LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP (virtual)
Mr JE Hunt MP (virtual)
Mr JM Krause MP
Mr JR Martin MP (from 1 pm)
Ms JC Pugh MP (until 1 pm)

Staff present:
Mrs K O'Sullivan—Committee Secretary
Dr S Pruim—Assistant Committee Secretary
Mr B Smith—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CRIMINAL CODE (SERIOUS VILIFICATION AND HATE CRIMES) AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 29 May 2023

Brisbane

MONDAY, 29 MAY 2023

The committee met at 10.01 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023. My name is Peter Russo, member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share. With me here today are: Laura Gerber, member for Currumbin and deputy chair; Sandy Bolton, member for Noosa via videoconference; Jess Pugh, member for Mount Ommaney, who is substituting for Jonty Bush, member for Cooper; Jason Hunt, member for Caloundra; and Jon Krause, member for Scenic Rim.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings, and images may also appear on the parliament's website or social media pages. I ask everyone to turn their mobile phones either off or to silent mode.

BALL, Ms Julie, Principal Lawyer, Human Rights Commission

McDOUGALL, Mr Scott, Human Rights Commissioner

CHAIR: Good morning. Thank you once again for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr McDougall: Thank you, Chair. I begin by acknowledging the traditional custodians of the land on which we appear today. Thank you for the invitation. Hate crime encompasses many forms of criminal behaviour: physical attacks on people because of their attributes; damage to property or places of worship; verbal abuse and harassment directed towards minority groups; and hate speech that urges violence towards the person or property of people with certain attributes. These crimes can inflame community tensions and instil fear among groups. They can severely impede progress toward obtaining a diverse and inclusive community in a democratic society that is based on human dignity, equality and freedom.

I acknowledge the work of this committee in its comprehensive inquiry into serious vilification and hate laws. The purpose of this bill is to implement some of the recommendations from that inquiry. I believe that these legislative reforms have the potential to go a long way to protecting the community and providing greater confidence in being a part of this diverse state. The commission supports the proposed changes to the offence of serious vilification and aggravated offences and an offence relating to prohibited symbols. Our written submissions also make suggestions to improve protections afforded in the legislation including by protecting the attribute of disability.

I also have a deep concern about the potential for the aggravated public nuisance offence to be used against Aboriginal and Torres Strait Islander people when they come into contact with police, particularly when swearing is involved. Since providing the written submission I have been referred to research and data relating to the operation of the public nuisance offence to Aboriginal and Torres Strait Islander people. Research and publications by Dr Tamara Walsh, professor of law at the University of Queensland, refer to the extent to which Aboriginal and Torres Strait Islander people in Queensland are over-represented in the criminal justice system. She found that Aboriginal people are up to 12 times more likely to be charged with or receive infringement notices for public nuisance, and often these charges are based on allegations that the person said something that offended or insulted a police officer. Dr Walsh says that in 2014 alone over 2,000 infringement notices were issued for language offences directed at police officers. Her analysis of penalties imposed for public nuisance

between 2005 and 2014 in Queensland Magistrates Courts revealed that Indigenous people tended to receive harsher penalties for public nuisance offences. For example, they were more likely to receive a custodial sentence for a public nuisance offence than non-Indigenous offenders.

In July 2020 the Queensland government committed to Closing the Gap targets to reduce the number of Aboriginal and Torres Strait Islander adults and children in custody by 15 per cent and 30 per cent respectively. The introduction of a circumstance of aggravation for public nuisance will undoubtedly lead to police charging Aboriginal people with this offence and ultimately lead to more Aboriginal people spending more time in custody. Such an outcome is, of course, at odds with the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the government's own commitment to Closing the Gap. I therefore respectfully urge the committee to recommend an amendment so that the circumstances of aggravation do not apply to disorderly and offensive behaviour; namely, section 6(2) (a) (i) and (ii) of the Summary Offences Act. Thank you. We are happy to take questions.

Mr KRAUSE: Thank you, Commissioner. I will start with a recommendation made in your submission. Can you provide a little bit more detail on the *Hansard* record here today about your recommendation that an attribute of impairment should be added as a ground of unlawful vilification and also aggravation? I have seen your submission. Can you elaborate, for all of us here and for those watching, on how and why you came to that and what that would add to the bill before us?

Mr McDougall: Disability, of course, is an issue that is currently before the disability royal commission into violence, abuse and neglect. There has been some strong evidence provided before that royal commission about the harm that is caused to people with disability when they are publicly vilified. I can recall several case studies, which I will not go into, that I think really clearly demonstrate the harm.

There are, of course, criteria that have been developed. The UK inquiry into hate crime in 2021 referred to criteria, being demonstrable need, additional harm and suitability. They are very similar to criteria that we developed when we were looking at the remainder of the Anti-Discrimination Act in that *Building belonging* report when we were looking at the attributes that should be protected from discrimination. Applying those criteria to disability, we think there is a strong case for the inclusion of disability for the aggravated offences and for the serious vilification offence.

Mr KRAUSE: The next issue I want to ask you about is the new offence in relation to prohibited symbols. It is noted that your submission says that the bill provides an appropriate balance of protecting Queenslanders and freedom of religion and public interest. I assume that means freedom of expression as well. I want to ask about the part of that submission which says it is okay for prohibited symbols to be prescribed by regulation. Obviously that means that regulation about what is a prohibited symbol will be made by a minister, working with their department. That minister is inevitably a politician who has varying political viewpoints from many in the community. Don't you think having that sort of thing in regulation runs the risk of particular symbols being banned because of people's political viewpoints?

Mr McDougall: Yes, there certainly is that risk. I guess that is why there is the requirement that there be consultation with my commission and other agencies. I did notice that one of the submissions—I do not recall which one—suggested that it should require the consent of two of the three organisations that the minister is required to consult with. I thought that was interesting. That might go some way to allaying your concerns. Ultimately, I guess, these are matters that the minister would have to take into account and there would be a level of scrutiny applied, in the same way that all regulations are scrutinised.

Mr KRAUSE: Quite often here in Queensland we have majority government so what the ministers decide is legislated anyway, but it is a more rigorous process than a regulation. I think it has been announced that the swastika symbol will be banned or may have already been banned by the state authorities here from being publicly displayed. This leads on to my next question as well. Thank you for your answer about the regulation issue. It is my understanding that the bill operates so that people can consider that they have been vilified if the public display of a symbol causes them personal offence—correct me if I am wrong—and there is a subjective element to it.

Mr McDougall: Yes.

Mr KRAUSE: Do you see a problem with that—as I do—because no two people will react in the same way to a particular symbol? Some people are going to react very differently to a swastika compared to how some people may react to a hammer and sickle symbol, for example. Do you see a problem with the way the offence is drafted?

Mr McDougall: The underlying intention, of course, in all of these provisions is to protect the dignity of all individuals in society. That is what we are trying to achieve. We are trying to achieve a society where people do not intentionally go about causing harm to others. When that harm reaches a certain threshold then as a society we say that should be subject to criminal sanction. The question is: does displaying a hooked cross reach that threshold level? Your question is whether that should be subjective or objective. In terms of proving criminal matters, obviously a subjective test—it will always come down to circumstances—will probably be easier than an objective test. From the point of view of victims—and, again, going back to the intent behind the legislation of protecting people from harm—I think the subjective test in this circumstance is appropriate.

Mr KRAUSE: Just so you know, I find both the swastika and the hammer and sickle to be terrible symbols of bad things that have gone on in the past. Putting those two things aside, I want to ask you about the certainty of the law in respect of how it may be applied in a criminal way towards people. If I have a tattoo, for example, which might be a little bit out there—I do not find it offensive and most people do not find it offensive—but I come across someone who does find it offensive, how am I to know whether the tattoo is going to cause me criminal issues or not if it is a subjective test for whether someone is offended by my tattoo? How am I to know in advance with certainty?

Mr McDougall: I think that is something that a tattooist and people getting tattoos really need to think about at the time they are getting a tattoo—how much offence it is going to cause and whether they decide to display it publicly. One of the issues that we had to deal with—and Julie Ball may want to talk more to this—was a person in a hospital with a Nazi swastika who was going out of their way to display it and it was causing upset to staff. That is one of the issues we have raised—about whether or not these provisions need to have greater clarity as to whether they apply in closed environments like places of employment, hospitals and schools. Ultimately, individuals in society have to choose how they are going to communicate. If their communication, whether it is through words or displaying symbols on their body, causes offence to people then they are going to have to deal with the consequences of that.

Mr KRAUSE: How will they know whether it is going to cause offence or not? They will not know. Do you understand the problem I am identifying?

Mr McDougall: Yes

Mr KRAUSE: It is subjective.

Mr McDougall: Yes, it is. It would be a ridiculous response to say they should consult a lawyer before getting a tattoo, right? Maybe tattooists are going to be vicariously liable.

Mr KRAUSE: I do not think it is a funny matter because it is an issue of certainty of criminal law.

Mr McDougall: Yes. I do appreciate that certainty should be a goal, but there are lots of things in the law that are uncertain and they are left to the courts to determine.

Ms Ball: To start with, the symbol—the tattoo—has to have been prohibited and gone through that process. As the department has pointed out in its response, the minister will be required to comply with the Human Rights Act when making the recommendation that a symbol be prohibited. The proposed provision itself says 'publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced' et cetera. So there is that element of an objective test.

CHAIR: I know there is a fair bit of movement in relation to the Anti-Discrimination Act. Am I correct to assume that there is some crossover between what is going to happen ultimately with the amendments to the Anti-Discrimination Act and the introduction of this legislation? Is there a necessity for this legislation to be delayed? Is it functionally workable, in your mind, to have this legislation and the Anti-Discrimination Act amendments? Our report, I think, will be finalised first.

Mr McDougall: The *Building belonging* report terms of reference specifically carved out vilification from the terms of reference. The government has responded to that report by accepting those recommendations in principle and has made a commitment to introduce a new Anti-Discrimination Act within this current term of government. That is where that stands.

The question is: should these provisions be delayed until that act is ready to be introduced? My response would be that I do not think it does need to be delayed. Also, these provisions and the initial inquiry came about from a community-led push by the Cohesive Communities Coalition. I think there is a great deal of relief and excitement amongst community members I speak to about these reforms. I think they would be very disappointed, to say the least, if there was any further delay.

Ms BOLTON: Commissioner, in the first part of your response to the member for Scenic Rim in talking about the attributes you mentioned disability. From the committee inquiry report, given that recommendation 4 clearly outlined a number of attributes that do not seem to be covered within this bill, could you comment on that? You mentioned disability but not any of the others.

Mr McDougall: Yes. I think the others ones included age. I think a strong case could be made for age. I do not think we have yet seen the evidence of serious vilification presented before the committee. I could be corrected on that if that is not the case. The other attributes that have been agitated for include sex and gender and sex worker. It is possible, as the chair mentioned, with the remainder of the act being currently reviewed and a new act under development, that some of those issues could be picked up in that process if there was demonstrated evidence. Again, looking at the criteria that I referred to earlier, it could be the case that they are picked up in the new legislation. In terms of the evidence that was before us and the committee, the attributes that we have identified are the ones that we are recommending at this point in time.

Ms BOLTON: Within your submission you state, 'The increase in the maximum penalty will enable police to obtain a warrant to access communications held by a telecommunications carrier.' What I am trying to understand is that the bill does not cover recommendation 6 regarding online hate speech. Is this in reference to giving greater powers in that space? I am trying to understand how that is going to assist all those experiencing that vilification online or elsewhere.

Mr McDougall: This is an issue that Julie Ball has worked on for some time, so she might enjoy answering this question.

Ms Ball: We actually think the vilification provisions are wide enough to cover online vilification. Part of the problem with the serious vilification offence—it has been in the act for a long time but not used very much—is that the police have not had the powers, because of the low penalty, to seize and preserve evidence. That is one of the reasons for the increased penalty. Other reasons include recognising the seriousness of the offence and the damage that it does to the community. The powers to get a warrant are just one aspect.

Ms BOLTON: That will cover the online elements that were raised consistently during the hearings in the inquiry?

Ms Ball: It will assist police to prosecute for those types of offences, yes.

Mrs GERBER: I wanted to ask you about your recommendation in relation to excluding police from the aggravated offences. I understand the point that you have made in relation to our First Nations people being disproportionately criminalised and institutionalised within the criminal justice system. I can see that you have made a recommendation to 'provide for a review of the operation of aggravated offences against Aboriginal and Torres Strait Islander peoples'. I want to understand why, then, you think the next step needs to happen to exclude aggravated offences towards police. Everyone deserves to feel safe in their workplace. No-one deserves to be abused. If you are going to exclude police, why not open it up to other areas of the Public Service like nurses and doctors? I need to understand why you think police need to be excluded from that.

Mr McDougall: That is a good question and a totally valid question. Again, I would point to the history of contact between Aboriginal people and police for decades and the patterns of behaviour that have developed. There was a High Court decision in Coleman v Power which addressed this issue of what should be considered offensive and whether police should be expected to have thicker skin than the average citizen. They concluded that police should be expected to be trained and deal with those situations.

I can recall a case—I was not directly involved in it at the time, but the firm that I was attached to was running it—of an Aboriginal woman who swore at a police officer at four o'clock in the morning in a public park and was charged with offensive language. The real question there was: what harm was occasioned by that woman at 4 am when nobody could hear her other than the police officer? Given the statistics I have outlined earlier today, if we are going to turn around the scandalous numbers of Aboriginal people who are languishing in prisons across Queensland then we have to heavily scrutinise each and every new law that we introduce to ensure it is not going to worsen the problem. My fear is—and I think it is a well-founded fear—that this provision will lead to more aggravated offences being brought against Aboriginal people simply for swearing at police officers.

Mrs GERBER: Isn't that more an application of the test in relation to the police officer proving that swearing at them amounted to serious vilification or hate? Is that fear borne out in any evidence, or is it just something that you have?

Mr McDougall: We are talking about the application of the aggravating circumstance to the offence of behaving in a disorderly or offensive way. That is what we are talking about. We are talking about removing those two so that the aggravation does not apply to those. Yes, I think there is a wealth of evidence to say that those provisions applied disproportionately to Aboriginal men and women.

Mr HUNT: I have a question around hate symbols. Your submission mentions the difficulty of it not being included in enclosed spaces and/or hospitals. I wonder if you could expand on that a little bit, please.

Mr McDougall: Yes. Julie Ball might want to talk about a particular case from New South Wales where two consultants were brought into a school setting to do training and they were subjected to what they considered to be racial vilification. That claim ultimately failed because it was in a school and considered to be not a public space. I will let Julie Ball explain that further.

Ms Ball: That case was actually about the application of vilification laws. There were similar issues in terms of the definition of 'public act' for vilification. This new offence sets out what it means to be publicly displayed. We have raised the issue based on the example we gave in our submission about the person in hospital who had the tattoo and refused to cover it. Is it intended that that sort of situation should be covered? If so, that should be made clear.

In terms of vilification itself, we have also recommended a minor amendment to the current 'public act' definition to clarify that it does apply to enclosed places like workplaces and educational settings, because of the case in New South Wales and also a couple of cases here in Queensland. The intention of the vilification prohibition is that it applies to public life but not private life, whereas work and education are public aspects of our lives and to clarify that it does in fact apply to those.

Ms BOLTON: In your submission you support the relocation of section 131A. Do you also support the increase of the penalty to three years? The Queensland Law Society does not support that.

Mr McDougall: That is a good question, thank you. I think the three years was required in order to enable police to get over the threshold. I am not sure of the exact provision that requires the three years. I think it does raise legitimate questions of proportionality. It might be that a less restrictive option would be to amend whatever that provision was that required the three years. Is it a Commonwealth provision? Yes, it is a Commonwealth provision, which is obviously beyond this parliament to amend. I do think there are legitimate questions of proportionality, but for this law to be effective it does need to happen.

CHAIR: That is really to do with online vilification and the ability of police to preserve or seize the evidence that they need to prove those cases.

Mr McDougall: Correct.

Ms Ball: Yes.

Mr McDougall: That is why the existing provision has resulted in so few prosecutions.

CHAIR: There is another thing I have been trying to grapple with. I know it is a cross-jurisdictional issue in relation to the way social media is managed. One of the things I do not understand is that there does not appear to be an ability for the authorities to take down horrible vilification of individuals, whether they be in the public eye or not. To your mind, is that something that we just cannot solve without state legislation, or is it something we could turn our minds to?

