

12/07/2021

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
Alice Street
Brisbane, QLD 4000

email: lasc@parliament.qld.gov.au

RE: INQUIRY INTO SERIOUS VILIFICATION AND HATE CRIMES

TASC National Limited (**TASC**) welcomes the opportunity to provide a submission to the Legal Affairs and Safety Committee in relation to the Inquiry into serious vilification and hate crimes.

TASC is a not-for-profit organisation that has delivered high quality legal, advocacy and social support services to the South West Queensland community since commencing in Toowoomba as a community legal centre in 1982. TASC is now one of the largest regional community legal and advocacy services in Queensland. Our clients come from the most vulnerable and marginalised sectors of our community, including people with disabilities, those suffering financial disadvantage and those from different cultural backgrounds or religion.

We hear our client's stories and it is clear that systemic reform in this area is both overdue and needed to strengthen legal avenues to ensure that people are protected and those who perpetrate vilification or hates crimes are punished. If reform is successful then hopefully it will ignite a social change which will allow **all** people to feel safe in their communities as well as in their homes. An object of the *Human Rights Act 2019* (Qld) is protect and promote human rights.¹ All Queenslanders have the right to equality before the law and to enjoy their human rights without fear of discrimination and where there is discrimination they have the right to effective protection.² Currently there is a section of our community that are not experiencing equality because the protections available are not effective. Alternatively the remedies available to ensure that they are protected through either criminal or civil actions are inadequate. Whilst the use of deterrence, such as harsher penalties and jail term may be effective to bring

¹ Section 3(a).

² Section 15. Under international law the right to equality and non-discrimination constitute basic principles for protecting all human rights. Therefore obligations arise for Australia (inclusive of all States and Territories) to ensure these protections are in place as it is signatory to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

about change a corresponding change in social attitudes and behaviour is required. If this occurs then society will readily call out hate behaviours as not socially acceptable at any place or at any time.

TASC considers the law to be critical in deterring and addressing vilification and hate crimes but the law cannot be both sword and shield, nor can it operate in isolation. The law needs reform so that Acts (legislation) that seek to protect those subject to hate and vilification have adequate recourse to address the behaviours and protect those people. Any amendments to the law should be complemented by systemic education and early intervention strategies.

RECOMMENDATIONS

1. Merge the civil and criminal offences of vilification into one unified and robust summary offence. This would avoid vilification or hate behaviours being subsumed into existing offences for instance such as in common assault, wilful damage or public nuisance.
2. If the law is to keep the current civil and criminal offences, we suggest a change to the wording of s131A³ because as it currently stands a higher threshold test in regard to evidence required is disadvantageous to bringing an action under this section.
3. If the law is to keep current civil and criminal offence structures, it should be refined to simplify the process. For example abolish the requirement to seek consent from the Crown Law Officer before a proceeding can commence. Additionally remove the limitation of subsection 3 to allow the Queensland Human Rights Commission (**QHRC**) to commence proceedings or investigate the matter. Consideration should also be given to using a facilitated referral from the police to the QHRC or vice versa to assist the process and handling of these complaints. Alternatively develop this function within a liaison officer role where that person could accompany the complainant to the right organisation to lodge a complaint.
4. Consider introducing a new court order similar to peace and good behaviour or domestic violence orders. Alternatively expand the definition of what behaviour can be captured under the current peace and good behaviour orders.
5. Widen the attribute groups of race, religion, sexuality, transgender and gender identity for example as outlined in section 131A to who protection is provided **to include** people with a disability or impairment.

³ *Anti-Discrimination Act 1991* (Qld)

6. Offending hate behaviour should be broadened to capture other situations such as behaviour that is intended to humiliate, intimidate, and hurt other people or their property.
7. The definition of vilification should include incitement of hate that has been encouraged by a silent third party. That is those who do this encouraging by way of a private act. This would capture those who do not personally engage in the behaviour but encourage others to engage in it. The definition of 'public act' would need to be broadened to capture such instances. Alternatively omit 'public' and simply state 'any act' so either a private or public act is caught by the legislation.
8. Implement parallel and complementary systemic education, awareness campaigns and early intervention strategies in schools and the community.

