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7 September 2026

The Hon. Robert Borsak, MLC
Chair, Portfolio Committee No. 5 – Justice and Communities
Parliament House
SYDNEY NSW 2000

By email: portfoliocommittee5@parliament.nsw.gov.au

Dear Chair,

REVIEW OF DIVISION 8A OF PART 3A OF THE CRIMES ACT 1900 (NSW) (INCITING RACIAL HATRED)

Thank you for the opportunity to make a submission to Portfolio Committee No. 5 – Justice and Communities' (**Portfolio Committee**) review of the inciting racial hatred provisions within Division 8A, Part 3A of the *Crimes Act 1900* (NSW) (**Crimes Act**). The Law Society's Human Rights, Public Law and Criminal Law Committees contributed to this submission.

Previous inquiries on criminal law protections against the incitement of hatred

There have been two recent considerations of criminal law protections in NSW against the incitement of hatred. The first was the inquiry by the New South Wales Law Reform Commission (**NSWLRC**) into the effectiveness of s 93Z of the *Crimes Act 1900* (NSW) (**NSWLRC Inquiry**), the final report of which was tabled in Parliament on 21 November 2024.¹ The second was the independent review led by the Honourable John Sackar AM KC into criminal law protections against the incitement of hatred, the findings of which were reported to the Attorney General on 5 November 2025 and tabled in Parliament on 4 August 2026 (**Sackar Review**).² That review considered, among other matters, the appropriateness of s 93ZAA, which came into force on 15 August 2025. Section 93ZAA also forms the subject of the current inquiry before the Portfolio Committee.

The Law Society contributed to both the NSWLRC Inquiry³ and the Sackar Review⁴. In both submissions, we expressed caution in relation to the introduction of new hate-based offences for the purpose of promoting social cohesion. We noted that there exists a range of other offences, both at the State and the Commonwealth levels, that may be used to address criminal behaviour motivated by or otherwise involving hatred. We also highlighted the fact that hatred or prejudice can be considered as an aggravating factor at sentencing.⁵

¹ NSWLRC, '[Serious Racial and Religious Vilification Report No 151](#)' (Report, September 2024) (**NSWLRC Inquiry**).

² The Honourable John Sackar AM KC, '[Criminal law protections against the incitement of hatred: Independent review led by the Honourable John Sackar AM KC](#)' (Final Report, November 2025) (**Sackar Review**).

³ The Law Society of New South Wales, Submission to the New South Wales Law Reform Commission, '[Serious Racial and Religious Vilification](#)' (17 April 2024).

⁴ The Law Society of New South Wales, Submission to the Honourable John Sackar AM KC, '[Review of criminal law protections against the incitement of hatred](#)' (5 August 2025).

⁵ *Crimes (Sentencing Procedure) Act 1999* (NSW), s 21A(2)(h).

In our submission to the Sackar Review, we raised concerns about the complexity of s 93ZAA of the Crimes Act. While the offence requires intentional incitement of hatred by a public act on the basis of race, it also incorporates a harm-based test of whether, objectively, the alleged offender's conduct would affect the person or group towards whom it was directed. We suggested the requirement for both objective and subjective elements within the offence means it may be complex to understand and enforce, as has occurred with s 93Z.⁶

Our submissions emphasised the importance of holistic responses, noting that the criminal law should not, and cannot, be the principal tool to combat threats to social cohesion. We suggested that governments at both the Commonwealth and state and territory levels, together with broader civil society organisations, must think expansively about solutions to combat the drivers that sometimes underpin hate-based conduct, including economic exclusion, social-cultural trends and the spread of misinformation and disinformation.

Recommendations of the Sackar Review

While we recognise that s 93ZAA does have a unique role within the Crimes Act i.e., to explicitly capture the incitement of hatred, we retain our concerns about the complexity of the offence for the purposes of enforcement.⁷ We recognise, however, the strong symbolic effect of this type of offence and note that its repeal at this time may send a mixed message to the community on hate-based conduct. If the legislature is therefore minded to maintain the offence in its current form until its repeal as provided for by s 93ZAC, we make the following comments in light of the recommendations of the Sackar Review.

1. *Inclusion of all attributes currently protected by s 93Z, with the additional including of disability as a protected attribute*

Recommendation 2 of the Sackar Review was set out as follows:

(1) Section 93ZAA of the Crimes Act 1900 should be amended to include all attributes currently protected by section 93Z.

(2) Both section 93ZAA and section 93Z should be amended to include disability as a protected attribute.⁸

Mr Sackar did not express a view on “whether section 93ZAA should have been introduced or whether it should lapse”.⁹ Rather Recommendation 2 was expressed to be “based on principled grounds — including the importance of equal treatment of vulnerable groups — rather than a determination of the substantive merits of section 93ZAA”.¹⁰ Mr Sackar noted the fact that some groups felt excluded by the fact that the offence only applies to race, and suggested that a “hierarchical, two-tier model of protection” was detrimental to social cohesion.¹¹

As a matter of principle, the Law Society supports law reform on matters of discrimination, harassment and vilification which emphasises equal protection of vulnerable groups under the law. Such an approach can assist in preventing piecemeal or reactive legislative reform. It also sends a clear message that hate speech or other hostile behaviour towards any individual or group of individuals based on a protected attribute is never acceptable and should not be tolerated. As noted in the Sackar Review:

A recurring theme raised by stakeholders was that excluding attributes other than race from section 93ZAA may undermine social cohesion, including by implying that other groups are less deserving of protection,

⁶ See NSWLRC Inquiry (above n 1) 38, where evidence was received that police may prefer other offences than s 93Z because they can have a higher maximum penalty and may be more familiar and simpler to prove.

⁷ Sackar Review, 104.

⁸ Ibid Recommendation 2, 5.

⁹ Ibid 103.

¹⁰ Ibid 103.

¹¹ Ibid 2.

sustaining an unhelpful division between ethno-religious groups, or reinforcing the idea of a 'hierarchy' of protection.¹²

There are strong arguments for legislating in a consistent manner on matters that concern the protection of vulnerable groups. An amendment of the type proposed by Recommendation 2 would ensure that the scope of protected attributes in ss 93Z and 93ZAA are the same. We suggest that the amendment would also achieve consistency with other aspects of the criminal law that reference the full range of protected attributes, including s 21A(2)(h) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) which applies where "the offence was partially or wholly motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, gender identity, sexual orientation or age, or having particular variations of sex characteristics or a particular disability)".

Amendments to s 93ZAA(2) of the Crimes Act

We note that the Sackar Review suggested that any amendment of s 93ZAA pursuant to Recommendation 2 would require a re-evaluation of s 93ZAA(2). We agree that it would be appropriate for consideration to be given to the options canvassed in the Sackar Review, including recasting s 93ZAA(2) as an "avoidance of doubt" provision that "clarifies the substantive law in section 93ZAA(1), rather than adding to or altering it".¹³

In this context, we note that the Law Society supports the enactment of a Human Rights Act in NSW. We suggest that this would provide a principled framework for determining relevant limitations, including those on freedom of religion and belief or other forms of expression, that arise in these types of circumstances.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney

President

¹² Ibid., 104.

¹³ Ibid., 107.