Mr McDougall: To give you a full response to that I would probably need to take that on notice, because it is complex. There are potential amendments to the act within the Building Belonging process that could result in powers akin to what you are talking about. It is a complex question. I certainly think these provisions, if they go through, would enable the police to engage with the social media platforms in a way they have not previously been able to engage with them to request them to take down material.

Mrs GERBER: I just wanted to go back to carving out the police from the aggravated offence of public nuisance and I just wanted to clarify. When you were talking about there being evidence to demonstrate that Aboriginal and Torres Strait Islander people are disproportionately affected, you are talking about the public nuisance charge itself, not the element of aggravated offence. Your concern is that an extra spoken word, for instance, against a police officer might elevate what is ordinarily a public nuisance charge into an aggravated offence of the public nuisance charge?

Mr McDougall: Yes.

Mrs GERBER: But there is no evidence that that is happening because it is a new section.

Mr McDougall: There is no evidence that it is happening right now because it is not there to happen.

Mrs GERBER: That is right. The way the department has responded to it and the way the bill is currently drafted is to allow for a review of the operation of the aggravated offence in relation to public nuisance, so don't you think it is perhaps prudent to understand before carving police out? Before saying, 'We are not going to allow police to have the benefit of an aggravated offence charge,' don't you think it is probably more prudent to ensure the law is operating in a way that is disproportionately affecting before you carve them out?

Mr McDougall: The evidence I referred to earlier from Tamara Walsh suggests that it will be used in a way that disproportionately acts against Aboriginal people. I do acknowledge the government's response that the Criminal Justice Innovation Office will monitor it. I would question whether the data will be set up by QPS and provided to that office to enable that review to happen effectively. I think the more prudent approach would be to carve it out as suggested, particularly if we are truly concerned about achieving the Closing the Gap targets.

Mrs GERBER: If you do carve it out, that is not just carving it out for Aboriginal and Torres Strait Islander people; it is carving it out for everybody.

Mr McDougall: That is right.

Mrs GERBER: That means police could be arresting a white supremacist, for example, and the police officer may be a police officer of colour or other ethnic background and be abused by that white supremacist and they cannot use the aggravated offence?

Mr McDougall: Yes, I appreciate that is a serious concern. That is part of the cost of ensuring we meet our commitment under Closing the Gap. It does come back to the training that the High Court referred to in Coleman v Power; that is, police are expected to 'resist their sting, it being contrary to the training of a police officer to engage in, and it being the duty of a police officer to refrain from, unlawful physical retaliation'.

Mrs GERBER: I understand that, but there should still be a line drawn between a safe workplace and having to deal with a certain level of abuse, particularly in the circumstance of it being an aggravated—

Mr McDougall: Police workplaces are obviously notoriously dangerous, and we are not talking about a carve-out for threatening or violent behaviour—just for language, which is not physically harmful. I do readily accept it could be psychologically harmful, but police are expected to be trained. I would expect that police officers would be trained in the history of the impacts of colonisation on Aboriginal communities and policing in particular, so they need to be particularly mindful of that when they are policing Indigenous communities.

Mr KRAUSE: Going to page 11 of your submission—this is in relation to the police and Aboriginal and Torres Strait Islander matter that the member for Currumbin was just talking about—I understand you are recommending that police be carved out in terms of the aggravation of offences. You recommend also that there should be a review of the operation of aggravated offences against Aboriginal and Torres Strait Islanders within three years of operation. In setting up the circumstance of aggravation, this bill is imposing more severe penalties on offences based on the identity of the person who is being affected, and you support that. I know that before I was a member of this committee it wrote a report that was broadly supportive of that principle. You refer to the UN Human Rights Committee's general comment at paragraph 60 of your submission. At the end of that it says 'laws should not provide for more severe penalties solely on the basis of the identity of the person who may have been impugned'. Isn't this bill doing just that? If so, in your view, how is that consistent with the United Nations guidance you have set out in your submission?

Mr McDougall: I think article 19(3) of the ICCPR does seek to protect freedom of expression, but freedom of expression—explicitly in article 19(3)—is identified as not being absolute. It can be subject to limitations, including for the protection of public order, public health and morals. This issue is one of public order and also public health when we are talking about the psychological impacts of serious vilification in particular.

Mr KRAUSE: But not for police officers?

Mr McDougall: Not for language used against police officers in a nonviolent and non-threatening way.

CHAIR: Thank you for your evidence today. In relation to the question taken on notice, which I understand is to review the ability of authorities to take down vilification in the public domain, is it possible to have the answer to that to the secretariat by Friday, 2 June? If there are difficulties with that time line, could you communicate with the secretariat, who will be very understanding and accommodating to your busy schedules? Thank you once again for your written submission and for appearing before the committee today. It is very helpful.

BURTON, Ms Bridget, Director, Human Rights and Civil Law Practice, Caxton Legal Centre Inc.

CHAIR: Good morning and thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Burton: Thank you for inviting me to provide evidence this morning. I acknowledge the traditional owners of the land on which we meet today, the Yagara and Turrbal people, and particularly recognise that Aboriginal and Torres Strait Islander people are very often subjected to racism and vilification in Queensland at the moment. Also I acknowledge the culturally and linguistically diverse communities who have provided evidence originally and continue to support this legislation and welcome broadly the package of reforms. My comments are limited to strengthening slightly, and nothing that I say should be considered as a criticism of the legislation that is incoming. We welcome it as well. I want to focus on three things, and I will respond also to the question that you asked of the commissioner in relation to social media. I will also respond to the DJAG response that we got at the end of last week which I thought was really helpful.

The first issue that we are asking for is to specifically include words around social media within the definition of 'public act'. As it stands, the provision of the definition has been moved but not substantively altered. We are recommending the words 'posting or commenting on social media'. When you look at where the worst of the vilification is occurring—in my view, in Queensland on social media, it tends to be in the comments section from Queensland-based platforms, particularly those that do not moderate their comments section—some of the media outlets—for example, if you look at Nine News Queensland—have a comment section that is quite unrestrained. Some of the government departments are really attracting it. My colleague Kate, who is with me today, looked on the weekend through the comments on Fire and Emergency Services social media; they are getting quite a lot of vilification content posted on their social media.

It is open, within the scope of Queensland law, to also include the platforming of comments if you are a Queensland-based organisation or social media user—not just those commenting but also those who have posted the initial post or created the platform for that; not the social media company itself but Nine News Queensland or your local Facebook community group or your local politician. Queensland Police, Fire and Ambulance have some responsibility in relation to what goes into their comments section. However, compared to the last time I was before you talking about this last year, a lot of those have been much better at moderating. We have noticed a big improvement—not a complete improvement but a significant improvement—in the way that Queensland police are moderating their social media. I think you could include words that cover not only posting or commenting but also the initial post to which those comments are attached so they would acquire some responsibility for what happens below.

In the DJAG response to the definition for 'public act' they have referred to the Building Belonging process. I came in late on the commissioner's evidence so I am not sure if he talked about that, but when the original response was given to your report last year they did not have the benefit of that *Building belonging* report and the response to that. Some of the recommendations were intended to be rolled into that process, but that could be years away. None of the recommendations from *Building belonging* affect vilification because it was specifically carved out. I would say to you: if you have the opportunity to do so now, make those small amendments in line with your original recommendations rather than waiting for that process to potentially down the track resolve the entire piece of legislation. They are quite separate. 'Public act' only applies to vilification, so it does not need to be considered together with the rest of the legislation.

I would make the same comment in relation to the list of attributes for which vilification is currently unlawful. You made recommendations in relation to including three additional attributes: sex/gender, disability and medical status. I could understand waiting if you were going to expand the vilification regime to the entire list of attributes under the Anti-Discrimination Act, but that is not what is being proposed so I do not think we should be leaving those three groups behind pending the outcome of that process. I would probably encourage you to consider making recommendations in relation to that modest expansion of the list of attributes at this stage, in line with your own recommendations.

The third issue I wanted to bring before I stop talking and let you ask me some questions is the question of expanding the aggravation regime to sexual offences and those things that generally affect women. In the DJAG response, they have made the point that that is a political decision. We are bringing it again quite pointedly to you to ask for that political decision to be made in relation to that. For me, it is a gender equity issue, recognising that hatred motivated by violence is experienced by women and gender-diverse people in a way that is a bit different from what is currently being anticipated

by the aggravated regime. I know you have Ghassan from Equality Australia talking later who is recommending the same plus domestic violence, and I hope he will speak a little bit more about that, but we certainly support what they have written in their submission in relation to that. I am happy to have questions.

CHAIR: Bridget, when you talk about expanding the definitions, should it go as far as to cover, say, people in the sex industry?

Ms Burton: I would love to see sex workers being protected because I think that is an especially vulnerable group and, for me, often with intersectional vulnerability, so they might be women or gender-diverse or transwomen and also sex workers. I think, as we move this year towards decriminalising sex work, it is really important that there is an appropriate package of protections that sex workers can rely on. It was not your original recommendation. The sex workers are incredibly eloquent on their own behalf so I would not pretend to speak for them, but I would support that.

I personally support expanding the vilification regime to all of the attributes under the anti-discrimination legislation. Maybe the Building Belonging process will lead us in that direction. For now, it is quite late in the process of this particular piece of legislation—a lot of the contents have already been announced as coming—so we are just recommending at this stage that you tweak it to reflect your own earlier position on those sorts of things, rather than expand significantly. If you are minded to include sex workers, of course we would welcome that, too.

Mrs GERBER: Thank you, Bridget. I want to go back to your submission around social media to understand it a bit more. We just heard from the Human Rights Commissioner, who, on my understanding of his oral and written submission, thinks the way it is currently drafted it is broad enough to encompass social media and their submission does not make any further recommendations around that. However, I note that your submission does recommend that the definition of a 'public act' include social media in particular.

Ms Burton: Yes.

Mrs GERBER: I wanted you to expand on that for us. What is the risk of not including it, particularly in light of the submission we have just heard from the Human Rights Commissioner in that he thinks it is broad enough to cover it.

Ms Burton: It is broad enough to cover it currently. We are not asking for it to be included as an extra thing. Within the definition is a list. It says 'including' and then it lists some examples of public acts. The example used that covers social media is the phrase 'or by electronic means'. What I like to see in legislation is, when I am talking to somebody who is not accustomed to reading legislation, a section of the law I can show them and say, 'This is what it says. You can clearly read this yourself to understand what this means.' Being able to say, 'Yes, okay, "by electronic means" does include social media,' people will argue that. They will argue it to themselves; they will argue it to other people. The clearer you can be in the legislation, the better people interact with it and the more coherence there is between how people engage with that as individuals in their day-to-day lives. That is why we are asking for it to be included—not because it would change the meaning but because it will change the way people interact with the legislation.

Mrs GERBER: You are asking for the part that says 'including' and then give some helpful examples?

Ms Burton: Yes.

Mrs GERBER: And for those helpful examples to also outline that it includes comments and posting on social media?

Ms Burton: Yes.

Mrs GERBER: So where it says 'by electronic means', maybe a bracket that says 'including'?

Ms Burton: Yes, something in that line. I think—

Mrs GERBER: You do not want to limit electronic means, though. Sometimes being overly prescriptive means that you are actually creating a limitation around the application of the definition.

Ms Burton: We absolutely would not want to limit it. I think the word 'including' at the start of that list does make it clear that it is expansive. Certainly people bring vilification proceedings now in relation to social media posts. I do not think this reform is going to solve all of the problems of social media, but if it assists one local police officer to wave a piece of legislation in front of somebody in their community who is whooping up vigilante activity on the basis of race then I think it will be worthwhile making that very small additional clarifying comment, yes.

Ms BOLTON: Good morning, Bridget. Going back to the attribute which we had in our previous list of recommendations that was No. 4, I asked the Queensland Human Rights Commissioner why disability was discussed but not the others. He said that basically there had not appeared to be the evidence. Within your realm, have you seen cases of vilification and can you give us some evidence of this?

Ms Burton: Vilification against women or gender-diverse folk?

Ms BOLTON: Sex, medical status like HIV—anything that can start showing the type of evidence that is obviously required.

Ms Burton: To the extent that you would probably need to call evidence, I would not be able to give that to you today because it is all provided to us on a confidential basis. I am trying to distinguish between what would constitute serious vilification of women in particular compared with general sex discrimination, which we see an enormous amount of, some of which is sex discrimination occurring in comments where a less favourable environment has been created because of the way people speak particularly about women in that environment. I would not mind coming back to you with that. I can go back to my office and ask my colleagues to get some consent from some individuals to provide information to you, if you like, around vilification of women.

It is particularly an issue for our clients who sit at the intersections of other attributes. Sometimes it is difficult to say whether it is because they are a woman or because they are a Muslim or because they are a Muslim woman, for example, that they are receiving the comments they are. That is a cohort, to give you some example, that does receive a particularly large number of vilification comments because they are so visibly Muslim and women in public spaces. Once you start digging into all of those attributes you do find a lot of crossover between them. I would be happy to come back to you with more examples if you would not mind giving us a little bit of time. For anything specific I would need consent.

Ms BOLTON: Wonderful. You had in your submission regarding recommendation 5 lowering the threshold, which we had in our recommendations and is not here. Can you state why the omission of that is concerning to you?

Ms Burton: The concern for me is that some of the recommendations you have made have been rolled down to the review of the Anti-Discrimination Act. It is hard for me to see that that is likely to occur in the next 12 months. It worries me a lot more in relation to some of the other components, which is why I have spoken more about those in my opening, than it does about the threshold. I just do not think at this late stage in the process you are likely to get that level of reform into this bill. It does worry me that the reform is occurring in stages like this and we are being asked to support this while being confident that that will happen down the track. It would have been much nicer to see the complete package pulled together and done as one.

It worries me a lot because—it is unclear—we are potentially lowering the threshold in respect of the criminal offence, but the threshold for the civil offence remains quite high in a historical context where there has not been a lot of action taken in relation to the criminal offence previously. Reserving people that right to bring their own proceedings seems to me to be very important. If ever there was a lower threshold, I personally feel like it would be better placed in a civil than a criminal environment.

I am not sure that that huge change is going to happen at this stage with this bill. If there is one thing you are going to leave for the Building Belonging process that might be the one because it has not been presented to us to talk about in any level of detail.

Mr HUNT: Could you give me an example of—I am asking you almost to trawl through your memory for a case study or something, so I apologise—the sort of online commentary or directly confronting vilifying hate speech directed at women so you could say, 'This is the sort of thing that we would like to capture'? I want to preface that by saying: I am not disputing that in any way, shape or form; that is absolutely an ongoing problem. Could you give me an example of what you are talking about, either real life or a hypothetical based on real life?

Ms Burton: We had a look at a few key platforms where we know we will find vilifying content, particularly on the local media pages of mainstream media outlets like Nine and so on. I can tell you that at the moment the big attributes are race and transgender—gender diversity, not women. That is the flavour of the month or the flavour of the year in terms of where people's anger is being directed. I am very happy to have more of a look to find the comments about women.

It feels as though these things come in waves. We had a lot more commentary towards women last year when the government was looking at attitudes towards domestic violence. There were a lot more negative comments about women at that time. This year that energy has been redirected to race and to gender, unfortunately. We will come back to you with examples of vilification against women.

Mr HUNT: Just confirming, I am not disputing that it happens, in any way, shape or form. You only have to visit Clem Ford's page or any of those other pages to see it writ large.

Ms Burton: I understand your need for some tangible examples. I have not brought them with me today, but I am very happy to come back and provide those if it assists you to make a strong recommendation in relation to that.

Mrs GERBER: I will ask a question around age. You heard the Human Rights Commissioner's response that he does not—and I am trawling through my memory and I cannot think of a submission we have received in relation to vilification around age or ageism. Is there anything you can give us? Again, you can take it on notice.

Ms Burton: The Townsville community legal centre has made a submission that is very strongly supportive of age being added to the list of attributes and has provided some examples. They are especially concerned about older people. We are also concerned about younger people, in particular some of the issues relating to young Aboriginal people at the moment, where there is a lot of distress in the community about youth justice and that has led to broader actions in some places against—

Mrs GERBER: Aboriginal people?

