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NSW Law Reform Commission
Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

Sent via email: nsw-lrc@dcj.nsw.gov.au

To the NSW Law Reform Commission

Re: Serious racial and religious vilification

ACON and the HIV/AIDS Legal Centre (NSW) (HALC) are pleased to provide a submission to the NSW Law Reform Commission's review of the effectiveness of section 93Z of the *Crimes Act 1900* (NSW).

As you know, ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders.

HALC is the only not-for profit, specialist community legal centre of its kind in Australia. HALC provides free and comprehensive legal assistance to people with HIV or Hepatitis-related legal matters. Community legal education and law reform activities are also carried out in areas relating to HIV and hepatitis.

We are concerned that the purpose of this review, as described in the Terms of Reference, is to review the effectiveness of the section in addressing serious racial and religious vilification in NSW, without regard to the other protected attributes contained within the section.

ACON and HALC strongly condemn vilification of an individual on the grounds of race or religion, or on any of the protected attributes contained within 93Z, including sexual orientation, gender identity, and HIV status. However, we are concerned that a review that seeks to address only two of the six protected attributes contained within the section may have unintended consequences, or inadequate regard, to the other protected attributes. Any outcomes of this review that do not consider the other attributes will undermine the ability of this section to provide adequate and targeted protection.

Racial and religious vilification impacts people of diverse genders and sexualities. Those with overlapping, compounding experiences of marginalisation, such as being a person of colour and LGBTQ+, require an intersectional approach to experiences of vilification and discrimination. When identity characteristics are separated in legal contexts, such as section 93Z or the *Anti-Discrimination Act 1977* (NSW) ("the ADA"), this limits the understanding of the ways in which vilification can be intersectional, where a person may experience a particular type of vilification *because* they are *both*, for example, a racial minority, and a sexual minority.

It is therefore critical that protected attributes are not considered as completely distinct from one another, but always have the possibility of overlapping, and compounding to form particular, unique experiences of discrimination, vilification, or marginalisation.

We therefore provide this submission to underscore the importance of this review also considering the effectiveness of section 93Z in addressing serious vilification on the basis of sexuality, gender, HIV status, and intersex status, and vilification at the intersection of multiple of these attributes. We also welcome the Commission's efforts to further consult our communities at in person consultations.

The feedback we provide is especially related to the impact of vilification and hate speech on the health and wellbeing of LGBTQ+ communities and people living with HIV.

We also defer to the expertise of our partners at the Public Interest Advocacy Centre, and Equality Australia.

Harmonising criminal and civil vilification protections

Civil protections need to apply consistently alongside criminal offences, to offer different avenues for those who have experienced vilification to seek justice. LGBTQ+ people have a complicated history with policing and criminal justice,[1] so a civil vilification scheme, such as that contained within the ADA, is required for those who wish to pursue justice outside of criminal schemes. This is especially important for those seeking justice in relation to family or domestic settings.

ACON has previously provided a submission to the NSW Law Reform Commission's Review of the *Anti-Discrimination Act 1977* (NSW). In that submission, we advocated for the Act to be repealed and replaced with a modern, simplified Act that expands the scope to better include harassment and vilification, that provides for investigative functions and representative complaints, that allows for a less onerous complaints process, and that better protects all in our communities.

Part of this process must necessarily involve harmonising the civil protections for vilification, so they are consistent with criminal law, and protect all in our communities equally. To be clear, as it currently stands, the protections in section 93Z with regard to sexuality and gender identity are more appropriate than the protections in the *Anti-Discrimination Act 1977* (NSW), which only protect homosexuality and binary transgender identities (that is, trans men and trans women, but not non-binary people).

ACON and HALC have also advocated for the amendments to the *Anti-Discrimination Act 1977* (NSW), contained within Alex Greenwich's *Equality Legislation Amendment (LGBTQIA+) Bill 2023* to be passed as a stopgap to protect all LGBTQ+ people from discrimination while the Act is reviewed, and replaced.

