Queensland Parliament
Legal Affairs and Safety Committee

Inquiry into serious vilification and hate crimes

Joint Submission by

Christian Schools Australia (CSA)

Adventist Schools Australia (ASA)

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Introduction

Christian Schools Australia (CSA) and Adventist Schools Australia (ASA) are national bodies that support and represent schools for whom religious formation is an integral part of the education process.

In combination, CSA and ASA schools educate more than 80,000 students across more than 250 locations nationally. Within Queensland, member schools of these groups educate around 15,000 students at more than 30 locations. Globally, CSA is part of the Association of Christian Schools International (ACSI). There are 24,000 schools educating in excess of 5.5 million students in over 108 countries around the world within this network. ASA schools are part of the wider Adventist Church, which educates around 2 million students globally.

Member schools of CSA operate as independent, locally governed, religious organisations. Some are closely aligned with one or more Christian churches in their communities, while others have their heritage in a group of parents coming together to start a school. ASA schools operate on a systemic basis, with small systems established in line with wider Adventist Church governance arrangements.

General position on vilification

Christian and Adventist schools are committed to the elimination of vilification.

The Bible teaches, profoundly given its historical and cultural context, of the inherent dignity and worth of all people. The Apostle Paul, writing to believers in Galatia, proclaimed that *'There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus'*, a revolutionary statement for the society in its day. The recognition of the unique nature of all humankind as image bearers of God, Imago Dei, provides the very foundation for contemporary Western culture and the freedoms we enjoy.

That foundation forms the basis for the revulsion towards vilification, harassment, racism or victimization held by the schools represented in this submission. This finds expression in the school context in strong anti-bullying policies and procedures and a deep commitment to high quality pastoral care – for all students.

Scope of Options Paper

The Committee is being asked to consider the *Options Paper: Serious vilification and hate crime: The need for legislative reform* ("Options Paper"). The Options Paper extensively canvassed, and exclusively considered, the prevalence and impact of racial and religious vilification. It is important to acknowledge that this paper did not address, and provides no evidence to support, legislative reform in relation to the other two grounds protected by the current provisions in sections 124A and 131A of the *Anti-Discrimination Act 1991* (QLD) ("the Act").

The Briefing Note for the Committee provided by the Queensland Human Rights Commission on 19 May also clearly indicates that vilification based on race and religion are the basis of the majority of claims accepted by the Commission. Nearly two thirds of all accepted complaints were related to these attributes.

Some caution must be exercised by the Committee when considering the proposals for reform in the Options Paper if changes were to apply to grounds beyond vilification based on race and religion as considered in that paper.

RECOMMENDATION ONE: Any legislative amendments proposed by the Committee only apply, consistent with the Option Paper, to vilification based on race or religion.

Grounds for vilification protections

The protections in sections 124A and 131A of the Act originally only related to vilification based on race and religion. The *Discrimination Law Amendment Act 2002* (QLD) amended the scope of these sections to include sexuality and gender identity within the grounds for vilification protections.

The *Discrimination Law Amendment Act 2002 — Explanatory Note*,[1] makes it clear that there was "no consultation with the community on the Bill". Indeed, there was scant, if any, justification provided at the time for the inclusion of sexuality and gender identity within the vilification protections. Assessment of the implications of the amendments was at the time against the *Legislative Standards Act 1992* (QLD) which merely required that the proposed legislation had 'sufficient regard to, inter alia, the rights and liberties of individuals'.[2] Contemporary legislation is assessed in relation to the *Human Rights Act 2019*, which provides for a much more structured test on the limitation of rights in section 13.[3]

The inclusion of protections for vilification based on sexuality and gender identity alone, rather than a broader range of grounds, as part of a Bill lacking consultation and with limited assessment of human rights impacts, is concerning. Certainly, there would seem to be legitimate questions as to why these two attributes alone were added. Were the grounds of age, impairment, breastfeeding or pregnancy not considered worthy of protection from vilification?

RECOMMENDATION TWO: No amendments be considered impacting vilification based on grounds other than race and religion until broader research and consultation is undertaken on the appropriate range of grounds to be protected and the level of protection to be afforded each ground.

Introduction of aggravated offences

The *Criminal Code Act 1899* (QLD) contains existing 'aggravation' provisions. The serious assaults in section 340 relate to particular circumstances surrounding the assault, the wilful damage provisions in section 469 incorporate varying penalties on the basis of the subject of the damage. These do not, however, seek to ascertain the motivation for the actions, as Recommendation 1 in the Options Paper suggests introducing.