Ms Burton: Yes, Aboriginal young people who sit at that intersection of age and race. I would say probably the strongest underpinning there is race, but age definitely has a part to play in some of the worst commentary. When I say 'worst commentary', there are definitely people who are calling for these children to be engaged with lethal force, and it is not just one or two people; there are large numbers of people calling for that. I can see the Queensland government and the Queensland police taking some significant steps to deal with that issue, because nobody wants to see vigilante behaviours. I feel like if you included age and race and you made it clear that social media was covered, you would give the police another tool to be having those conversations in community, and I know a lot of them are trying to do that.

If you include age, you definitely do need to make sure that it covers both ends of the age spectrum. It is generally not middle-age people who are the recipients of hatred; it tends to be older and younger people. I am not sure if Bill Mitchell's submission from the Townsville community legal centre included examples of age discrimination. I do not know if he is appearing at all. The pandemic brought a lot of the age discrimination towards older people out of the woodwork, particularly where they were seen as being the reason for everyone else's human rights being limited.

Ms BOLTON: You mentioned the waves of vilification. An example, obviously, is one you have given regarding youth justice. Do you see it as very much part of when government does inquiries and bills—for example, we had the births, deaths and marriages—and that obviously influences those ways? Do you believe there is a better way that government could introduce bills or do this to reduce the amount of vilification?

Ms Burton: I definitely think there is room for better communication with the public around issues that does not invite or encourage difficult issues to be pinned to attribute-based cohorts. My big concern for this year, aside from the youth justice concerns and the community's reactions to those, is that we are going to have a conversation about constitutional recognition of the Voice to Parliament. Based on the community's experience through the same-sex marriage conversation, I feel that is likely to see us experience another wave of aggression towards Aboriginal and Torres Strait Islander people during the conversation if it is not well managed.

I do not know what the solution is from the government side. I think providing improved clarity in the legislation in relation to people's responsibilities when they engage in that conversation through clarifying what is a public act and what your responsibilities are when you are engaged in a public act should be helpful. I think there is room for more human rights affirming communication in relation to a lot of issues that the community deals with.

I do not think that births, deaths and marriages is the reason for the increased hatred towards transgender people. I think that is an international movement. I think the legislation that we have introduced in Queensland is actually very helpful rather than harmful in that regard. My concern in relation to the waves is that the communication is sensitive and the tools are there to deal with it, ideally before it becomes a serious issue.

Ms PUGH: Circling back to your comments about social media and what you said in your opening statement, I want to be sure I am understanding correctly. Obviously administrators in our local community Facebook groups are now responsible for the comments, but you are also suggesting that the person who makes the original post—for example, they might be posting about something quite innocuous, like a sofa giveaway. If that were to take a turn it would be that person's responsibility, or am I misunderstanding?

Ms Burton: I think that is not what is happening. The issue is those kinds of clickbait posts which do contain a comment that invites a response that has some racial or religious or other attribute related material and then you would have a responsibility to moderate what goes on underneath your posts that you make, I think.

Ms PUGH: Because you have incited that; I understand. Yes, that is understandable. I have actually seen it, and it might be because of our positions. Sometimes I have shared content that is innocuous and then it has taken a fairly nasty turn, and it often has nothing to do with the content of the original post. In that case, there would not be a provision to discriminate. Whether the original post is innocuous or whether it is not innocuous, it would still be covered if we are putting that—

Ms Burton: I think it is just about removing it when you reasonably become aware of it and the maintaining of it. What we see is that there are different responses that different people make to what goes on in the comments section under their posts. For example, it appears to us that Queensland police are just deleting them whereas the Queensland Fire and Emergency Services are turning off comments but leaving the comments above rather than deleting those. When it gets nasty they will turn off comments so that there is nothing further, but they are not going back and removing other comments from their posts.

If you have posted something innocuous and people have commented below, there would be, I think, a responsibility to remove those when you become aware of it, but I do not think you need to be monitoring it at two o'clock in the morning. You would have to find some words—and lawyers love 'reasonable'—about reasonably facilitating or maintaining publications. I know that you all have these on your Facebook pages and you probably are deleting them—hopefully you are deleting them—but not everybody is.

CHAIR: Thank you. That brings to a conclusion this part of the hearing. Thank you, Bridget, for your attendance today and for the written submission that the committee received. I understand that there is one question on notice. You were going to see if you could obtain some examples of vilification evidence for the other attributes such as age and gender.

Ms Burton: Yes.

CHAIR: Could you have that to the committee by Friday, 2 June? If there is difficulty meeting that time line, you can communicate with the secretariat which will assist in accommodating you if you need an extension.

Ms Burton: Thank you, yes.

CHAIR: Thank you once again.

Ms Burton: Thank you.

CASTLEY, Ms Christine, Chief Executive Officer, Multicultural Australia

CHAIR: Welcome. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Castley: I would like to begin by acknowledging the traditional custodians of the lands on which we meet and to pay respects to elders throughout all time. Thank you to the committee for the opportunity to provide a submission to this important inquiry and for the invitation to give evidence at this public hearing.

Multicultural Australia strongly supports the bill, which will implement some of the legislative reforms recommended by this committee in its report *Inquiry into serious vilification and hate crimes*, and we also welcome the government's continuing commitment to extensive consultation with key community stakeholders in developing this legislative response. As a member of the Cohesive Communities Coalition—and I am co-chair of that coalition—Multicultural Australia has a strong commitment to strengthening the legal protections that will support Queensland communities to live safely and peacefully and to protect and foster diversity. We have engaged consistently with this process towards legislative reform to not only ensure our diverse community members are able to live safely in Queensland and that they receive the protections they are entitled to but also ensure that members of our community have trust in our systems enough to take recourse where there are instances of hate crime and vilification. As an organisation, we are deeply committed to advancing multiculturalism and building inclusive communities where everyone belongs.

As I said earlier, Multicultural Australia strongly supports the reforms proposed by the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 and supports its passage in its current form. We will note that, while the focus of the bill is to implement recommendations 7, 8, 9 and 16 of this committee's report as well as to amend section 131A of the Anti-Discrimination Act, the implementation of remaining committee recommendations should continue to be a focus and a priority for the government. Multicultural Australia supports the introduction of a complementary criminal offence banning the public display, distribution or publication of hate symbols. We welcome this new offence, which will capture both offline and online conduct, and we also welcome the requirement for consultation preceding listing of a prohibited symbol, noting, however, that the consultation requirement should extend to encompass the views of all relevant communities.

Finally, we also would like to emphasise and re-emphasise the importance of community education to support public awareness on this important legislative reform. We see this as critical to the success of the legislation. We support a wideranging implementation process that includes communication, education, resourcing and a carefully planned and staged lead-in time. Multicultural Australia, along with other members of the Cohesive Communities Coalition, is committed to contributing to this important community development work. Thank you again for the opportunity to appear before the committee on this important reform. I am happy to take questions.

Mrs GERBER: Thanks very much, Christine, for your appearance. I wanted to get some more information from you in relation to your recommendation with regard to the right for a relevant community impacted by the hate crime to be able to make a victim impact statement. Did your organisation make a submission to our committee in relation to the victims of crime inquiry?

Ms Castley: I do not recall. I do not think we did.

Mrs GERBER: No? Did you know about it?

Ms Castley: I think that might have passed our attention.

Mrs GERBER: Okay. That inquiry looked at how the state government can better support victims of crime, and I can see that the department's response to your recommendation points to that inquiry, but it is curious that you did not really get an opportunity to make a submission because it would have probably been quite helpful to hear from you guys in relation to that.

Ms Castley: Yes, it would have.

Mrs GERBER: The department's response says that the Victims of Crime Assistance Act broadly captures offences against the person and domestic and family violence offences. Can you just expand for us on why you think the bill needs to specifically give a community member the right to make a victim impact statement in relation to this?

Ms Castley: Yes, and we have engaged with the department in quite a few conversations on this point. While we appreciate the position that says it is really the individual that you need to seek a victim impact statement from, what we have tried to do is emphasise the point that this is a journey around us understanding diverse communities and diverse cultures, and many of the people who come from the cultures that we service as clients come from a very collective culture. They work as

communities; they work as a group. When there is behaviour that impacts on an individual, what you often find is that it will reverberate through the community and also then create impacts. This is a piece where it is potentially a different form of thinking around what happens and what the flow-on impact is from behaviour when you have a hate crime and serious vilification, noting that in the criminal context we are talking about very significant behaviour that leads to it becoming a criminal act. You are talking about acts of violence; you are talking about very strong language. It just reverberates and has an impact in terms of a sense of safety and a sense of trust in systems right across the community which adds then to the impact of the behaviour that is the subject of the criminal offence in this instance. While we appreciate the challenges, we are simply trying to say that in the victim impact statement space there should be consideration not just of going to the one individual but of understanding the full impact of the crime by then also seeking and giving communities an opportunity to make a victim impact statement.

Mrs GERBER: Thank you. I wish we had had that when we did the victims of crime inquiry.

Ms BOLTON: Christine, you mentioned the remaining recommendations, and hopefully we will be able to ensure they get taken up. Specifically, I have been asking regarding recommendation 4, which has expanded the attributes in the vilification laws. We heard from previous witnesses that there are crossovers obviously between sex, age, gender identity and often with race. What are your thoughts: should the other attributes be included, as we had in our recommendations; and do you have any examples, because the commissioner basically said there had not been a lot of evidence supporting that they would need to be incorporated?

Ms Castley: Yes. We I think in general are comfortable with the scope as it stands, coming from a perspective that you have to start somewhere in a very practical way. Absolutely we would—like, I believe, other people who would have appeared before the committee—understand that whole intersectionality dimension. Of our clients, who often come from diverse cultural backgrounds, you do have women and you have young people who are then subject to behaviours for a whole range of reasons. I suppose the thing we have had to think about in a practical sense, looking at this being a piece of legislation, is that you have to draw a line somewhere in terms of the attributes. We are also very conscious that this is legislation that we are very keen to ensure works in terms of its rollout and implementation. We think you have covered a sufficient range for now in terms of the scope of the attributes, but perhaps it could be that you would review it further down the track in terms of what might emerge, probably not in case law but perhaps in police practice, and what is seen on the ground in terms of other additional attributes as you understand how the legislation works.

Mr HUNT: Christine, I am assuming—something you should never do as a rule—that your group is a communication node for a lot of other multicultural groups and a lot of diverse communities all around Queensland and Australia. What is their central feedback about this bill? Is it too long in coming? Is there a sense of, 'Thank goodness it's arrived'? What is their general sense and what is their overarching feeling about the bill?

Ms Castley: Thank you for that question. We aim to be a voice for many communities but also to provide platforms for each of those communities to have their own voice, so absolutely we feel that we have tapped into the sentiment, but I would not ever want to claim to speak for the many communities that have made a life here in Queensland. On the introduction of the bill and also the government response accepting the recommendations there was huge relief. That I think reinforced the position that we had adopted around having good, strong laws that will send a strong message to our communities about who we are as a community in our willingness to take action when their safety is compromised. Certainly we received significant strong positive feedback, and I used the word 'relief' deliberately because there was caution right through this process, from the initial review and the whole process as it progressed, of people not quite believing that it was going to happen and be strong enough in terms on the legislation being rolled out.

Mr HUNT: Is there a sense of—I want to find the right word—contentment that it has landed in a good place?

Ms Castley: I think there is general satisfaction that it has landed in the right place but still some caution in terms of seeing how it is rolled out. The legislation can be as good as it can be but it is then how it unfolds in practical terms—in terms of use of the sections in the act, in terms of police practice and capability and in terms of the capability and procedures within courts. The legislation is not the be-all and end-all of the solution. How it then gets executed in practice is going to be fundamentally important and there is going to need to be a lot of capability lift, a willingness to learn and a willingness to think about the next change process to reflect the intent of the legislation right from that first point of a complaint being made, around information being collected, around the charges being laid and how the process then runs through the courts, right through to finally the legislation being enforced.

Mrs GERBER: I want to touch on your other recommendation around the addition of a subclause to clause 52B. You recommend the addition of the words, 'It is immaterial if the offender was also motivated by another factor.' I note that the department's response to that recommendation is that even if the offender is partly motivated by an attribute not listed in clause 52 but then motivated by one of the other listed attributes then the person can still be charged with the offence with a circumstance of aggravation. Can you give us some examples of why you think your recommendation of the further subclause needs to happen? What do you think the consequences will be if that is not in there?

Ms Castley: I should say that we are satisfied with the department's response on that issue, but I will provide some context about why we see it as an issue. It comes down to how events unfold in real life, in the heat of the moment. Often these things happen in public spaces, be it where people go for nightclubs, football games and all those sorts of things, and there could not be complete clarity around how the circumstances came about and how the events unfolded. Charges might be laid for a range of reasons. Because it is a circumstance of aggravation, I think the issue comes down to how the evidence is collected and what evidence is collected and for what purpose. Again, the recommendation that we put forward there is as much about trying to pin down the legislation as it is about trying to make the point about how it is then rolled out in practice in terms of how police use the legislation, what information they collect and how charges are then laid.

Mrs GERBER: To be clear, based on the response you were sent back from the department you are satisfied that that covers that sufficiently?

Ms Castley: Yes, we are on that one.

Ms BOLTON: Christine, in your submission you talk about education. I think it was in our recommendation No. 17 that we talked about what needs to happen in working with organisations. Is there anything you would like to add that maybe was not in your original submission or has not been said now?

Ms Castley: I will be frank and say that our main concern is that that recommendation is not forgotten, that people do not see the job as having been done and dusted. I think the recommendation was a very good one in terms of highlighting that that is there. What we will keep reiterating is the importance of that point and it needs to happen in all parts of the justice system.

Certainly we are doing some work already with the Queensland Police Service in terms of training for recruits and for domestic and family violence specialists. That is a start. We think there is a capability piece that needs to happen in the courts and there needs to be a piece in the broader community as well in terms of people understanding that the legislation is in place and about people needing to act. There is an important piece here—and this is one point probably that we have not really reflected on—around bystanders. People can take action and maintain an awareness. This is not simply about the person who commits the offence and the person who is at the receiving end; it is about who we are as a broader community and a really strong education piece around bystanders taking action and being there to provide the evidence to support prosecution where really bad behaviour happens.

Ms BOLTON: As an organisation, how do you normally become first aware if something is forgotten like such a recommendation?

Ms Castley: Basically where it does not happen. If I could flag that, I have been trying to think what new steps would be ideal for this legislation. For a piece like this, it is complex and it has been tried a number of times in a number of jurisdictions. When we were going through similar types of clauses around treating these types of offences, the repeated thing that we kept hearing about was that it was never used. The assumption has always been that it was never used because the legislation was not right. I actually think it was never used because the systems that sit around it to allow the legislation to be used were not adhered to in terms of police having a consciousness and awareness of the availability of these provisions, for people in the community having an awareness that these provisions exist and should be enforced.

I am not sure if the committee is considering a recommendation in terms of saying there should be a review of the legislation in 12 months or whatever is a reasonable period. That review should not only look at how well the clause has worked and allow a response that says it was never used and, therefore, it has not worked. There should be a review that looks into: if it has not been utilised as much as it should have been then that does not mean there are no racist incidents happening in Queensland; it probably simply means there has not been the awareness, the rollout and the use of the clause in those circumstances.

Just coming back to the start of your question, usually people come to us because they have tried to do that first piece around going to the police or someone else for help. They come to us saying, 'We have had no response. We have been told, "Yes, sure, that's happened to you but it's going to be pretty difficult to collect the evidence so there's no point in proceeding".' We also have people who come to us simply for the wraparound emotional support rather than wanting to enforce the law. It takes a bit sometimes to convince people that they should report to police, simply because there is a real sense that they have lost faith that any action will be taken in relation to the issues, often because they have seen it a number of times and experienced it a number of times in their lives and have seen it happen within their communities and seen a failure to act.

Ms BOLTON: And that review would also capture that all recommendations are actually—

Ms Castley: Correct.

CHAIR: Is it a correct assumption that the lack of police action in relation to some of these issues that were raised in the community was really the result of the previous legislation being unworkable at the coalface?

Ms Castley: A lack of clarity in terms of knowing what you would charge a person for. That is why we have argued so strongly for a very specific circumstance of aggravation. Certainly the committee would be aware that one response to the need for this legislation has been that the provisions already exist in the Criminal Code in terms of the types of behaviour that occur, whether it be assault or other things. That is why we finally landed on supporting a circumstance of aggravation because, while we accept those offences already exist, having that circumstance of aggravation sends a very clear message that this is behaviour that should be acted on. That provides clarity then to police on the ground, it provides clarity to the community and it provides clarity to the courts that this behaviour is something that should be addressed and responded to, which does not exist now. That is the difference with this legislation.