ACON and HALC also support the need to include protections for people with disability and sex workers in both civil and criminal vilification regulations.

Experiences of vilification, harassment and hate speech by LGBTQ+ communities

Vilification significantly impacts the health and wellbeing of LGBTQ+ people, and the cohesion of the community. ACON recently worked with the Australian e-Safety Commission on a report that

recognised hate speech as a growing online issue that can negatively impact a person's mental health, general well-being and online engagement.[2] Broadly, hate speech can be seen as verbal or written words or symbolic acts that convey negative and prejudiced views about people or groups, including prejudicial views based on people's sexual orientation and gender. The Australian e-Safety Commission's research found that the LGBTIQ+ community experiences online hate at more than double the national average in Australia[3].

LGBTQ+ people have been facing an alarming surge in targeted hate-based attacks, and this has been particularly pronounced for trans people.[4,5,6] With the proliferation of misinformation and disinformation campaigns on social media, LGBTQ+ communities, and trans people in particular, are increasingly being targeted by emboldened hate groups and coordinated campaigns of intimidation and violence.[7,8,9]

Extremists and fringe groups have targeted drag story time at libraries and local councils with intimidation, hate speech and fear. Members of our communities have also been targeted with online threats, vilification, and doxing.

Performers and council workers have been harassed in-person and online, and rather than deal with angry, hateful mobs, some performances are being cancelled. This is occurring across NSW, including in Sydney, Newcastle, Goulburn, Wollongong, and other regional centres.

ACON is deeply familiar with this surge in targeted attacks. Our own staff members have been subject to doxing by anti-trans advocates, on social media, and by tabloid news outlets. This vilification of our staff, and violation of their right to privacy and dignity, has been deeply distressing for our staff and our organisation. Further, ACON has also been subject to a number of freedom of information requests by the anti-trans lobby, seeking to undermine the work that we do in caring for our communities.

These attacks cause significant harm and distress to members of the LGBTQ+ communities. They increase stigma and discrimination and negatively impact the health and well-being of LGBTQ+ people. ACON works to prevent and combat words of hate speech being used against LGBTQ+ people across Australia and to support and build LGBTQ+ people's safety and resilience.[10]

This recent surge contributes to the already high prevalence of violence and abuse experienced by our communities. Large population surveys, such as *Private Lives 3* (a survey of LGBTIQ+ adults)[11], Writing Themselves in 4 (a survey of LGBTQA+ young people aged 14-21)[12], and Trans Pathways (a survey of trans young people aged 14-25)[13] indicate the prevalence of incidences of anti-LGBTQ sentiment experienced by LGBTQ+ people in Australia.

35% of *Private Lives 3* participants reported experiencing verbal abuse, and 22% received written threats of abuse via email or social media because of their sexuality and/or gender identity in the 12 months prior to the survey. 41% of *Writing Themselves in 4* participants experienced verbal harassment because of their sexuality and/or gender identity in the 12 months prior to the survey.

In the *Trans Pathways study*, 74% of participants experienced bullying, and these participants had higher rates of wanting to hurt themselves, suicidal thoughts, suicide attempts, self-harming, reckless behaviour, and diagnoses of depression, eating disorders, anxiety, personality disorders and PTSD than those who did not experience bullying.

A recent study of anti-trans hate in Australia[14] found that 94% of participants had witnessed online anti-trans abuse, harassment, or vilification, and 49% had experienced such vilification. The report calls for funding for research into the causes and impacts of anti-trans abuse, harassment, and vilification.