The Options Paper suggests that police are 'more likely to lay charges they are familiar with' but provides no mechanism for them to ascertain the 'prejudice motivation for racial or religious vilification' the Options Paper suggests incorporating. Significant questions seem to arise as to how

[1] Available online here: https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2002-881#bill-2002-881.

[2] Available online here: https://www.legislation.qld.gov.au/view/html/1992-12-07/act-1992-026#Act-1992-026.

[3] Available online here: https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005#sec.13.

police would be expected to identify, let alone evidence to the criminal standard, such motivation. This is not an insignificant hurdle for the establishment of such an offence.

Traditionally the nature of the motive for an act has not been a factor in establishing a criminal offence, although it can impact on sentencing. The Options Paper does not address the application of judicial wisdom in this manner, instead focussing merely on the number of charges laid – which arguably could be reduced if motivation was required to be established. The existing Queensland Sentencing Guide already includes as a factor in sentencing 'any physical, mental or emotional harm to a victim' alongside well established and considered sentencing principles.[4] If the Committee took the view that there was merit in recognising racial or religious motivation, amendment of the Sentencing Guide may be a preferable mechanism.

RECOMMENDATION THREE: Should the Committee seek to ensure that racial or religious motivations are recognised in relation to offences that amendments be sought to the Queensland Sentencing Guide.

Creation of new response mechanisms

Recommendation 2 of the Options Paper proposed a 'new species of Order … to address concerning behaviour that falls short of criminal offences'. The Options Paper proposes that such an Order 'would not need an overt criminal offence to be triggered' merely requiring 'repeated behaviour of a concerning nature', going on to make clear that these orders 'would not need to be proven beyond reasonable doubt', but not indicating what, if any, standard of evidence would be required. Presumably the use of these orders would be monitored by the 'hate crime scrutiny panels' based on the approach in the United Kingdom contained in Recommendation 7.

These recommendations are, frankly, chilling.

There are widespread concerns regarding what appear to be similar mechanism in the United Kingdom which should be a lesson for the Committee of the dangers of these recommendations. The rise of police activity in response to 'non-crime hate incidents', in the UK has been staggering. It was reported that police forces in England and Wales had recorded 120,000 non-crime hate incidents over the five years to December 2020,[5] which has caused widespread concern. The Free Speech Union publishing an extensive and detailed critique of their use which exposes that such incidents have been recorded 'based on the existence of "ill-will", "ill-feeling" and "dislike"'.[6] This seems analogous to the 'behaviour of a concerning nature' discussed in the Options Paper as the basis of the proposed new form of Order.

Some of these concerns in the UK have resulted in legal action, the most prominent of those, *Miller, R (On the Application Of) v The College of Policing & Anor [2020] EWHC 225 (Admin) (14 February*

[4] Queensland Sentencing Guide, Queensland Sentencing Council (February 2021) <https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/queensland-sentencing-guide.pdf.> [15].

[5] https://www.telegraph.co.uk/news/2020/12/17/exclusive-people-must-have-right-offend-without-facing-police/

[6] https://freespeechunion.org/wp-content/uploads/2021/03/An-Orwellian-Society.pdf

2020),[7] prompted a scathing judgement in the UK High Court of the guidelines provided for police. The actions of the police being compared by the judge in this matter to those of the Cheka, the Stasi, and the Gestapo. These concerns have now reached the point that the UK Home Secretary has earlier this year ordered a review into the reporting of these incidents.[8]

It is vital that the Committee learn from the experiences of the United Kingdom and not introduce mechanisms with such a low bar that they impose such an Orwellian effect on free speech.

RECOMMENDATION FOUR: The Committee should reject the proposals in Recommendation 2 and 7 of the Options Paper.

Summary of Recommendations

RECOMMENDATION ONE: Any legislative amendments proposed by the Committee only apply, consistent with the Option Paper, to vilification based on race or religion.

RECOMMENDATION TWO: No amendments be considered impacting vilification based on grounds other than race and religion until broader research and consultation is undertaken on the appropriate range of grounds to be protected and the level of protection to be afforded each ground.

RECOMMENDATION THREE: Should the Committee seek to ensure that racial or religious motivations are recognised in relation to offences that amendments be sought to the Queensland Sentencing Guide.

RECOMMENDATION FOUR: The Committee should reject the proposals in Recommendation 2 and 7 of the Options Paper.

[7] Miller, R (On the Application Of) v The College of Policing & Anor [2020] EWHC 225 (Admin) (14 February 2020) available online: https://www.bailii.org/ew/cases/EWHC/Admin/2020/225.html

[8] https://www.telegraph.co.uk/politics/2021/04/24/wipe-non-crime-hate-allegations-says-priti-patel/