CHAIR: To take it back one step, the recommendations in our original report deal with the non-performing legislation. Now that we have got to this point, and I understand the reasoning for wanting a review, hopefully what we have landed on is a more workable solution—for example, not having to get permission from the director's office to prosecute, which was a hurdle that we heard about.

Ms Castley: Absolutely. This will make the legislation work much better. When I am talking about a review, I am talking about how the legislation is actually implemented. My strong concern is that I think the legislation at this stage is as good as it can be and it has taken us to where we need to be, but it will only be as good as the agencies that seek to enforce it and that have the powers to act under it.

Ms PUGH: Going back to your proposal around the victim impact statement from the community group and the importance of the collective for a lot of our multicultural and CALD communities, can you explain a little more how that would work in practice? Would there be a spokesperson for those kinds of issues? Would it be put out as a general call to the community each time there is an incident? Do you have a plan or a concept for how that would work?

Ms Castley: Again, I think this comes down to the different ways in which the individuals who come from those communities live and operate. They do have structures. In most instances people will be connected into a community organisation that has a community leader. Often they will have elected office bearers; sometimes they are less formal than that. It is very possible to go find a collective. Absolutely, we agree: a broader call-out to the community is probably not going to be workable in terms of seeking victim impact statements, depending on the type of behaviour. For the most part, how we saw that happening was that obviously you would go to the individual first to make their victim impact statement, but they would generally be connected in some way, shape or form to a community or there would be a community from a different background. There are hundreds of these communities that exist so there is an organised collective that you could go to fairly readily.

Ms PUGH: Yes, absolutely. In a lot of cases there are a number of different groupings. It was really interesting to hear you reflect on how it impacts on the collective because, in many cases, the issue that person has is not with the individual; it is very much with the collective. That is why making a collective submission makes so much sense. Thank you for explaining that.

Ms Castley: That is alright. I think it is also the context of what might be happening in a community at a particular time. You can think through what was happening during the COVID pandemic in particular communities that were being attacked without any basis whatsoever. That was the foundation of a lot of behaviour that was happening. It also helps you to understand that a lot of this

behaviour is cumulative in its impact. It chips away because it keeps compounding with behaviour after behaviour so that a single act on its own may not seem like much, but when you look at it as an accumulation of behaviours and attitudes then you start to understand the full impact of the behaviour.

Ms PUGH: Absolutely.

Mrs GERBER: I want to give you the opportunity to expand upon your submission around education. One of the pillars underpinning what you are talking about seems to be that the legislation is only as good as how it is enforced or disseminated and educated about. You have said that you think there should be the development of a community education campaign in conjunction with the organisations that are to enforce the legislation. Can you give us an example of what you think is needed practically in terms of education around this legislation?

Ms Castley: I think we are coming from a perspective where we understand these issues are complex in terms of how you actually respond to people. If we think about a person's journey from when a behaviour happens right through to trying to report it to police, to that matter being taken through the courts and the gathering of evidence, the individuals and the systems that they will need to deal with all need to be culturally capable to actually be open and receptive. While we recognise that absolutely the way in which the law is conducted needs to be objective, impartial and ensure that justice is delivered, you also need to understand where is that scope for flexibility to ensure you collect evidence and you are a safe space for people to enter into.

We think there is real need for education, absolutely. I have mentioned that we are already doing some work with the Queensland Police Service which is about different paths and thinking about the different points at which you engage with different communities, starting with that cultural capability piece. It is even issues as basic as using a translator or interpreter when you have someone who does not speak English well or at all. We regularly hear stories of people in schools or even the first point of reporting where people try to use Google Translate. We hear about the issues around court proceedings having to be adjourned because people have not had documents translated. That is the whole issue about understanding the importance of using valid and credible translators and interpreters—do not use children as a translator or interpreter—and what is right and wrong in those instances. We appreciate that in some of those circumstances people are simply trying to get the job done to ensure justice is served but not engaging in the right processes.

It is just understanding the integrity of the processes that you use. It is simply in terms of interacting and engaging in a culturally capable way, so that people understand what is happening, and thinking through your ways of communicating—the ways you set up even the physical spaces you have and how that might be too intimidating. For example, in some communities women do not go out much and are not used to, say, sitting in a very busy foyer space with a lot of people at a point when they are feeling very insecure. There are some very practical pieces about thinking through how you can have a culturally capable response, recognising that these issues deal with myriad communities who have made their home in Queensland.

The other piece we did not go into in too much detail was that piece I referred to earlier around bystander behaviour, about how we as a community come together to send a strong message around what is right and what is wrong behaviour—about the behaviour that we do not walk past and in that sense kind of condone or allow. That is a piece that happens in terms of what is the right and wrong behaviour. It already happens in relation to domestic and family violence and issues around sexual assault. This is another piece again where we think it is really important that there be a broader community campaign to send those messages. When you talk about bystanders taking action, it is also an education piece around how you take action as a bystander in a safe and effective way, without escalating or aggravating the circumstances. There are myriad complexities around this. I think a multipronged education approach is needed.

Mrs GERBER: The first aspect of what you just spoke about would have fed into the victims of crime inquiry that we undertook as well.

CHAIR: Thank you for your evidence today. Thank you for your written submission. Keep up the good work.

Ms Castley: Thank you for your time, committee and Chair.

KASSISIEH, Mr Ghassan, Legal Director, Equality Australia (via videoconference)

CHAIR: Good morning. Thank you for making yourself available to the committee. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Kassisieh: Thank you, Chair, and thank you for the opportunity to speak with you today. My name is Ghassan Kassisieh and I am the legal director of Equality Australia, a national LGBTI organisation. I have policy and legal expertise particularly in discrimination law. That is the basis on which I am appearing today.

Everyone deserves to live in safety with dignity and respect. LGBTIQ+ people have long been the targets of hate. During the marriage postal survey our organisation saw this firsthand. In New South Wales today, a special commission of inquiry is investigating the murders of previously uncounted hate crimes against gay men and transgender people. Unfortunately, despite incredible progress, that hate continues unabated. Today, our trans community is often the target; sometimes it is our drag artists. Storytime events have been cancelled. Unspeakably hateful signs against trans people have been seen in Melbourne and then replicated in mastheads across the country. People have been attacked when attending pride events. The messages are the same; the methods are not that different, but the pain and debilitating effect of hate on survivors and our family and friends is all too real. That is why targeted hate crime legislation is warranted.

By passing this bill, the Queensland parliament can recognise that the safety and dignity of the LGBTI community matters and communicate to the perpetrators of hate crimes that their actions are not condoned by the wider community. It is because of this deep and long experience of hate that we have made a submission seeking improvements to the bill in two key respects. We think the department's response has misunderstood our concerns in this regard.

First, our recommendation for a sentencing consideration responds to a significant contradiction in this bill; that is, the more serious the hate crime, the less recognition there is of the bigotry that motivated it. The law should not remain silent when murders or sexual assaults are committed based on hate. That is why we have recommended a sentencing consideration where, wherever a crime not captured by the aggravated crimes regime is committed based on hate, the harm caused by that hate be taken into account in sentencing.

Second, we have recommended technical improvements to the aggravated hate crimes regime to ensure that it responds to all commonly experienced crimes that are experienced by our community, including domestic violence and sexual assault offences, and that bigotry, however expressed, can actually be proven beyond a reasonable doubt to meet the thresholds of this bill.

Our recommendation in this regard is to ensure that conduct motivated by hateful tropes and stereotypes are captured by the new aggravated offences to respond to our concern of how hard it will be to prove beyond reasonable doubt what actually motivates an offender. If I could give you an example: a person attacks a drag queen or a transgender person accusing them of being a paedophile and then says that they do not care what their sexuality or gender identity was, that they were motivated by a desire to protect children. It seems to us that the law currently requires us to get into the mind of an irrational person and work out what their actual motivation was when the rest of us can see exactly what connections they were drawing. That is why we have made suggestions to improve the drafting. Thanks for your time. I am very happy to take your questions.

Mrs GERBER: Thank you for your appearance by video link today. I think you were just touching on it then, but I also reference what the Human Rights Commissioner has said and what a Multicultural Australia representative just said. I refer to your recommendation that the provision should be amended to clarify that hate crimes can be motivated by a prejudice to people with more than one attribute. I note that Multicultural Australia also made that recommendation but in oral submissions have said that they are satisfied with the department's response that if the offending is partly motivated by an attribute not listed in the relevant section—section 52B of the Criminal Code—but, in addition to one of the listed attributes, is part of the offence then the person can be charged and the prosecution can continue. Both Multicultural Australia and the Human Rights Commissioner were satisfied that the legislation adequately covers it without the need for the addition or the clarification of more than one attribute. What is your take on that? Are you satisfied with the department's response? If you are not, can you elaborate on why you think the section needs to clarify that it can be motivated by more than one attribute?

Mr Kassisieh: I agree that it can be captured within the focus of the offence. If it is motivated by more than one attribute, that does not prevent you bringing the aggravated circumstances offence forward, but it focuses your attention only to the aspect of hate that is captured by the offence. If, for

example, a gay man were targeted based both on their sexuality and on the fact that they are presumed to have HIV then you ignore the fact that they were attacked on the basis of an imputed disability, which is what HIV for example would be captured under, and you only focus on the motivations of the offender in respect of their sexuality. Unfortunately, if I can put it this way, bigotry is not always very clear nor very clean. If you want the offence to respond to the experiences of hate that people who are captured by this offence experience, you have to make sure that the offence captures those experiences properly. I think that is both extending the kinds of attributes that are protected but also clarifying that the hate can be intersectional and all forms of hate are equally admonished by this offence.

Mrs GERBER: If the offence provision captures it because it can be partly motivated by that, wouldn't the circumstances you have just talked about form part of the circumstances of the offending and the facts that make up the case that is presented as part of the prosecution and therefore be taken into account in relation to the inevitable outcome at the end of the prosecution, because it forms part of the case? Why does the section need to be amended to specifically say more than one attribute?

Mr Kassisieh: If your question is about the combination of attributes, I think my view was that we are talking about some attributes that are not captured. If I could clarify, is your question about attributes that are covered or not covered as well, or is it that the person has, for example, addressed somebody based on their race and their religion and then would it be covered under the—

Mrs GERBER: My question is the former. It is about the attributes that are covered. You have a prosecution and it can proceed on the basis of the current drafting of the bill but, in the circumstances of the case, there are other elements to the case that perhaps are not covered but they can form facts of the case. I guess my question to you is: is your recommendation more about broadening the scope of attributes that can be covered or is it about making sure that more than one—do you understand what I am getting at in terms of the nuance there? Multicultural Australia have said that they are satisfied with that but they would still like to see age and certain other aspects covered by the aggravated offence.

Mr Kassisieh: I think it depends on what you are intending to achieve. If you are intending to achieve only admonishment of hate based on race, religion, sexuality, gender identity or sex characteristics then you have achieved that, and the word 'partly' does that. My point is: if you are trying to also admonish other forms of hate, like motivated by antipathy towards disability or other attributes, then without those attributes what you are calling out is that we only condemn some forms of hate but not other forms of hate. The courts may be looking at complex circumstances when considering what actually occurred. I use an example of what we saw recently in Melbourne with the Nazi salutes. There you have a really complicated set of factors. If there were violence in that situation, you have Nazi salutes, potentially antipathy towards Jewish people, an element of racism and an element of anti-trans sentiment as well. In the context of particular facts, it can be very difficult to tease out the different threads of the motivating factor that the offender held at that point. If you do not have all of the attributes protected that you want protected, then the court is looking only at whether the 'partly' aspect was enlivened by those attributes that are protected.

Ms BOLTON: I am sorry if I sound a little confused. I have been trying to ask each witness about recommendation 4 from the inquiry that has not been incorporated anywhere in this bill. After what you have just described, do you believe that that recommendation should have been incorporated to expand those attributes?

Mr Kassisieh: If I recall, the recommendation was around protecting age, disability—

Ms BOLTON: Gender identity, sex characteristics, medical status including HIV—there were a number of them. When I asked the Human Rights Commissioner regarding that, they said yes to disability but they said there had not been the evidence to support the other attributes. What are your concerns if that recommendation is not incorporated?

Mr Kassisieh: What I would say is that we would support protecting survivors as you find them, regardless of what attributes they have. If those offences are not being committed then the law does not need enforcement. The waves of hatred and the way that plays out historically has been shifting. For a period of time our focus has been directed towards Asian Australians and for a period of time it has been directed towards Muslim Australians. As various events happen around us, the attitudes change and are responded to differently, as we saw during COVID and after September 11.

I do not see any problem with including a protection now. Also, if you do not have an offence you do not really know what evidence there is necessarily for those offences. I do not see a problem. In fact, we would welcome protecting in a proactive way all people who are likely to experience hate and protecting people equally under the law that you put in place. I do not think that prevents the legislation being passed as it is today. Certainly it could be added to and we would welcome that. I

hope I have answered the question. There is no barrier to passing it as is, but we also do not see a problem with—and we would encourage it—at least protecting the people who are likely to experience hate.

CHAIR: I think I heard you say either in your introduction or in answer to one of the questions that if someone commits an offence against a person—say, assault—because they are of view that that person is of a certain characteristic, even if they are mistaken but they are still motivated by the same—have I heard you correctly or am I embellishing?

Mr Kassisieh: I think you have. I think it goes to a quite fine distinction between a presumed attribute and a characteristic that is presumed for the attribute. I will give you a clear example that came to mind. I do not know whether you recall, but in London there was an electrician who had wires hanging out of their back pocket. He was killed by police officers who thought he had a bomb. Why did they think that? Because of what he looked like. They imputed to somebody whom they believed to be Muslim certain characteristics, that they were likely to be a terrorist. What motivated them in addressing that person was not whether or not the person was Muslim but a characteristic or a stereotype that they imputed to Muslim people that they were more likely to be a risk to society. They put all these things together and jumped to conclusion Y when he was just an electrician who happened to be Muslim.

The way it is framed is: if I believe you are Muslim or if you are Muslim and I attack you on that basis, the legislation is fine. If I impute to you certain things because of those attributes, it gets a little bit further and further away from where the drafting is currently tight. My fear is: if I attack you because I mistakenly believe that you pose a risk to someone, am I actually motivated by my prejudice, notwithstanding I have made steps along the way to connect you to an attribute? That is where I am worried.

For example, the way we see it is that drag queens and transgender people get attacked not because they are gay or trans necessarily but under this false pretence of being a risk to children. That is not an attribute that is protected, and of course we would not say it should be. What we would say is: if you attack someone because you are assuming things for them based on what you presume for that attribute, we should look beyond your irrationality as a person in having connected all those things. The way it is framed is from the offender's perspective and we are seeking to prove beyond a reasonable doubt what the offender was motivated by. I think there is a bit of a disconnect.

What anti-discrimination law does is extends that ground of 'based on' to mean based on an attribute or a characteristic or a stereotype that you imputed to the attribute, so it goes one step further to make sure we are capturing those more nuanced situations where the person might have thought they were acting in a particular way but that way was prejudice based.

Mr KRAUSE: In relation to recommendation 2 in your submission—and I think we have just been talking about this—it seems to me that what you are suggesting is: if there is an offence committed against someone who has a protected attribute, it should be presumed or imputed to the person who committed the offence that they committed the offence for the wrong reason—because of a matter of hate or vilification. Is that what you are suggesting?

Mr Kassisieh: No, not quite. The legislation is concerned with what the person personally believed—what the offender themselves believed. The issue there I see is that what the person believed may be influenced by their prejudice. So what you want to do is make sure that there is a clearer line between what the person believed where it is a based on prejudice and the attribute.

Mr KRAUSE: How could you possibly know that, though?

Mr Kassisieh: That is the problem. How would you prove what they personally believed, except from the circumstances around you? By adding that link in the chain, our submission is that it would be clearer that if you attacked someone because you imputed something that was mistaken to them but you imputed that mistakenly to them because of prejudices that you held about people of a particular race or people of a particular religion then that would not stop you showing that the person was partly or wholly motivated by hatred or contempt for those people. There is nothing between your hatred and the attack based on some other reason that you held.

