treated negatively or differently to other people by healthcare workers in the past year.
- Many respondents felt socially isolated due to fear of rejection or discrimination.
- Stigma was linked to delayed testing, reduced treatment adherence, and avoidance of healthcare services.

The stigma which underlies HIV-related discrimination, vilification and other forms of hatred is not only a personal burden for people with HIV and their loved ones, but also a public health issue. When people fear being ‘outed’ or vilified because of their HIV status, they are less likely to engage with prevention, testing and treatment, undermining Australia’s goal of virtually ending HIV transmission by 2030.²

People living with viral hepatitis similarly face negative social attitudes and a range of associated consequences, including willingness to engage with medical professionals and seek treatment.³ This stigma is known to undermine Australia’s 2030 viral hepatitis elimination goals.

Vilification of people living with HIV and hepatitis often intersects with other forms of hatred, particularly against LGBTQIA+ communities, people who use drugs, and culturally diverse populations. Criminal law protections must acknowledge and respond to this compounded vulnerability by recognizing the potential for vilification to occur based on several attributes, not just race.⁴

Focus Question 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?

Unwanted Disclosure

Current criminal law in this state, does not adequately protect people with HIV and hepatitis from the unwanted disclosure of their health status, or threats to disclose their health status,

² Australian Government Department of Health and Aged Care, *Ninth National HIV Strategy 2024–2030* (Report, 10 December 2024), <https://www.health.gov.au/resources/publications/ninth-national-hiv-strategy-2024-2030?language=en>.

³ LiverWELL, *Stigma & Discrimination* (Web Page, undated) <https://liverwell.org.au/liver-conditions/stigma-discrimination/>.

⁴ Hepatitis Australia, *National Hepatitis Strategies 2023–2030* (Web Page, 2023) <https://www.hepatitisaustralia.com/news/national-hepatitis-strategies>.

which may constitute forms of vilification, hatred and personal harm. Disclosure without consent can also lead to harassment, violence, and reputational damage.

Recent reforms to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) recognised certain forms of ‘outing’ as constituting intimidation: intentionally disclosing or threatening to disclose a person’s HIV status, sexual orientation, gender history, variations of sex characteristics, and whether they are or have been a sex worker.⁵ These reforms mean such conduct may now be more likely to be subject to certain apprehensive violence orders and offences like stalking and intimidation under that Act.

This is a welcome development, as historically police have been hesitant to recognise such behaviour as constituting violence or harassment. However, further reform is needed to:

- Explicitly criminalise the malicious disclosure of HIV status.
- Ensure people with HIV have access to justice when disclosure leads to harm.

Section 93ZAA of the Crimes Act 1900 (NSW)

We support the submissions of the Inner City Legal Centre (ICLC) in relation to the recently introduced section 93ZAA of the *Crimes Act 1900* (NSW) and agree with the NSW Law Reform Commission’s September 2024 report which **did not** recommend the introduction of such a provision.

In our submission, if section 93ZAA is to remain in force, it should be amended to include all protected attributes, rather than perpetuate a tiered system of protection that privileges some minority groups over others. It is essential that any law, whether criminal or civil, that addresses the incitement of hatred does so equitably and comprehensively. Such laws must recognise the intersectional nature of hatred, discrimination and vilification. As stated above, in our experience, people living with HIV and hepatitis are often targeted not solely because of their health status, but also due to intersecting factors such as race, gender, sexuality, and other traits.

Focus Question 6 - Are there other measures related to criminal law reform that may promote social cohesion?

It is important that, where desired, victims of HIV-related harassment, vilification and violence can seek remedies through the criminal justice system. However, criminal law is only part of the solution to addressing hatred and discrimination against people with HIV. Broader systemic and cultural change is essential. We are also in agreement with the point

⁵ *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 7(1)(a).

raised in ACON's submission to this Review that investment in preventive initiatives is critical to promoting social cohesion.⁶

Gay and Lesbian Liaison Officers (GLLOs)

One practical measure is the strengthening of Gay and Lesbian Liaison Officers (GLLOs) within the NSW Police Force. GLLOs play a critical role in:

- Building trust between LGBTQIA+ communities and police.
- Ensuring that reports of vilification or violence are taken seriously.
- Providing culturally competent support LGBTQIA+ people who live with HIV.

Investment in GLLO training, visibility and community engagement should be prioritised. GLLO's should be provided mandatory training on:

- the effects of stigma, discrimination, vilification and unwanted disclosure on people with blood-borne viruses;
- universal precautions and the (correct) risks of blood-borne transmission and exposure; and
- the offences referred to sections 1 and 2 above.

HALC finds that clients are often not aware of the option of requesting to speak to a GLLO when they interact with police. More information about GLLO's and their roles should be given when police encounter people from the LGBTIQ+ communities who wish to report offences.

Adequate Funding of Community Legal Centres

Increasing the NSW Government's funding commitments under the National Access to Justice Partnership (NAJP) is critical to the effectiveness of criminal law protections against hatred, including the effectiveness of any reforms arising from this review.

We again endorse the submission of ICLC on this point: well-resourced community legal centres have greater capacity to advise victims of hatred and invest in community legal education to increase awareness of the protections offered by criminal law.

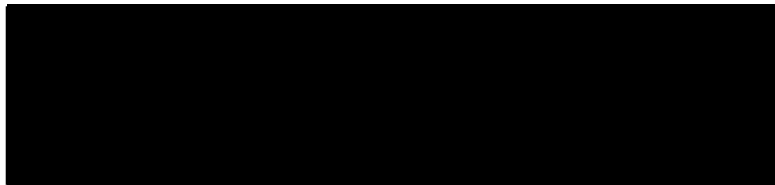
Adequate funding of specialist centres like HALC (who assist people with HIV and hepatitis) and ICLC (who specialise in assisting sex workers and trans and gender diverse clients) is critical. Specialist centres have the expertise and community trust necessary to support vulnerable populations.

⁶ ACON, *Submission to the Independent Review of Criminal Law Protections Against the Incitement of Hatred*, The Independent Review Secretariat, Department of Communities and Justice (2025) 3.

Strengthening criminal law protections against the incitement of hatred, particularly in relation to unwanted disclosure, is essential. However, law reform must be part of a broader strategy that includes culturally competent policing and access to justice.

We urge your Honour to consider how the criminal law in NSW can more effectively address hatred against people living with HIV and contribute to fostering genuine social cohesion. These recommendations are a starting point for improving inclusivity and safety for people with HIV.

Yours sincerely,



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