



Department of Justice and Attorney-General
Office of the Director-General

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Mr Peter Russo MP
Chair
Legal Affairs and Safety Committee
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Dear Mr Russo

Thank you for your letter dated 30 April 2021 regarding the Legal Affairs and Safety Committee (the Committee) inquiry into serious vilification and hate crimes. I note that you have also provided a copy of your letter to the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence.

As you may be aware, during the 2020 State General election, the Deputy Premier, the Honourable Steven Miles MP, made an election commitment to refer an options paper developed by the Cohesive Communities Coalition to the appropriate Parliamentary Committee for review and consultation. The Options Paper entitled 'Serious vilification and hate crime: The need for legislative reform' can be accessed at: https://betterlawsforsafeqld.com.au/wpcontent/uploads/2020/09/SeriousVilificationAndHateCrime_CohesiveCommunitiesCoalition-1.pdf.

Existing provisions

In addition to considering the Options Paper, the Terms of Reference (ToR) ask the Committee to inquire into and report on the effectiveness of section 131A of the *Anti-Discrimination Act 1991* (ADA). Section 131A of the ADA contains the offence of serious racial, religious, sexuality or gender identity vilification. The elements of the offence are that a person must not, by a public act, knowingly or recklessly incite hatred towards, or serious contempt for, or severe ridicule of a person or persons on the ground of race, religion, sexuality or gender identity of the person or members of the group in a way that includes:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

(2)

The offence at section 131A of the ADA carries a maximum penalty of 70 penalty units or six months imprisonment for an individual, or 350 penalty units for a corporation. Although a proceeding for a prosecution of the offence is to be by way of summary proceeding under the *Justices Act 1886*, the written consent of the Attorney-General or the Director of Public Prosecutions (DPP) must be obtained before a proceeding is started.

As at 30 April 2021, court statistics show that, since commencement, there have been five persons charged pursuant to section 131A(1)(a) of the ADA, with three convictions. The sentencing outcomes for these convictions are follows:

- (a) two months imprisonment, wholly suspended for 12 months;
- (b) one month imprisonment; and
- (c) 40 hours community service.

In relation to the remaining two charges the prosecution advised they had 'no evidence to offer' and the charges were dismissed.

The Queensland Statute Book also contains a number of alternate offences of general application which, depending on the circumstances, may be preferred to a prosecution under section 131A of the ADA. Alternate offences include, for example, Criminal Code offences such as *threatening violence* (section 75), various assault offences (Chapter 26), *wilful damage* (section 469) or *indecent acts* (section 227). Similarly, a public nuisance offence under the *Summary Offences Act 2005* may also apply which has a maximum penalty of 10 penalty units or six months imprisonment and, an increased maximum penalty of 25 penalty units or six months imprisonment if the act is committed within, or in the vicinity of licensed premises.

In addition, the ToR ask the Committee to consider the appropriateness of the conciliation-based anti-discrimination framework as set out at Chapter 7 of the ADA. In this regard, I note that complaints under the ADA are made to the Queensland Human Rights Commission (QHRC).

The QHRC has specific functions under the ADA, including to resolve complaints by conciliation. The QHRC is best placed to answer queries regarding its complaints resolution process.

With respect to online vilification, such conduct may be captured by the Commonwealth offence of *using a carriage services to menace, harass or cause offence* (section 474.17, *Criminal Code Act 1995* (Cth)). The provision does not require the victim to belong to a protected group and is broad enough to cover both vilification (without a threat of physical harm) and serious vilification (with a threat of physical harm). The offence carries a maximum penalty of three years imprisonment. The ToR therefore ask the Committee to have regard to the interaction of state and Commonwealth legislation in relation to online vilification.

(3)

The ToR also seek the Committee to consider the effectiveness of activities and programs of the Queensland Government (including the Office of the Director of Public Prosecutions (ODPP)) in responding to hate crime, including record keeping practices. In this regard, the Department of Justice and Attorney-General (DJAG) notes that the ODPP does not keep statistics in relation to criminal offences that may have been committed in circumstances of racial, religious, sexuality or gender identity vilification.

Parliamentary inquiries in other jurisdictions

I note a number of other Australian jurisdictions have recently commenced or conducted Parliamentary inquiries into similar matters. For example, on 12 September 2019, the Victorian Legislative Assembly referred to its Legal and Social Issues Committee (LSIC Committee) terms of reference for an 'Inquiry into Anti-Vilification Protections'. The report was tabled in the Victorian Parliament on 3 March 2021 and is available here: [https://parliament.vic.gov.au/images/stories/committees/lxic-LA/Inquiry into Anti-Vilification Protections /Report/Inquiry into Anti-vilification Protections 002.pdf](https://parliament.vic.gov.au/images/stories/committees/lxic-LA/Inquiry%20into%20Anti-Vilification%20Protections/Report/Inquiry%20into%20Anti-vilification%20Protections%20002.pdf).

Similarly, the Commonwealth Parliamentary Joint Committee on Intelligence and Security (Intelligence Committee) has commenced a review into extremist movements and radicalism in Australia. The inquiry was referred to the Intelligence Committee by the former Minister for Home Affairs, the Honourable Peter Dutton MP, on 9 December 2020. Further information regarding the review being conducted by the Intelligence Committee is available here: [https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Intelligence and Security/ExtremistMovements](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/ExtremistMovements).

The information outlined above is the extent to which DJAG and the ODPP are able to comment in relation to serious vilification and hate crime and the matters set out in the ToR. Decisions regarding the effectiveness of existing provisions and the need for any legislative amendment would be a matter for the Committee and ultimately the Government.

Accordingly, DJAG does not anticipate there being any additional value in making representatives available for a public briefing on 24 May 2021. I am advised that the ODPP's view is consistent with this approach. On this basis, could you therefore arrange for the Committee Secretariat to confirm with the Departmental contact on this matter (see below) whether or not attendance is required on Monday, 24 May 2021 by DJAG or the ODPP.

I note your advice that the Committee is calling for public submissions until noon, Monday, 12 July 2021. As an alternative to the attendance of Departmental representatives at a public briefing on Monday, 24 May 2021, DJAG is willing to assist in addressing any factual queries that may arise from submissions to the extent it is able to.

(4)

[REDACTED]

I trust this information is of assistance.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'D Mackie', written in black ink.

David Mackie
Director-General

cc The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of Domestic and Family Violence
Member for Waterford
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