What TASC knows about vilification and hate crimes?

Whilst TASC does not directly provide advice about discrimination, we are aware that since 2017 twelve of our clients have been impacted by vilification or hate conduct. Clients bring this type of conduct to our attention whilst we are assisting them with their legal or advocacy problem. For example, during an appointment with a client about a fencing matter, the client remarks that the neighbour is unable to be approached to seek agreement about the fence. The neighbour does not like and won't talk to the client except to abuse the client over the fence. The remarks made by the neighbour indicate the conduct arises because they don't like our client's race.

TASC recognises a theme in these conversations. That is the client is often not aware they can do something about this behaviour, so they simply put up with it. If they have tried to seek assistance, usually from the police, they have been told there is little that can be done, particularly as often they do not know the perpetrator's name. However in reality, the police themselves have probably turned the client away because the level of harassment or abuse experienced fails the threshold criteria to make it a criminal offence and therefore out of the police's ability to investigate and prosecute.

In the rare occurrence that one of our clients has made or attempted to make a complaint to the QHRC they have found the process impersonal, complicated and confusing and the outcome (if one achieved) to be unsatisfactory. TASC is not aware of any matters that have been referred to the Queensland Civil and Administrative Tribunal, but understand this figure to be low. Where matters have been referred the outcome has been unsatisfactory and poses little deterrent to repeat offending.⁴

⁴ Refer to [Donovan v Tobin \[2015\] QCAT 332 \(1 September 2015\) \(austlii.edu.au\)](#), by way of example where QCAT found that there had been vilification, the respondent was told to stop, no compensation or punishment was made

The effectiveness of current legal protections for vilification and hate crimes in Queensland.

TASC believes the current protections are largely underutilised because many people are not aware they exist or how to access them. The current system is confusing and even more so for people where English is not their first language. Information is difficult to find and legal outcomes are even harder to achieve. Even if people are aware, they become confused with the separation into civil and criminal offence and whether it is something to report to Police or to the QHRC.

The legal processes, particularly the civil, are complicated and are inadequate to deal with the specific issue which results in people lacking trust in the process and outcomes. Anecdotal evidence received by TASC suggests that the process is challenging and confronting and that future incidents are not being prevented, so people lose confidence in the system. On such basis it would appear as though neither the civil nor the criminal remedies available adequately ensure that all persons of the community enjoy the right to safety, dignity and security.

TASC is aware that Victoria has recently conducted an inquiry into the effectiveness of legal protections for vilification and hates crimes and recommends the committee examine the outcomes of that inquiry. TASC supports the recommendations in this report and by way of example recommendation 5 and 7. Which are to implement programs within primary schools to strengthen respect, diversity and cohesion among all students and to implement community education. Additionally there are multiple recommendations to bolster existing legislative frameworks and punishments for acts of hate and vilification. Recommendation 36 mandates exploration of options across all states and territories so that there is one unified approach to online vilification.

TASC's position on future vilification and hate crime laws.

Currently as the laws stand there is ambivalence, complacency and possibly tension that one form of vilification is more acceptable than the other. For example, there has been a social shift towards respecting and treating women equally. Whilst not yet completely equal and with ways to go, it is more readily acceptable that offensive behaviours towards women will not be tolerated. However, the same offensive and insulting comments made towards other minority groups still continue. How is that equality before the law particularly as limitations are placed on value of human rights under the civil offence? Quite simply such behaviour should not be tolerated and stronger penalties are needed to discourage people from engaging in them.