Mr KRAUSE: That is making a very different set-up for hate crime offences, though, because of that extra link there. Hate and vilification are individual aspects of people's behaviour. Many people do many things for many different reasons sometimes. Do you recognise that that is a risky approach, to go towards presuming someone's motivation for doing something? If we look at a more extreme example, intention to kill is always an element in proving murder. That is never presumed. It always has to be proven beyond reasonable doubt on the facts of a particular circumstance because it goes to what people are actually thinking. Drafting around this is very problematic. Would you concede that?

Mr Kassisieh: No, because what we are drafting is trying to crystallise what the intention is and how you prove that intention in circumstances where you cannot get into the head of a person. Unless they say something when they are assaulting someone, the only way that you can prove what their motivation was is from the circumstances around—

Mr KRAUSE: But you need to prove that, though.

Mr Kassisieh: Correct. You do need to prove it. What I am saying is that the circumstantial case and how you link it back to hatred or prejudice is what our recommendation 2 goes to. If you have committed the crime, if you have assaulted someone because in your mind you are protecting a child, for example, from a paedophile but the reason that you have connected the trans person or the drag act to paedophilia is your prejudice towards trans people or gay people, then you need the link. That is what we are saying. You need something in the legislation to say, 'If you believe every gay person or trans person or drag artist is a paedophile, that is the prejudice that motivated you.' Therefore, that is what our recommendation 2 does. It makes clear that that stereotype that I have assumed for every trans or gay person is prejudice based.

Mr KRAUSE: It is going from actual hate and vilification to presumed hate and vilification.

Mr Kassisieh: No. It is actual hate proven by presumptions that the offender held. It is just describing the way that hate manifests itself in much more nuanced ways than 'I will just hit you because I think you are gay', which is what this provision says. If I hit you because I believe you are gay, you are covered. If I hit you because you are gay, you are covered. If I hit because I believe you are a paedophile but I have connected paedophilia with you because you are gay, that is the part where I am worried the legislation does not actually impute that prejudice as the motivator to the person who hit you.

Mrs GERBER: On my reading of section 52B, if the prosecution is able to prove that you attacked a transvestite or a trans person based on a belief that they were a paedophile but that belief is motivated by your prejudice, then I think section 52B does cover that if it is proven. It has to be proven. What you are suggesting is that it does not need to be proven, that it can be imputed in order to bridge the gap.

Mr Kassisieh: I am worried that it is not enough. The reason I am worried that it is not enough is that we have had a recent complaint made in New South Wales in respect of vilification—not hate crimes but vilification—where a drag queen was not attacked because they could not impute any kind of sexual orientation. You could not tell whether the person was gay or straight, so the complaint did not go ahead on that basis. They were not being attacked based on their sexual orientation. They were being attacked because they were a drag queen and a drag queen could be any sexual orientation. My worry is the words 'based on' and then putting 'based on the attribute or presumed attribute' makes a requirement of connection, which is one extra step that needs to be closed by the law. It is the words 'based on' that worry me.

CHAIR: I have a question in relation to the Penalties and Sentences Act. I am trying to understand what your concern is in your submission. I am not suggesting for one minute that it is not a genuine concern. We have heard from other submitters that having the circumstance of aggravation will cater for when the judge or the member of the tribunal feels that the sentence needs to be increased. Is it necessary then to amend the Penalties and Sentences Act? Could you flesh that out?

Mr Kassisieh: Yes. What we say is that it is necessary to amend the Penalties and Sentences Act for those offences which are not prescribed. The way Queensland has taken forward the approach is that it has picked up a few types of offences and it has increased the maximum penalty for those offences where a circumstance of aggravation is proven and that circumstance is hate motivation. We are looking at a selection of offences, but there are some offences, like murder for example, which has life imprisonment as the maximum. You cannot increase the maximum, but a court could look at why a murder was committed and seek to punish based on the fact that hate motivations were part of the reason for that murder.

What we are saying is that, alongside the aggravated offences, a court should be required to look at whether the hate motivated other offences that are not captured in that regime such as murder or sexual assault—very serious offences that are unfortunately quite commonly experienced by LGBTI people. If you are hoping to protect LGBTI people in the unfortunately wide range of ways that we experience violence, which is often sexualised and sometimes fatal, then it is appropriate to ensure those types of crimes are also able to be considered when you are sentencing an offender.

CHAIR: Thank you. That brings this session to an end. Thank you for your written submission and thank you for taking our questions and providing clarification to the committee. It is very helpful.

Proceedings suspended from 12.16 pm to 1.00 pm.

CHAIR: I would now like to welcome James Martin MP, the member for Stretton, who is substituting for Jonty Bush, the member for Cooper.

COPE, Mr Michael, President, Queensland Council for Civil Liberties

CHAIR: Good afternoon. Thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you. For the benefit of Hansard, could you please identify yourself with your name and title when you first speak. It will not be necessary to do it again after you have done it the first time.

Mr Cope: On behalf of the Council for Civil Liberties I thank the committee for the opportunity to appear today in relation to this piece of legislation. The QCCL understands that Nazi symbols are highly confronting and offensive, particularly to the Jewish community. We also understand that this legislation is intended to convey to the community the community's condemnation of racism. We also condemn racism and fascist ideologies.

The debate between civil libertarians and those who advocate speech restriction is really about how important free speech is in a democratic society and how best to respond to hatred. There is never going to be unanimity on these issues. In fact, there is no unanimity between civil libertarians. In the recent Senate committee inquiry into proposed legislation by Senator Cash, Liberty Victoria opposed the bill and the New South Wales Council for Civil Liberties supported it in principle. Like our Victorian colleagues, we prefer the view of the former president of the American Civil Liberties Union, Nadine Strossen, who said—

Because civil libertarians have learned that free speech is an indispensable instrument for the promotion of other rights and freedoms—including racial equality—we fear that the movement to regulate ... expression will undermine equality, as well as free speech. Combatting racial discrimination and protecting free speech should be viewed as mutually reinforcing, rather than antagonistic, goals ...

One of the difficulties with these laws is: what is their limit? Many Palestinians are of the view that Zionism is a form of racism and prejudice against them. Why shouldn't they be able to say that the Star of David, as a symbol of the Zionist state, is 'widely known by Palestinians as being solely or substantially representative of an ideology of extreme prejudice against them'? Equally, many Jews will be offended when Palestinians say, 'But Zionism is a form of racism.'

British author and lecturer Kenan Malik has pointed to the irony of those who argue for diversity and then want to prevent the inevitable and beneficial consequences of that pluralism. I quote—

For the very thing that is valuable about diversity, the cultural and ideological clashes that it brings about, is precisely what so many people fear.

...

... diversity is good, but it has to be policed to minimise the clashes and conflicts and frictions that it brings in its wake.

The imposition of moral and legal restraints on being offensive is one such form of policing. I take the opposite view. It is precisely because we do live in plural societies that we need the fullest extension possible of free speech. In plural societies it is both inevitable and important that people offend the sensibilities of others, inevitably because where different beliefs are deeply held clashes are unavoidable. Almost by definition such clashes express what it is to live in a diverse society—and so they should be openly resolved rather than suppressed in the name of respect or tolerance—and important because any kind of social change or social progress means offending some deeply held sensibilities. Or, to put it another way, 'You can't say that' is all too often the response of those in power to having their power challenged. To accept that certain things cannot be said is to accept that certain forms of power cannot be challenged. Human beings, as Salman Rushdie has put, 'shape their futures by arguing and challenging and saying the unsayable; not by bowing their knee whether to gods or to men'.

I want to quickly talk about the amendments to sections 30 and 32 of the Police Powers and Responsibilities Act—which are not addressed in our submission—that allow a police officer to search a person or vehicle without a warrant where the police reasonably suspect the person has committed or is committing an offence under legislation. The recent decision only last Monday of the Queensland Supreme Court in the case of The King v Davis in which the court excluded evidence as unlawfully obtained when police used a licence check to cover an alleged drug search reminds us of the need not to increase the powers of the police to conduct searches without a warrant. Those are my submissions.

Mrs GERBER: Thanks for your written submission and your oral submission. On page 4 you talk about how the current bill allows for the minister to prescribe by regulation the prohibited symbols. I want to bring to your attention something that the member for Scene Rim raised with the Human

Rights Commissioner before: potential problems that might arise from the fact that the minister may prescribe it by regulation. Ministers are politically aligned, and in Queensland it is invariably a matter of one party holding power over another. That can open it up to the potential for politics to be involved in relation to the prescribing of prohibited symbols by regulation. The Human Rights Commissioner did not see any issue with that, but I am interested in your view on it. I have read your submission on page 4.

Mr Cope: With respect, what you have just said is the gist of our submission. Our view is that the creation of serious criminal offences, offences that involve imprisoning people, should be created within the legislation. They should not be the subject of regulation. The Australian Law Reform Commission's report into traditional rights and liberties a few years ago I think suggested a limit of 50 penalty units. If you want to create an offence and do it by regulation, then I would think that is probably a reasonable approach. But when you want to create an offence which sends somebody to jail, that should be dealt with in the legislation.

As I set out in the submission, the scope in a court to challenge any decision is probably quite limited. Some of the decisions suggest, for example, that even if the minister does not go through the consultation process that is prescribed the court might not think that is mandatory and therefore will not strike down the legislation. There are differing and competing views about that in various judgements from what I read, but that is certainly open. The courts do not like striking down regulations, particularly when they are made by the governor. As I say, I quote the well-known High Court decision in Toohey, where they basically said you can only challenge the decision of a governor or a governor-general on the grounds of bad faith, so you would have to challenge the minister's decision. The statute talks about the minister being satisfied. What does that mean? I quote from the judgement of Justice Gummow where he says that 'satisfied simply means that you would have to establish that the minister's view was a view that no reasonable minister could hold', which is a pretty high test. Who knows? Once again, different views might be held about that.

You may remember the Malaysian refugee swap case. The Commonwealth was very surprised by what the High Court decided in that case, because they thought the High Court would say that the minister's decision in that matter could only be challenged on the basis that no reasonable minister could have made it. Certainly there is a long history of the courts not being very keen on challenging decision-making powers, and so we would say that it is extremely unlikely that that decision will be challengeable in a court. That is one of the reasons we think that it should not be made by regulation: it should be made in the act. No doubt people will say that it is a disallowable instrument, but as the Sydney academic Andrew Edgar has said in relation to delegated legislation, 'In practice, the parliamentary supervision of regulation is limited in practice. It has long been recognised that parliamentarians have little time or energy for such review.'

This should be a matter which is debated by the parliament in its entirety in the context of the particular legislation. I agree with your comment that, in a context where we have a one-chamber legislature, that is an even more important reason this should not be hived off to regulation-making power. Like our Victorian colleagues—their legislation is quite specific—obviously we would oppose this even if it was for the same reasons that they do. This, in our submission, makes this legislation even more difficult than the Victorian legislation.

Ms BOLTON: On page 6 of your submission you put forward the view that this legislation is not likely to suppress far right ideas. Besides what you have already outlined, what do you think would be effective in countering vilification and hate crimes?

Mr Cope: I would start with the old adage from Justice Brandeis of the US Supreme Court, 'Light is the best disinfectant.' The best way to combat far right ideas is with more speech, not less. Because, as I have set out in the submission and referred to in the submission, the evidence from the Weimar Republic is that these laws did not work. In fact, they had the opposite effect. The thing we have to be concerned about is that this will just create martyrs. They will get more publicity about it. If the Nazis could use the media back in the 1930s to great effect to promote their own cause when there was no such thing as social media, they will now just be able to turn up outside the court and create their own little TikTok video and send it to millions of people. I actually think this is not going to assist in the elimination of racism or any other form of hate; it is actually just going to make it worse. If you really want to get at these issues we need to address fundamental social issues. Why is faith in the political system falling apart? It is not because of this. That is what is going on. People are shifting their positions to one extreme or the other. That is not because of this; that is because of other things which may just be inevitable because political parties of all sorts have probably run their length. These are issues about a fundamental collapse in faith in the way the system works. I am not sure how you deal with that, but I do not think this legislation deals with that.

Ms BOLTON: You have referred to law speech or putting the light on. What is your suggestion—more speech? Freedom of speech also comes with the responsibility for others to be free from the vilification, humiliation and the fear. As a society, how did we move into that realm where there is an understanding of that responsibility while having the freedom of speech?

Mr Cope: As I say, the fundamental difficulty I have with your question is that I do not accept the legislation will result in that reduction; I think it is probably going to make it worse. We do not start with the premise that this legislation is going to have the result that you wish to achieve, and which we would wish to achieve. You could take, for example, the situation with gay rights. The thing that fundamentally changed the situation of LGBT people in our community was the making of it legal. All those people who were friends and relatives who were hiding the fact that they were gay for fear of being prosecuted could actually come out and tell people that they were. You did not need a law to achieve that result. The law we needed was the one we got which was to make it legal. Ultimately, we have to address whatever is going on in our society which is moving people to these extreme positions on both sides of politics, and that obviously changes in the economic system. Governments, over the last 40 years, have thrown their hands up and taken their levers off the system. There are many good reasons they did that. That is a thing that I think many people see. There is increased inequality. There is a whole bunch of issues which are going on which are shifting people to extreme positions, and I do not think that censoring those people is going to make them go away.

Mr HUNT: Michael, I might have misunderstood, so correct me if I am wrong, but did you make a parallel between post-Depression Weimar 1930s anti-Semitic Germany with the situation as it stands in 21st century Queensland? Were you trying to draw a bridge between—

Mr Cope: No, I did not. All I said was that we have social media now. They did not have that in the 1930s. Despite that, the Nazis were still quite effective in using these prosecutions to promote their cause. That is what I said.

Mr HUNT: Definitely no connection between—

Mr Cope: I do not think we are living in 1930s Germany when there was a depression and—

Mr HUNT: No real direct comparison between the measures—

Mr Cope: My answer was specifically about—

Mr HUNT: So no direct comparison, really, is there, between the methodology of Weimar Germany and 21st century Queensland?

Mr Cope: Only in the fact that they did not have social media.

Mr HUNT: That is the only point of difference?

Mr Cope: Yes, and that is exactly what I said.

Mr HUNT: I just needed to be clear on that, and I may well have misunderstood. We heard from a lot of submitters when this investigation was first done in 2022. Has a young Sudanese woman from the south side of Brisbane got it wrong when she or they are saying that the situation that exists currently is ineffective at meeting the instances of naked hatred and aggression that they encounter? Are they misunderstood or do they just need to live with it for the sake of civil liberties? What is the trade-off for the young Sudanese girl living in Moorooka?

Mr Cope: I think unfortunately this legislation will make the situation worse.

Mr HUNT: So she has got it wrong?

Mr Cope: No, that is not what I said either. I said the situation will be made worse by this legislation.

Mr HUNT: So the submitters who are calling for it, they all seem to have misunderstood?

Mr Cope: That is what we are saying.

Mr HUNT: Thank you.

Mr Cope: It is not just myself, lots of other people in the civil liberties movement.

Mr HUNT: That is it. Thank you very much.

Mr KRAUSE: Thank you, Mr Cope, for your submission. I note from page 1 you make the very solid point from the outset that 'criminal liability should only be imposed where it has proven the person had a guilty mind'. One of the other submissions we received from Equality Australia—and I do not know if you have had a chance to review any of these or hear the previous evidence—propose that that situation be somewhat amended by, to paraphrase, imputing motive or a mindset of someone when they are committing a particular offence. I ask for your views on this proposal.

Mr Cope: Our position is that if you are going to convict somebody of a criminal offence, it should be a requirement that they have a guilty intent. It is written in one of those submissions—I am not sure whether it is that one or not—that the ground of criminal liability should rest in the effect that it has in the absence of a guilty intent, which is really to take the criminal law back about 200 years; that we should punish people of criminal offences when they are morally guilty of it, which means they should have criminal intent. A broad approach like that would take us back to the days when they were sending people out here for stealing fob watches. Our fundamental view is that to be convicted of a criminal offence should require a guilty intent.

Mr KRAUSE: You also talk about 'disorderly and offensive behaviour raises free speech issues as this type of conduct often involves speech with no violence or threats of violence', and applying aggravation to that raises problems, from your perspective, from a freedom of speech issue. You refer in that case to people just presenting a controversial view that many people may not agree with—protesters, for example?

