THE OFFICE OF AUSTRALIA'S SPECIAL ENVOY TO COMBAT ISLAMOPHOBIA

Submission for the NSW Legislative Council's Statutory Review of Division 8A of Part 3A of the *Crimes Act 1900* (Inciting racial hatred)

Thank you, Chair and members of the Committee, for the opportunity to appear today. I appear on behalf of the Office of Australia's Special Envoy to Combat Islamophobia. The Committee's terms of reference asked two questions: whether the policy objective of Division 8A remains valid, and whether its terms remain appropriate for securing that objective.

The objective of this provision, as reflected in the second reading speech and the Government's own framing of this review, is social cohesion. However, section 93ZAA provides protection only on the ground of race. Muslims are not legally considered an ethno-religious group or a race, as Islam spans diverse nationalities and ethnicities. As a result, some Muslims may experience intentional incitement of hatred with no legal protection under this section.

This creates a two-tier system — protecting one victim's path to redress and not another's. Social cohesion depends on people believing the law operates fairly and equally. A gap in protection doesn't just fail one community; it undermines the objective for everyone. This concern is not new: it was raised previously by Muslim organisations, and the Sackar Review itself recommended extending protection to all attributes already covered under section 93Z.

The law should also recognise intersectional and compounded harm. Data from the Islamophobia Register Australia shows Muslim women account for around 75% of reported incidents. A Muslim woman targeted for wearing a hijab is not experiencing her race, her religion and her gender separately — perpetrators don't separate or target standalone characteristics of her identity, and the law should not either.
Expanding protection should not come at the expense of free speech — these are not competing values. We recommend the Committee consider an additional safeguard modelled on section 18D of the federal Racial Discrimination Act, to protect public interest, fair reporting and artistic work.

We also support the ongoing inclusion of the existing safeguard in subsection (2) for directly quoting or referencing religious texts. Individuals across all faiths should be free to teach and engage with religious texts without fear that doing so would be a crime.



Our concern is if the objective of this provision is social cohesion, then communities should receive equal protection under the law. Social cohesion is not about protection at the exclusion of others. The law has to be uniform. We are not asking for exceptionalism. It is about achieving equality and parity.

Thank you.