TASC opines that the civil and criminal offences of vilification be merged into one unified and robust summary offence. Such an offence would encompass all forms of vilification and hate experienced by people. It should be up to the judiciary to decide

the severity of the crime and the penalty as opposed to the legislature. Further to this, an increase in penalties should be considered.

Having a specific standalone summary offence included under the Criminal Code would ensure that vilification and hate behaviours are not subsumed as is currently the case, within other crimes such as common assault (Criminal Code s335), threatening violence (Criminal Code s 75), wilful damage (Criminal Code s 469) or even public nuisance under section 6 of the Summary Offences Act 2005 (Qld). Subsuming the offences often means that the vilification and hate crimes are unable to meet the standard of proof and ultimately leads to dismissal of charges or charges not being brought in the first instance.

A standalone offence would make it far easier to extract data from QPrime (the police database) for statistical analysis on the prevalence of these offences. Currently this type of analysis is subject to how the police officer categorise the behaviour in QPrime and is not indicative of the true nature or prevalence of vilification or hate crimes.

If a standalone summary offence was established there would be a need to consider extending the legislative threshold for covert police strategies. For instance, applications for stored communications would allow the police to access data that has been deleted off an alleged offender's phone.⁵ Currently most summary offences fail to meet this threshold.

If both civil and criminal offences continue then refine and simplify the process and allow representative cases to be more easily brought before the QHRC. Perhaps even consider proposing a facilitated referral from the police to the QHRC or vice versa to streamline the process and handling of these complaints. This process could involve the development of a function within a liaison officer role. Where continued civil actions are required against the one respondent such as various complaints made by members of a particular community, consideration should be had to having a provision whereby if found to have committed three or more hate, vilification or discriminatory offences that you should then be criminally prosecuted as an automatic report.

Furthermore the wording of s131A *Anti-Discrimination Act 1991* (Qld) would need to be changed so police don't have to substantiate the vilification rather they could apply a test of 'on the balance of probabilities' to charge a person with a vilification/hate crime. That is only discriminatory intent would need to be demonstrated as opposed to the police having to pull together all the evidence to show 'beyond a reasonable doubt' that the perpetrator met all elements of the section. Consideration should be given to abolishing the requirement to seek consent from the Crown Law Officer before

⁵ Currently under the *Police Powers and Responsibility Act 2000* (Qld) this may be possible but only if there is a reasonable suspicion that a crime has been committed. This provision may require amendment to ensure covert strategies could be used in any new summary offence.

a proceeding can commence. Further remove the limitation of subsection 3 to allow the QHRC to commence proceedings or investigate the matter or when an automatic referral is made to QHRC for investigation.

Additionally consider introducing a new court order, similar to a peace and good behaviour order and domestic violence orders which could be used to order parties to act or not act in certain ways. This would also allow police to take out orders for the protection of the victim in cases where behaviour is escalating such as in neighbourhood matters and workplace matters. The court, if the order is breached, could impose additional or more severe penalties. Alternatively investigate whether or not hate behaviour can be treated similarly to some family law processes. That is, use dispute resolution, social and educational services to improve the mental wellbeing of victims, as well as the behaviours of the perpetrators.

Any legislative change must seek to widen the attribute groups of race, religion, sexuality, transgender and gender identity to who protection is provided to include other vulnerable cohorts. So those people with a disability or impairment. Further the offending hate behaviour should be broadened to capture other situations such as humiliate, intimidate, hurt other people or their property. Additionally the definition of vilification should include incitement of hate by a third party in private to capture those who do not personally engage in the behaviour but encourage others to engage in it.

Online vilification is likely to be captured by the *Criminal Code Act 1995* (Cth) under the offence of using a carriage service to menace, harass or cause offence.⁶ This is because the provision does not require the victim to belong to a protected group and is sufficiently comprehensive to cover both vilification and serious vilification.

As stated earlier any legislative changes will need to be complemented by ongoing systemic education, awareness raising campaigns and early intervention strategies.



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⁶ Section 474.15