Mr Cope: That is really directed at extending the aggravation circumstance to public nuisance offences which do not involve violence or threats of violence. A lot of those public offences are people who, quite frankly, are probably intoxicated and are saying things. We do not see that there is a legitimate case for extending the circumstances of aggravation to them. As our submission sets out, we have no problem with it being extended to the other categories that are in the legislation, including in relation to public nuisance offences which involve some form of violence or threat of violence, but for those offences which might involve simply people mouthing off, for all the other reasons I have articulated, we do not support that.

Mr KRAUSE: In your criticisms of the bill, you refer to the fact that there is a reversal of the onus of proof for a defence, putting evidential burden on a defendant, and reverses the usual situation. It might be a slightly technical question, but do you have any proposals for how that could be fixed?

Mr Cope: Our position is that in relation to a charge of a criminal nature, the onus of proof should lie at all times on the prosecution. That is the fundamental principle, as we see it, of the law and it is the golden thread—the common law as described in Woolmington v DPP all those years ago. It is not as bad as I put out in the submission as the usual effect of reasonable excuse which is to, at least in the view of the Office of Parliamentary Council, reverse the onus of proof completely. I am not sure what the justification is for shifting it. You can have all sorts of arguments about something as exclusive as 'in the knowledge of the defendant', but that applies to many offences. However, that does not apply here. I do not see what the justification is for shifting it. As the submission points out, there is a serious prospect that people of different faiths who use the swastika and other symbols as an ordinary part of their religion belief, I think, are going to be subject to prosecution under this legislation, and why should any part of the burden of proof lie upon them?

Mr KRAUSE: Mr Cope, do you see any risks in parts of this bill that your organisation opposes in the criminalisation of people's strongly held opinions and views without any other problem being attached to that?

Mr Cope: That is essentially our argument. We live in a society in which there are very diametrically opposed views, and in our increasingly diverse society there are going to be even more of them. The fundamental problem becomes: can you create a law which enables the state to effectively arbitrate those disputes without favouring one side or the other, because of the nature of the government, and in this case with regulations it will depend on who is in government at the particular time, with the view of the particular minister. Then you get to the question of, as I have repeatedly said: are these laws actually going to improve the situation? With all due respect to those who say otherwise, there are laws banning the swastika in Germany, in France, in Austria and in Switzerland. There is no less extreme right views in those countries than here. In fact, you might think that in Austria the far right was in government, or is it still in government? I am not sure. Marnie Le Pen might win the election. What we are giving up then is one of the most important mechanisms we have, in fact, for defending people's liberties, promoting the cause of equality, for resisting hate speech and for resisting intolerance and prejudice in our community. We are handing over to the state the power to make those very critical decisions in ways which are, on the face of it, on at least one view of the law, pretty much unrestrained, and we do not know what the next government or the government in 10 years time might be.

Mr KRAUSE: Indeed.

Mr MARTIN: I want to continue exploring the issue of the religious symbols and the swastika. You mentioned on page 4 that the swastika has been around for millennium and it is used extensively in Hinduism. 'However, the law tries to address this concern by the defence of genuine religious

purpose.' You also mentioned in your submission that you have concerns, correct me if I am wrong, that Hindus would be unfairly charged and have to defend themselves for displaying the swastika. What I wanted to put to you, though, Michael, is that in my community I have a large Hindu population. I see swastikas all the time, but at no point when I have seen a swastika on a Hindu symbol on a poster or one of their temples would I mistake that for a Nazi swastika. It is pretty clear. I could not see the context where you could mistake one for the other.

Mr Cope: When you see such a symbol, no doubt, on a Hindu temple you understand what it is, but the key decision to charge people in these cases will be made by police officers, and we do not know in what context the swastika may appear. I mentioned Hindus. Of course there are many other religious groups. This is a common symbol. I see some discussion that it is also found in China. It is all over the place.

I accept what you are saying, but the problem is that this symbol is in such extensive use by many different religious and cultural groups and ultimately the decision to prosecute somebody will be made by some police officer who may not understand what you are saying and then the burden of having to defend that prosecution will fall upon those persons and at least part of the burden of proof will lie on them, and I am not quite sure why that should be. If we are going to give them that defence, we should give that to them unrestricted by that change of proof. Obviously it is a legitimate attempt to curtail the adverse impact of the legislation but, given the prevalence of the swastika in so many different cultural and religious contexts, inevitably someone is going to get charged who is going to say, quite legitimately, 'I'm not a Nazi; I'm whatever I am. I'm a Jain, I'm a Hindu or I have some other particular faith which uses this.'

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your deliberations and also for your written submission.

Mr Cope: Thank you.

FOGERTY, Ms Rebecca, Vice-President, Queensland Law Society

QUINN, Mr Patrick, Deputy Chair, Criminal Law Committee, Queensland Law Society

CHAIR: I now welcome representatives from the Queensland Law Society. Good afternoon. Thank you for being here. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Fogerty: Thank you. In opening, I would like to respectfully acknowledge the traditional owners and custodians of the land on which this meeting is taking place, Meanjin. The Queensland Law Society is the peak professional body for solicitors in Queensland and we are an independent, apolitical representative body which aims to promote good evidence-based law and policy. We acknowledge and support the policy intention of the bill to introduce dedicated legislation to address vilification and hate crimes. In a diverse society, antivilification laws play a role in protecting the rights of people's peaceful existence. We reiterate the concerns expressed in our submission and previous submissions regarding the creation of a new offence to deal with the display of offensive material. The nature of vilification and hate crimes are complex social problems which are rarely solved by the introduction of a standalone criminal offence. I am joined today by Patrick Quinn, the Deputy Chair of the Criminal Law Committee, and we welcome any questions the committee may have.

Mrs GERBER: Welcome. Thanks for your submission, both written and oral. I wanted to understand the QLS's view in relation to the question that I just posed to the Queensland Council for Civil Liberties and it was also this morning posed to the Human Rights Commissioner around the prescription of the symbol being in the regulations. As the bill currently stands, the minister can prescribe by a regulation the prohibited symbol as opposed to it being in the legislation itself. The issue that the member for Scenic Rim raised with the Human Rights Commissioner and that was raised just before with the Council for Civil Liberties was that because it can be prescribed by a regulation it means it does not need to go through the ordinary processes of parliamentary scrutiny. Given the unicameral system that we have in Queensland in respect of how our one-chamber parliament works and that the minister is invariably associated with a particular political ideology, having the prescription by regulation has some inherent risk. Does the QLS think that, given the offence carries a term of imprisonment, it should be prescribed by legislation or do you see any issue with it being in regulation?

Ms Fogerty: The long position of the Queensland Law Society on these matters has always been that the highest levels of parliamentary oversight are appropriate.

Mrs GERBER: Which would mean that it should be in legislation?

Ms Fogerty: Correct. Yes, that is so.

Ms BOLTON: Good afternoon, Rebecca and Patrick. As I have asked previous witnesses about recommendation 4 of our committee regarding the attributes, do you think this bill should include age and disability along with race, religion, sexuality and the others that were noted in relation to serious vilification and hate crimes?

Ms Fogerty: As a starting proposition, when there are criminal laws that are directed in some way in relation to a class of people or a class of attributes, the general preference of the society as a matter of good law is that those classes be restricted insofar as possible because of the reality of changing social landscapes and the potential for the laws to have greater overreach than perhaps is initially intended. In saying that though, I do acknowledge what is contained in our most recent written submission which acknowledged that best practice and acknowledging the Queensland Human Rights Commission review of the Anti-Discrimination Act which acknowledged the inclusion of persons in relation to age and disability.

Ms BOLTON: Even though the Law Society does not support the increase in the penalty for serious vilification from six months to three years, we did hear earlier that the reason for this was so that the police could access communications held by telecommunications carriers, because apparently it sits in Commonwealth law. Is there anything you can add to that?

Ms Fogerty: No. I might have to take that on notice. I do not understand the relationship between telecommunication service access and the maximum penalty. I do not understand how those two things are related.

CHAIR: It is in relation to whether or not the police can get a warrant to seize material that may be posted on social media.

Ms Fogerty: They cannot do it if it is just a six month—

CHAIR: They cannot do it at the moment.

Ms Fogerty: What do they need? What is the minimum?

CHAIR: What is proposed.

Ms Fogerty: Okay. That is interesting. That is a dimension I do not think the Law Society had considered in its submission.

CHAIR: It is not a criticism. What I have found with this is that there are so many moving parts and they seem to intersect with—

Ms Fogerty: The maximum penalty question I think is a complicated one. On one hand if you look at the wording of the bill, it is in relation to 'serious vilification and hate crimes'. So there is the acknowledgement there that the sort of conduct that is captured by the legislation needs to be the most serious and possibly I think it is arguable that for the most serious six months is not an adequate maximum penalty. I do not think we could sustain a submission though that that would hinder the proper function of police in investigating it. I would like to take that on notice so that we can give a more thoughtful response, because that is interesting.

CHAIR: That is perfectly okay.

Mr HUNT: I was just wondering about the tail end of your submission about the proposed public display offences, so are you able to talk me through the difficulties that you have with the propositions around the public display offence? From my understanding of it, it seems that you have identified some problems with it. Could you talk me through what they are please?

Mr Quinn: Perhaps if I could answer that question. There are two main issues. The first is that the original offence in 131A would, it would appear in all likelihood, cover the same offending in proposed section 52C. That is one issue—the necessity of it—in light of 131A. Secondly, the test—that is, is the display objectively capable of causing offence rather than simply hurting the feelings of a person making the complaint? It needs to be clear that it is an objective test in those circumstances.

Ms Fogerty: That is really, I think, the key issue that underpins the Law Society's submission in relation to the offence aspects of the bill. It is ensuring that the test of offence and associated concepts is strictly objective to ensure that only the most serious types of behaviour are captured to ensure that there is not a slippery slope then in relation to the way that such legislation could be misused, including against the people it is meant to protect.

Mr HUNT: So how would you respond—and I said this to another submitter—then to the community groups and the cultural groups that we heard from in 2022 who were unanimous in their views that what exists currently is not working because they simply cannot get anything off the ground in that regard when they are making complaints about hate speech or vilification? It was a very widely held contention from some of the groups.

Mr Quinn: I think those concerns may be rectified by the removal of the need for the AG or the DPP to consent to a prosecution. It has been difficult in the past for prosecutions to be brought. Now where a police officer is able to do that, it may very well mean that those barriers are gone.

Ms Fogerty: We would also note that there are other barriers to prosecution that have nothing to do with whether or not a standalone criminal offence is created, and again that goes to those other aspects of the submission about non-legislative engagement.

Mr HUNT: I do not presume to speak for all of the previous submitters from 2022, but I think the point they were making was that those mechanisms simply are not cutting the mustard and a lot of them are, to speak colloquially, falling at the first hurdle, particularly in relation to that first approach to police: 'This incident has happened. Where to from here?' They are just not getting any cut-through under the existing mechanisms.

Ms Fogerty: In that regard we recommended the proper training of police officers in relation to dealing with these offences has to occur.

Mr KRAUSE: Thank you very much for your submission. I am not going to quibble with—to grab some language from your submission—the issue about the 'reasonable excuse' definition. I want to expand on the topic we were talking about with the member for Caloundra, section 52D and the test of 'might reasonably be expected'. It seems to me that creates a lot of uncertainty about what might fall into a criminal offence. I put this to the Queensland Human Rights Commissioner this morning and to a certain extent he agreed with that. If that drafting were left in there like that, and either Patrick or Rebecca may answer this, that would be bad law in terms of a criminal law perspective, would it not, in terms of creating uncertainty in what is and what is not a criminal offence?

Ms Fogerty: The key thing for us in relation to any sort of offence, the gravamen of which is causing offence or harassing or creating a negative, for want of a better word, emotional response in the victim, has to be tiered to an objective test where the criminal liability stems from whether or not a reasonable person would be offended or feel harassed.

Mr KRAUSE: It does not say that at the moment, though, does it?

Ms Fogerty: The use of 'reasonably' suggests to us a clear parliamentary intention for it to be an objective test and does not refer to the subjective circumstances of the complainant or the victim. Could it be tightened? Yes. That said, we also derive comfort from the case law from the High Court, the case of Monis v The Queen, that dealt with a similar provision, which I suspect perhaps this provision may be modelled off, that is using a carriage service to menace, harass or cause offence. The case law was very clear that the ordinary meaning of those words requires a very high threshold. Mere hurt feelings is not enough. It has to be such as to objectively engender those feelings in an ordinary person.

Mr KRAUSE: What about the word 'might' at the beginning of the phrase? That introduces a whole range of uncertainty.

Ms Fogerty: The requirement of the reasonable person means that a subjective experience is, in effect, irrelevant. I think that is an area where more guidance from the legislature could occur to remove any uncertainty about 'likely'. That said, it is a term that features everywhere in the Criminal Code and it is subject to significant case law and analysis.

Mr KRAUSE: In relation to further guidance, would you suggest perhaps rephrasing that particular phrase so it is clearer?

Ms Fogerty: We will always support greater legislative clarity. At this stage we are not calling for the provision to be redrafted.

Mr KRAUSE: But your submission says that section 52D 'in its currently drafted form, is premature and unsatisfactory'.

Ms Fogerty: The submission is concerned with ensuring that there is a wholly subjective test and no aspect of subjectivity. The area where we are concerned about drafting is in relation to the meaning of 'public' and ensuring that there is no way that places that are not public such as places of employment or other business places are not captured by the definition and that there is no unnecessary extension of that term, which is well known to legislation and judicial interpretation.

Mr KRAUSE: When I read your submission I felt that 'premature and unsatisfactory' was attributed to the whole of the preceding paragraph in relation not only to the public display of symbols but also the onus of proof test. As you are saying now that it only applies to the public display issues—that is your evidence—and not the actual test?

Mr Quinn: Yes, I think that is right.

CHAIR: I turn to your submission at page 3, paragraph 6, in relation to the proposed public display offences. I know you are relying on your previous submission, which was made in 2021. You talk about unintended consequences that may flow. Are you able to expand on that for the committee? It is the middle of page 3, just under '6. Proposed public display offence'.

Ms Fogerty: It is always an interesting process justifying a submission one has not written.

CHAIR: To be fair to you, obviously, you have as much latitude as you want. Trying to prevent unintended consequences for legislation—

Mr Quinn: I think that may refer to the potential for vexatious complaints to be made. If that test is not clear that it is an objective test then that is very much an unintended consequence.

CHAIR: There was the example that was made public of the gentleman who lived beside a synagogue and he hung a Nazi flag out obviously—I withdraw the word 'obviously'. I do not know what his intent was and I do not dare to go there. For the reasonable observer seeing that, the only offence available to the police was, as I understand, a public nuisance offence. If the legislation is amended, there would be able to be a circumstance of aggravation attached to that because of the hurt, as obviously a person from the synagogue would regard that as offensive.

Ms Fogerty: Yes. The situation you have described is exactly the sort of situation this sort of legislation is designed to address. The hanging of a Nazi flag in a synagogue is behaviour clearly designed to be provocative and offensive and there is no question that that is the appropriate conduct that the act is designed to try to capture. The concern about unintended consequences would always be, as Patrick indicated, more marginal examples of that behaviour carrying with them criminal sanction.

CHAIR: That is why, Rebecca, the suggestion has been made that it is a standalone offence. So the police do not have to worry about public nuisance, there is an offence created that says you do not do this.

Ms Fogerty: We do not oppose the making of the offence. We support the intent of the bill. Any concerns we have relate to the test not being sufficiently objective, but we do not have any philosophical or legal objection, in principle, to the creation of the offence. We have concerns about duplicity and where those offences might exist in other parts of legislation. We have concerns that perhaps the civil law mechanisms are not being used to the extent that they could to address this. We have concerns about some of the material from other submitters perhaps seeking to extend the definition of what a public place is and change fairly core concepts. However, we do not have a philosophical objection. As I indicated in the opening statement, we support the intent of the bill.

Mr KRAUSE: In your submission it says 'new section 52D, in its currently drafted form, is premature and unsatisfactory.' It goes on to say—

... QLS recommends that the Government give further consideration to the phrasing of this new offence provision, so as to make clear the test the Court must apply, and recommends having regard to the test outlined in section 6(2) (b) of the Summary Offences Act ...

In this bill it says the offence relates to a person who 'publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended'. In the Summary Offences Act, section 6(2) (b), and I am looking at it now, in a similar sort of phrase states—

the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

Ms Fogerty: The summary offences test is a much lower threshold than the proposed section 52D test.