The impact of vilification, harassment and hate speech on LGBTQ+ communities

The impact of vilification can result in an increased risk of depression, anxiety, self-harm, and suicide. The Australian Human Rights Commission Report *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights National Consultation* (2015) found that the rate of suicide for LGBT people is 3.5 to 14 times higher than the general population, and LGBT people are at a higher risk for a range of mental diagnoses and significantly more likely to be diagnosed with depression or anxiety. [15]

Instances of anti-LGBTQ prejudice, such as hate speech and homophobia in themselves have been shown to lead to poorer health outcomes, including increases in depressive symptoms, suicidality, anxiety, post-traumatic stress disorder, alcohol misuse, reduced access to HIV prevention, lesser quality of life, and a lesser sense of belonging.[16,17,18,19,20,21]

An Australian study of gender and sexuality diverse young people found that their experiences of homophobia, transphobia and discrimination reduced their chances of gaining work, securing financial independence, their education, and recreation.[22] In this study, of those young people who experienced homophobia and/or transphobia at school, approximately a third indicated they could not concentrate in class, and 24% acknowledged their marks dropped. 20% missed classes, and 21% skipped days.

Another Australian study found that 46% of participants reported that experiences of transphobia and discrimination impacted their employment and income.[23] These studies demonstrate the direct impact homophobia and transphobia have on the social determinants of health, including education and employment, which in turn compromises access to health and community services and health outcomes.[24]

As well as having a direct impact, instances of hate speech or vilification, and exposure to hate speech or vilification, further contributes to other aspects of minority stress, such as shame, internalised homophobia, and fear of discrimination.[25,26]

Feelings of shame and internalised homophobia, as well as a fear of or perception of discrimination and anti-LGBTQ+ sentiment has a significant impact on an individual's health. Perceived or internalised anti-LGBTQ sentiment has been linked to poorer mental health,[27,28,29] substance use,[30] compromised access to HIV prevention services,[31] less frequent HIV/STI testing,[32] and a lower likelihood of having a regular health care provider.[33]

As well as impacting an individual's wellbeing, hate speech can promote broader normalisation of homophobia and transphobia, which has structural impacts on LGBTQ+ people's health and wellbeing. Hate speech can also reduce access to quality healthcare services. Words of hate speech can create barriers for LGBTQ+ people to seek and receive appropriate and respectful health care, such as fear of discrimination, lack of trust, or lack of knowledge and sensitivity among health professionals.

Hate speech can also lower the sense of belonging and social support experienced by LGBTQ+ people, especially those in isolated communities. Words of hate speech can isolate LGBTQ+ people from their families, friends, communities, and society at large and affect their self-esteem, identity, and happiness.

Adequate vilification protections that understand the intersectional experiences of those with compounding protected attributes, with avenues for civil complaint as well as criminal justice, are critical for a cohesive, inclusive society.

Experiences of vilification, harassment and hate speech by People living with HIV (PLHIV)

The widespread consequences of vilification are also apparent for PLHIV, who are already extensively impacted by discrimination and stigma. HALC frequently represents PLHIV, not only in HIV and/or LGBTI related vilification complaints, but also in matters of actionable discrimination in employment settings and in accessing services and housing.

HALC commonly assists PLHIV whose HIV status has been disclosed without consent by service providers, employers, government entities, family members and the community at large. HALC often acts for PLHIV from other countries seeking to migrate to, or remain in Australia due to a fear of persecution and/or discrimination based on their HIV status, sexual orientation and gender idenitity.

HALC has acted in a wide range of harassment and vilification matters where a clients' intersecting forms of identity often interact with their HIV status to create a unique form of vilification. One notable example of such a case was that of *JM and JN v QL and QM* [2010] NSWADT 66.[34] A gay couple from a rural NSW town was found by the NSW Administrative Decisions Tribunal (as it then was) to have been vilified when former friends threatened them with violence at the pub and began telling town members that they had HIV and referred to them using homophobic slurs.

The consequences of HIV vilification and a failure to address it, include increased stigma and discrimination for key populations and drastic flow on effects for HIV testing and treatment uptake.[35] Effectively, tackling HIV vilification is therefore crucial to Australia achieving its goal of ending HIV transmission in Australia by 2030.[36]

ACON and HALC hope that this review ensures the continued safety of all LGBTQ+ people and PLHIV in NSW, especially those who experience multiple forms of intersecting marginalisation. Please do not hesitate to contact Brent Mackie, Director Policy, Strategy, and Research at bmackie@acon.org.au if you require additional information.

Kind regards

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