Mr KRAUSE: A much lower threshold in terms of an offence—

Ms Fogerty: Of being able to prove the charge.

Mr KRAUSE: So by making reference to it in the QLS's submission, are you advocating that the offence should be made more like section 6(2) (b) of the Summary Offences Act and taking out the reference to someone being 'menaced, harassed or offended'?

Ms Fogerty: We would support the opposite so the position would be that the higher threshold test is the appropriate test in the circumstances. We would not recommend that the test for whether or not there is a—is that the public nuisance test?

Mr KRAUSE: Yes. You would not recommend that?

Ms Fogerty: Be used in place of proposed section 52D test? I want to have understood your question because it could be that I have not or it could be that we have just drafted a submission that is not very clear.

Mr KRAUSE: I hate saying this phrase, but with respect, Ms Fogerty, it is clear that the written submission seems to be saying that we should look at the Summary Offences Act, but you are telling us not to?

Ms Fogerty: Yes.

Mr KRAUSE: So what is the position of the QLS? Which one is it?

Mr Quinn: I think there is a reference to the test in the Anti-Discrimination Act, which was the 'reasonably likely' test taken from the submission in 2021 and the certainty as to what—

Ms Fogerty: And you are looking at different tests across different acts that have different levels of intent that have to be proven. To me as a criminal lawyer, the first principle of any criminal law, the creation of any new criminal offence, is that you have the higher test—an objective test and the higher test. That is right because you are dealing with something that is proposed to have a maximum penalty of three years imprisonment.

Mr KRAUSE: I understand that.

Ms Fogerty: The Summary Offences Act—these are ticketable offences. These are low-level vagrancy, public nuisance style offences that would not even appear in a person's criminal history because they are often seen as less than a criminal offence. They appear often in their non-TORUM history because they are able to be dealt with by way of an infringement notice. The purpose of those provisions are somewhat different and, therefore, they are not—

Mr KRAUSE: I understand, and that is why I wanted to clarify it. If you did adopt 6(2) (b) from the Summary Offences Act, the intent of vilification laws I think would be significantly neutered because 'peaceful passage through … a public place' does not really relate to what we are talking about in this bill.

Ms Fogerty: I think it is fair to say that some aspects of the QLS written submission conflict with the evidence that I have given, and I appreciate and apologise for the confusion that that creates. I would like the opportunity to address that in a more complete way in writing, perhaps with the indulgence of the chair.

CHAIR: That brings to an end this part of the hearing. I understand one question has been taken on notice in relation to the increase in penalty of three years to allow police to make it easier to obtain warrants, perhaps under the Commonwealth legislation. I am a little bit—

Ms Fogerty: Chair, if we can take the opportunity to clarify how we propose section 6 of the Summary Offences Act relates to section 52D because, to be honest, I do not really understand it from our submission.

CHAIR: We have no issue with your sending through an updated submission if that helps progress the issue. Are you able to get that to us by Friday, 2 June?

Ms Fogerty: Yes.

CHAIR: If there are difficulties with that time line, could you communicate directly with the secretariat who I understand is very understanding of requests for extensions?

Ms Fogerty: Thank you so much.

CHAIR: Obviously 2 June would be great because we need to include it in our deliberations.

Ms Fogerty: Thank you.

CHAIR: Thank you for your evidence today and thank you for attending.

FAWKES, Ms Janelle, #DecrimQLD Campaign Leader, Respect Inc.

HOLIDAY, Ms Lulu, State Coordinator, Respect Inc. (via videoconference)

JEFFREYS, Dr Elena, Manager, Policy and Advocacy, Scarlet Alliance, Australian Sex Workers Association

PONY, Ms Mish, Chief Executive Officer, Scarlet Alliance, Australian Sex Workers Association (via videoconference)

CHAIR: Good afternoon. Thank you for being with us this afternoon. I invite you to make an opening statement of up to five minutes after which committee members will have some questions for you. For the benefit of Hansard, could you please identify yourself by your name and title when you first speak.

Ms Pony: I am the CEO of Scarlet Alliance. Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Our membership includes state- and territory-based and national sex worker organisations and individual sex workers throughout unceded Australia. Decriminalisation of sex work has advanced in a number of jurisdictions in Australia as a necessary change to protect the human rights of sex workers. It is clear that mechanisms to address discrimination and vilification are an essential component alongside this change. As the Queensland government has announced, it is in the process of decriminalising sex work. It is timely that this committee consider advancing serious vilification protections for sex workers in this bill.

Since your original vilification inquiry, the clause 11 amendments of the Northern Territory Anti-Discrimination Act have been passed and provide sex workers with vilification protections. A bill in drafting stage in New South Wales also adds 'sex work' and 'sex worker' as protected attributes in the anti-discrimination act and includes vilification protections. These changes in the Northern Territory and New South Wales explicitly acknowledge that sex workers are at high risk of experiencing discrimination and vilification due to historical and current stigmas, including through past criminalisation, and that this is the only way to adequately protect sex workers and our families and associates.

The serious vilification sex workers experience is informed by a specific set of stigmas and stereotypes about sex work and sex workers. Perpetrators of such crimes, which include media, individuals and groups, see sex workers as easy targets whether because they consider us less than deserving of basic dignity or because they know that these crimes they commit are unlikely to be reported or challenged as sex workers do not have these protections within the law. We recommend the committee consider a recommendation to include sex workers under this serious vilification legislation.

Ms Holiday: I am the state coordinator of Respect Inc. Respect Inc is the statewide sex worker organisation in Queensland run by and for sex workers. Our organisation provides a comprehensive health promotion, peer education and community engagement program with officers and sex worker drop-in spaces in the Gold Coast, Brisbane and Cairns and in regional outreach to other locations. We appear at this hearing today to raise our concern that sex workers have not been included in this legislation to criminalise serious vilification even though our community experiences excessive levels of vilification that currently go unaddressed. In January 2022, in response to your report No. 22, the government said it has committed to exploring additional attributes and that the recommended expansion of sections 124A and 131A to capture additional attributes will be considered in the context of any broader reforms relevant to the attributes recommended by the Queensland Human Rights Commission.

The Queensland Human Rights Commission's report titled *Building belonging* does recommend broader attribute reform. It says at recommendation 24.1 that the Anti-Discrimination Act should include 'sex worker' as a new attribute and the attribute should be defined to mean 'being a sex worker or engaging in sex work'. While sex work is currently intended to be covered under the attribute of 'lawful sexual activity', which exclusively applies to sex work, this has actually failed. Including 'sex work' under a broader attribute has been detrimental for the rights of sex workers. The Human Rights Commission noted that a clear definition would reduce the likelihood of lengthy legal arguments about the attribute itself which have hindered cases to date. For this reason and in line with the government commitment to consider expanding vilification protections in line with the Human Rights Commission recommendations, it is a critical safety issue that sex workers are protected against serious vilification.

Some recent examples of vilification includes a sex worker's name, address and photo being made public by another tenant in the building where the sex worker lived. It was then shared amongst local residents in a Facebook group and the comments on that post included death threats. They also made allegations about HIV and spreading disease. In another case, a small group of local residents believed that some masseuses at a massage parlour were offering sexual services, so they formed an action group aimed at getting other residents and police to take action against those workers. The residents posted the address of the business on social media, naming the location as a brothel and placing the safety of the people at risk. Threats from that action group were also reported to Respect Inc.

In another case, the sex worker was forced to leave a regional Queensland town when she received verbal threats from local residents. Then the location that she was working from was targeted and the security camera was destroyed. That followed a high-profile piece of media that fuelled stereotypes about sex workers. Any media article on sex work prompts statements of hate, vilification and threats of violence. Community attitudes towards sex workers in Queensland will not change without this signal from the government that involvement in sex work does not strip a person of their right to live free from serious vilification.

Mrs GERBER: I was trying to find the department's response to your submission. I note that it has not provided a response to your recommendations. If it is okay, I will put some of the questions from your written submission to us to the department to try to get a response for you. Essentially, others have also submitted that the act should be expanded and other categories that have been put forward include disability, age, sex and gender identity. Your submission is essentially just in relation to sex workers and aligning with those other submissions that broaden it. Is my understanding correct, or are you asking for something entirely separate?

Ms Fawkes: No, we are asking for the extension of the attribute that has been recommended by the Human Rights Commission to be incorporated into the vilification laws.

Ms BOLTON: Good afternoon, everyone. I just want to go on a very similar path here regarding the attributes. When I asked the Queensland Human Rights Commission about the expanded attributes, there was a response around evidence as in evidence of vilification and serious vilification. Within your submissions, including to our inquiry last time—did you submit to the original inquiry?

Ms Fawkes: Yes.

Ms BOLTON: Was there any data produced or is there any new data that can be provided as to the nature and the volume to demonstrate the evidence that vilification is occurring—that is, so that it can be added to this particular gathering of evidence?

Ms Fawkes: The issue is that vilification in relation to sex work is not currently illegal. There is no process for experiences of vilification to be reported. As such, there is no data in that respect. Not to speak on his behalf, but I think the Human Rights Commissioner in responding to your question today said that the review undertaken very specifically excluded vilification. While that process received many submissions from sex workers and sex workers attended those consultations, nobody was asked about their experience of vilification. As a sex worker organisation and as members of the sex work community, we hear regularly from sex workers about those experiences. To Lulu's point in her opening statement, they are broad, encompassing many areas of life, but regular examples include experiences sex workers have from people who live near them or where they are staying who find out that the sex worker is working. Then threats are made, often with the intent of inciting some action from other community members, and usually with threats of violence.

I will not give you the examples of the types of things that are said to sex workers, but they are often related to types of sexual violence the person might perpetrate on a sex worker and/or violence relating to removing that person from the area in order to get rid of them. We are pretty floored by questions related to evidence because we see those examples in social media spaces and in public spaces I would say every day but maybe it is every second day. I think the problem is that culturally people accept those statements as okay or normal when it is relating to a sex worker and particularly without any process of reporting it. We have that evidence that we hold as a community of what our people experience. There is no data. There is no research project that has looked at it, unfortunately.

Dr Jeffreys: If I can speak to that as well—and we did mention this in our most recent submission—just to back up what both Lulu and Janelle have said. The most common examples of vilification against sex workers are a person's address being circulated with deliberate malicious intent for other people to then take advantage of now knowing what that address is, so it is an implied threat; circulating that address on community social media with the kinds of insults that Lulu and Janelle have mentioned; neighbours getting together to talk about that person in the area; then doing things like

letterbox drops or letterbox drops inviting community members to a meeting to talk about that person; and then putting up posters and organising local petitions with the intention of trying to get that person to move away from the suburb.

In the survey done by #DecrimQLD and also in a fair bit of the national research work done by Scarlet Alliance and some of the national research institutes, sex workers have described incidences that they have experienced. They have not called it vilification, but it is vilification. Because vilification against sex workers is not illegal in Queensland—it is not illegal in other jurisdictions as well but we are talking about Queensland—people do not apply the term 'vilification' to it but what they are describing is vilification.

Mr HUNT: Looking at this through the lens of decriminalisation, what would you say the sequencing of, for example, protected attributes and moves towards decriminalisation?

Ms Fawkes: As you know, we are waiting to find out a time frame for anti-discrimination legislation, although I understand a commitment has been made that that will happen this year. A similar commitment has been made in relation to decriminalisation of sex work. We have been down this track before with many of these hearings and inquiries where sex workers are left out, if you like, because there is another potential piece of legislation further down the track that might cover sex workers. We are fearful of that because often that time never comes. We recognise that the timing issue of when the Anti-Discrimination Act changes will happen and this process is not ideal, but the Human Rights Commission report very clearly recommends the need for a new attribute, and the government has indicated its support for that.

Mrs GERBER: I am just trying to understand how this might open the gates. You are advocating for a new attribute based on a profession, essentially—sex work as work, as a job, and for that to be able to form part of a category of serious vilification and therefore be the attribute. Is there a possibility that that would open it up to other areas of practice that might mean they should also fall into that category?

Ms Fawkes: There already is coverage in the Anti-Discrimination Act for sex workers. That is about being a community that experiences high levels of discrimination. Your question as to whether it opens up to other professions—is that what you were meaning?

Mrs GERBER: What I am trying to get at is that this is a targeted specific bill to try to address hatred or serious contempt for a person or group of persons and it is based on attributes, not so much based on a profession. Do you understand the distinction I am trying to draw there?

Ms Fawkes: Absolutely.

Mrs GERBER: Could you tease that out a bit?

Dr Jeffreys: We are not quite a profession yet in Queensland. I just remind you that there is the history of criminalisation and stigmatisation. Right up until the 1970s we still had the locked hospitals in Queensland where sex workers could be held without any end date out at Boggo Road jail on the whim of police or the medical profession. I am trying to embed that that is the history of where we are coming from. This discrimination is not coming out of individual people's imagination. This a society problem of why people think vilification against sex workers is acceptable, and that is what is different to other occupations.

Mrs GERBER: What underpins it is the social status—that it is still viewed as not acceptable.

Ms Fawkes: Yes. Under the current anti-discrimination legislation, the protection has come to be seen to mean by tribunals that it covers sex workers for being a sex worker but not for doing sex work. We are not really looking for protection only as a profession. We are looking at protection that covers both aspects of that. That is what the confusion is about in responding to your question. We are really looking for something that covers both aspects.

Ms BOLTON: You spoke of what happens on social media and the types of vilification that occurs. With what is in this bill, do you believe that it will address a lot of that? Does it go far enough?

Ms Fawkes: We are coming from a very low level of having no protection at all that we see any protection moving forward as being better. We have heard comments made by other people here today. Yes, we do believe that it would provide coverage for sex workers. That is extremely needed. This is not to your question about social media but we do have some concerns in relation to hate crime because it is an area where sex workers experience a lot of violence in relation to hate crime. We are concerned that, for example, if the legislation did not extend to considering hate crime in relation to sexual assault, that would be a gap if the vilification covers sex workers.

Ms BOLTON: Overall, besides what you have just raised, is there anything else you would like to raise in relation to this bill?

Ms Fawkes: There is nothing else we would like to raise, but I will take this last opportunity to reinforce the situation that we are in. I see that what the committee is seeking is more evidence that this is an issue and the extent to which this issue is happening. We know that we cannot just ask you to take our word for it, but as an organisation we hear these reports from sex workers. The current criminal space that sex work is in means that no crimes are reported to police. Even in our survey of discrimination in which we did not specifically ask about vilification, 72.5 per cent of sex workers experienced discrimination and 91 per cent of sex workers did not report that discrimination. I give you those figures as an example of the current unlikely situation where a person would be able to report vilification.

That will change as sex work is decriminalised in Queensland. It is also impacted by the relationship with police. That is something that we are doing a lot of work on to ensure those abilities to report crime are shifted. I will leave it there.

CHAIR: This is not an obligation but, if you have anything in relation to more evidence that you thought could help the committee, feel free to send it through to the secretariat by Friday, 2 June. If you are not comfortable doing that or you do not regard it as being necessary, that is okay too.

Ms Fawkes: I understand. We will try to do that. I think as the person from Caxton indicated, the relationship we have with sex workers is that people are providing private and confidential information to us and often do not want that passed on to police because it would mean that the person could experience further criminalisation for being a sex worker. We will make an attempt to de-identify a list of experiences that sex workers have reported to us and provide that to you.

CHAIR: Thank you for your written submission. Thank you for your attendance.

Dr Jeffreys: Thank you for the opportunity to appear. Good luck with your deliberations. We have been following it and there is so much content, so best of luck.

CHAIR: Thank you.

DUKE, Ms Kenny, Manager Community Engagement, Settlement Services International Ltd

KRAAI, Ms Jantina, Settlement and Youth Services Lead, Settlement Services International Ltd

LUCY, Mr Joshua, Government Relations, Settlement Services International Ltd

CHAIR: I now welcome representatives from Settlement Services International: Ms Jantina Kraai, Mr Joshua Lucy and Ms Kenny Duke. Good afternoon. Thank you for being here. I invite you to make an opening statement of up to five minutes. Who wants to go first?

Mr Lucey: My name is Joshua Lucey. I am the stakeholder and government relations coordinator at SSI. I want to start off by acknowledging the traditional owners of the land on which we meet and pay respects to their elders past, present and emerging. With me I have Kenny and Jantina from our teams, and at the end of my opening remarks I might invite them, if the committee allows, to talk a little about what they do in the organisation.

By way of background, SSI is a national not-for-profit organisation that supports newcomers and other Australians to achieve their full potential. We work with over 50,000 people each year across Queensland, New South Wales and Victoria. As you may have seen from our submission, Settlement Services International merged with Queensland-based Access Community Services back in 2018. At the beginning of this year we have adopted new brand guidelines under SSI, hence why we are all wearing nice yellow lanyards today. While our branding locally has changed, our people and services remain the same. We continue to support communities across Queensland in Logan, Ipswich, the Gold Coast, Redlands and up in Townsville to pursue equality for all. That is our take on this. This afternoon I would like to focus my remarks on four key areas: the relocation of section 131A of the Anti-Discrimination Act; the creation of a new offence concerning public displays of prohibited hate symbols; the implementation of this bill; and then areas of improvement and other suggestions we have.

With regard to the relocation of section 131A, we welcome and support this. We note that many other submitters have already talked about this and asked questions. We also support the increase in the maximum penalty to three years. We believe this will aid the QPS in identifying and prosecuting appropriate cases of serious vilification and that the increases previously mentioned in other submissions will also allow the QPS to obtain warrants to access communications held by telecommunication carriers. From our consultation, particularly with young people, we found that a significant proportion of racism and serious vilification occurred online or through direct messaging services like WhatsApp and Facebook Messenger.

In terms of creating a new offence regarding hate symbols, we also welcome this. I note there was very strong consensus on this issue across our sector and the communities we work with. Throughout the consultation this committee undertook and later the state government, it became very clear that this is a complicated and nuanced area where community feedback was not just invaluable but in fact critical, particularly when we talk about issues we have previously raised around swastikas and Nazi symbols and the differentiation of these issues. That is why we support and urge that a requirement be considered to consult relevant communities in relation to listing new prohibited hate symbols and also with regard to, more broadly, the implementation of this piece of reform. We also want to note that we urge there be an offence for the display of prohibited hate symbols extended to online publications where practical.

Thirdly, with regard to the implementation of this bill, as noted by several other submitters, SSI thinks it is critical that this bill is complemented by a robust implementation strategy that is conducive to increased cohesion. This includes having an internal government strategy to help first responders tackle these issues and support individuals where support is needed. Again I note from previous submitters that includes training with police, identifying what symbols mean what, as an example, and an external strategy to increase confidence in the community to report offences and educate communities about what actually is vilification and hate conduct. SSI is committed to work with agencies to upskill staff. We have already started this work with certain parts of the QPS and several local councils. We look forward to continuing this work alongside community and other service providers.

Lastly, with regard to areas of improvement, as you would have seen from our submission, SSI endorses extending circumstances of aggravation to where a crime is wholly or partially motivated by hatred or serious contempt towards a person and that murder and rape be added to the list of crimes that can be treated as a hate crime.

Additionally, what you would not have in our submission and what we have subsequently read in other submissions that we support, is that we encourage the committee to look more closely at the issues raised by the Human Rights Commissioner around the public act. As you may recall from our original presentation to the inquiry, our submission highlights a number of stories where young individuals experienced hate and serious vilification in a school or work setting. Most of us spend at the very least a third of our day in education or a workplace, and to think that a person is not protected in these situations we believe is not in line with the original intent of this bill or what community expectations are. We strongly urge the committee to consider amending section 124 as recommended by the Human Rights Commissioner.

That concludes my opening remarks. If the committee is willing, I might throw over to my two colleagues. We are happy to take any questions.

Ms Duke: Just to add, when we were doing a lot of the consultation and being part of the coalition we realised that we saw a particular rise in hate crimes and incidents after certain situations like COVID-19, when we saw targeted individuals from African communities highlighted but also even some of our communities like from Myanmar. Because of their similar appearance to people from an Asian background, they were also persecuted a lot. When they would report a lot of these incidents they did not feel confident at all to go to the police. They said, 'This is something I reported very regularly before, and when there was inaction we were discouraged.' I think it highlights that many cases are not reported because of that mistrust. A really big part of the work that needs to be considered is an education piece to restate that it is not just about changing the laws but actually post that how do we raise awareness around these law changes.

Ms Kraai: I do not have anything to add at this point.

Mrs GERBER: Thanks for your written submission and your oral submission just now. I wanted to go to your written submission in relation to hate symbols or the offence of displaying prohibited symbols. Similar to Multicultural Australia, you have recommended that it be a requirement for the minister to consult with communities in relation to prescribing what might be a prohibited symbol. As the bill is currently drafted, the minister is able to do that by regulation, which means that it does not go through the ordinary legislative processes through parliament. Ordinarily with a bill you get the opportunity to present to a committee and provide feedback and consultation. If something happens by regulation, it does not happen that way. The minister can literally do it by regulation and may consult with the Human Rights Commissioner or other advisory bodies but not necessarily with communities. Would it be your recommendation that prescribed symbols be legislated, so taken out of regulation and put in the legislation, so that consultation through the ordinary process of legislative mechanisms can occur?

Mr Lucey: Our view on this is that, as noted, we would like government to consult community on some of those nuances. We are comfortable for that to be through regulation. We note that this process has taken multiple years to get to. What we find usually, as Kenny mentioned, is that vilification oftentimes comes out of circumstances, whether it be world events, the outbreak of war et cetera. We do not think it is conducive to tackle this issue to go through a process that might take three years. We are comfortable with the regulatory part of that, but again we would urge government to take that serious step in consulting with community.

Ms Duke: Can I just add that a lot of the coalition work was led by the Queensland Community College and we always worked very closely with Scott McDougall. We are not from a legal background ourselves. Even though you can consult with communities separately, we worked very closely with these legal bodies as well.

Ms BOLTON: Joshua, you have just said that it has taken multiple years. I do not know whether you have had a chance to look at our committee's recommendations in 2022. I think there are three recommendations in there that are legislative in nature that have not been included in this bill, which are recommendations 4, 5 and 6. Do you have any thoughts on those?

Mr Lucey: I do not have in front of me what those three specific recommendations are that you referred to.

Ms BOLTON: I can quickly summarise them. Recommendation 4 recommends that the government ensures antivilification provisions cover the attributes of: race, religion, gender and/or sex, sexual orientation, gender identity and/or gender expression, sex characteristics and/or intersex status, disability, and medical status, including HIV/AIDS status. That was one of them, and of course we heard about that from previous witnesses regarding sex workers. Recommendation 5 was that the government investigate lowering the threshold of the civil incitement test. Recommendation 6 was that the government adopt the definition of 'public act' to incorporate social media and other electronic methods. Do you have any concerns around those recommendations not being incorporated?

Mr Lucey: I think we addressed a number of those in our opening remarks, particularly around 'public act' and online forms of vilification. We also note that there are a number of pieces of work happening concurrently that tackle a number of different issues. Kenny, I am happy for you to add something.

Ms Duke: I think the most important part for us was highlighting—we raised it in the telecommunications part, which covers it partially—that one of the biggest forms young people reported back, particularly from the communities we work with, was online and social media and not understanding how to report it online and often not receiving a response. I think it is again strongly endorsing that telecommunications being used as evidence is important for us. We agree there are separate recommendations that were covered there which have not been included, but this is a good step in the right direction. That is how we are feeling.

Ms BOLTON: We heard from the Council for Civil Liberties that we need more speech. In the last inquiry we heard about the importance of education, and we have that as recommendation 17. That education obviously is much more than your standard type of education because there are so many complexities in this. Even the Queensland Law Society said that legislation alone is not going to bring about not only diversity but understanding and tolerance. Is that something that you think we need more of? Do you have specifics around what that has to look like?

Mr Lucey: Are you asking us to agree with the Council for Civil Liberties' issue of additional speech? Because I think we may not find ourselves in that position.

Ms BOLTON: No, I suppose it is around diversity and does it take education. When you are talking about increasing speech, it is about respectful speech. You can have different points of view. Is education part of the missing piece going forward?

Mr Lucey: Absolutely. Yes, this is an area that requires much education and much conversation to break down social barriers that have been ingrained in society and in people for generations. That is not a light task and I think it needs to happen very early in education. Again, as we have said, when we went out to our communities people were reporting this at a very early age. Yes, education is a major part. That is why we believe that the bill is fantastic and it tackles certain issues, but it really needs to be a pillar in a much broader strategy to end vilification and racism in our society.

Ms Kraai: If I may add that it would be around culturally responsive education of the larger society probably, but it is also an education piece towards communities themselves as they often are not aware (a) that they can report; and (b) how to report and the lack of trust there. So there are a lot of education and different kinds of angles.

Ms Duke: The word 'vilification' in itself, we had to spend a long time in explaining, even to get consultation or input on this. Once you break it down, they say, 'Oh, this is something that actually happens very regularly to us.' That storytelling through education has been an extra piece and has taken, to be honest, a lot of our resources to do, so I think there needs to be more recognition around how much education piece goes in when some law changes happen, particularly when you are dealing with institutional type changes that involves interaction with Queensland Police or other type of agencies. The accountability measures are also something that we would like to look at, mentioning more around the cultural competency and being aware. It is one thing having the piece of legislation; it is another thing how the police interact with that legislation. That work being done within the police is also important. There needs to be education in communities around what this means for them, particularly the serious vilification—being very clear around that terminology that it is serious vilification—and what type of evidence is required for that. That is a bit of work that I think we are aware of. I also feel that having an independent committee that involves people from community, from the sector and from departments is something that can really help move that part of the recommendations forward.

CHAIR: Are you familiar with the Tell MAMA organisation in the UK?

Ms Duke: No.

CHAIR: That is okay.

Mr Lucey: We are happy to learn more.

CHAIR: It is an organisation that traces vilification.

Mr HUNT: Thank you for coming in, everyone. I am going to ask you to drill down into the survey that you have cited in your submission. We heard during the previous hearing, we have heard during this hearing and we may well hear again that some people have a view that the existing mechanisms are perfectly adequate to serve for people who want to make complaints around vilification, that we

should be cautious about increasing their scope, and even that some of the people who are victims of hate speech and vilification might be—and these are my words, paraphrasing—over-egging the pudding a little bit and may have got it wrong and are on the right track in calling for greater safeguards; that the victims of this hate speech have essentially got it wrong. Could you juxtapose that with the results of your survey, please, so that we can capture that on the record?

Mr Lucey: If you are happy for me to start, and Jantina interviewed many of the people who completed our surveys so she may be able to go into a bit more detail. From the outset, we have two problems. As Kenny noted, many people experience this act and do not report it. Some 93 per cent of respondents to our survey did not report it.

Mr HUNT: Josh, they did not report it, from your submission—sorry to interrupt, but I am backing you up here—because they had a lack of confidence that the mechanisms that currently exist could work to their protection?

Mr Lucey: Twofold: firstly, yes, but also that they did not realise that this is something they could report.

Ms Duke: Exactly.

Mr Lucey: Imagine an individual who has experienced this from day one of arriving, this can very quickly seem like Australian culture and that this is just what happens. We need to segment that and understand that, first and foremost. Jantina, I will get you to comment more on the individual specifics.

Ms Kraai: To add onto that point, there is also the normal cultural barriers like language barriers that kind of add to the not knowing that it can be reported. But then the other point I was going to make—your question was?

Mr HUNT: Are the mechanisms sufficient? We have been told by some people that the mechanisms are sufficient and that we should be very careful of any sort of bracket creep.

Mr Lucey: In short, no is the answer to that. We do not think that the mechanisms are sufficient. The pathways for reporting are not sufficient and they are oftentimes not culturally and linguistically informed. That is a major challenge. I have spoken with police officers who face this challenge in that they do not necessarily always have the resources to get a translator in to give statements. It is more nuanced. You could very easily say that police officers have not tried, police officers have hurdles, and we need to recognise that. In short, we disagree with those statements that there is enough of a pathway to report these offences.

Ms Kraai: For some of the people we interviewed, it was also to do with a lack of trust. That could originally be related back to some traumatic experience in their past, like being a refugee, but then also just literally being here in Australia and noting that, for instance, if they were to report to police, they may not take them seriously because it seems almost as if there is no difference between what is happening to them and how they are treated. There is definitely also that part of a lack of trust in systems and structures around that.

Mr MARTIN: I wanted to examine a bit more the surveys you have taken. I think that is a great part of your submission. One of the issues that comes up in my electorate of Stretton, which is very multicultural—

Mr Lucey: Very close to our heart, yes.

Mr MARTIN: Not too far away from your office. Some people actually do go to the stage of making a complaint to the police about a range of issues that would be covered by this bill. The police try their best; they go out and investigate and they talk to people. However, what has come up quite a few times is that the charge that they could lay would be something like littering, or it could be nuisance or something that did not really reflect the community expectation of what had occurred. I wondered if your surveys had picked that up, and what that does to the community when they go to the police and make a complaint but then the police really cannot do anything.

Mr Lucey: I will be very careful with the language I use, and I do not want to paraphrase because I do not have it in front of me, but there is a submission in there that notes that police, in the long and short of it, not talk them out of it, but explain to an individual how difficult this is and that the success of this going anywhere is very low. That is really disheartening for a person who has experienced a pretty impactful event or series of events. I think the challenge, as you have pointed out, is the community expectation. A person, at the maximum, can receive a six-month sentence for threatening someone's life based on their skin colour et cetera. That is not really, I think, in line with what we experience most people would expect, and I think most people would be quite shocked by that. In terms of the interviews, Jantina or Kenny, do you have anything to add?

Ms Duke: What we were hearing from some of the consultations with the young people was that they were saying they had reported it to the frontline police, were then often given a written report, but there was no follow-up in regards to that, or even what considerations could be taken from there. Because they have had that experience the first time, they are then reluctant to go again. There are other cases where they were often referred to the police liaison officers or other leaders, community leaders, so kind of almost dismissed, or referred back to Queensland Human Rights, so dismissing the seriousness of what has occurred. Then when we hear the story of what has occurred, we would be shocked to know that it was not followed up. Again, this is why it is so important to have an education piece with this, to ensure that police also know that there needs to be a proper process and monitoring around that. That happens very frequently. I have worked 17 years with this organisation and I have worked in case work, and it was very regular that we would have police stations sending them back even to us. If they did not have an interpreter, they would send them back to us. If they could not follow up on the written report, they would—so almost discounting the person's story. If they have to go three or four places to just even report, you can imagine there is already a barrier there.

CHAIR: I am struggling with some of the submissions made by the Queensland Council for Civil Liberties, and I cannot actually find it, but the way I interpreted what their representative was saying is that this legislation has the potential to make things worse. I hope I am not misquoting him, but I am struggling with that concept because—

Mr Lucey: Certainly I do not think for our communities that is probably what we can attest to. I interpreted it also similarly to that. I do not think that is the case for our communities. I think a lot of issues can be dealt with through education and conversation. There is also, I think, very importantly, a consequence to actions, right. Most other actions face some sort of consequence. The fact that our communities do not have that privilege is saddening, so we do not think that this bill would leave anyone worse off except for those perpetrating the act.

CHAIR: When we were doing our report, one of the submitters—and I would have to go back to find it—had a quote by Dr Martin Luther King which stuck with me. It was, 'It may be true that morality cannot be legislated, but behaviour can be regulated. It may be true that the law cannot change the heart, but it can restrain the heartless.'

Ms Duke: That is good, yes.

CHAIR: I do not know.

Mr Lucey: I think it is also a sign to community that the parliament does take this issue seriously. I think that is a very big issue.

Ms Duke: It is a safety measure. It is really about making communities safer. I do not think it could get worse than what we experienced through COVID-19 and some of the attacks that communities had. I feel like the worst-case scenarios are those we have been experiencing, particularly in these last couple of years, and it could not get worse for them. The fact that they could not apply for any safety, in regards to that, and that they felt that who should be protecting them cannot protect them because the legislation is not there. I think that is the biggest highlight. If you do experience some serious vilification, you should be able to take action and there should be consequences for actions in terms of perpetration, and that communities feel safer that there is a pathway there, whereas at the moment they do not feel that at all.

CHAIR: That brings this hearing to a conclusion. Thank you to everyone who has participated today. Thank you to all those who helped organise this hearing—the secretariat. Thank you to the Hansard reporters. Thank you to all the committee members and also the committee members who subbed in. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 2.58 pm.