

Legal Affairs and Safety Committee
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QUT Digital Media Research Centre submission in response to the inquiry into serious vilification and hate crimes

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We are researchers in QUT's Digital Media Research Centre and the QUT node of the ARC Centre of Excellence for Automated Decision-Making and Society. The DMRC is a global leader in digital humanities and social science research with a focus on communication, media, and the law. The ADM+S is a cross-disciplinary national research centre that supports the development of responsible, ethical and inclusive automated decision-making systems.

We welcome the opportunity to contribute to this inquiry, and support the important work being undertaken by the Cohesive Communities Coalition. In general terms, our research focuses on digital media and human rights. We have provided references to some of our specific studies below.

We recommend that:

- Any criminal offences should include a clear intent requirement, beyond mere intent to possess the material, and be sensitive to context and existing power imbalances.
- Making hate or vilification an aggravating circumstance for existing offences is likely to be a better approach than creating a new offence.
- Public policy should focus on encouraging a broad societal effort to change social norms, rather than criminal sanctions aimed at individuals.

Criminalising speech can be problematic, and criminal restrictions on speech are frequently used on vulnerable and marginalised members of society.

Speech needs to be understood in its context,¹ and we should be very wary of the potential for misunderstanding. For example, the term '420', referenced in the Options

¹ Matamoros-Fernández, A. (2017). Platformed racism: The mediation and circulation of an Australian race-based controversy on Twitter, Facebook and YouTube. *Information, Communication & Society*, 20(6), 930–946. <https://doi.org/10.1080/1369118X.2017.1293130>.

Paper,² may well be used as a code for Hitler's birthday occasionally, but it is more commonly used in a wholly unrelated context.

Where the law does not properly account for context, it can be used to silence the dissent of marginalised populations. For example, a potential offence of 'possession of material for dissemination that is likely to incite racial animosity or racist harassment', referenced in the Options Paper, could foreseeably be used to suppress criticism by racial minorities of colonisation or white supremacy. In the past, common law obscenity and classification standards have been used in attempts to silence satirical criticism³ and artistic expression on the basis that the work might trigger violent reactions.⁴ This should be avoided by ensuring that intent to incite discrimination is a mandatory element in any offence.

Policy should address ordinary discrimination and abuse

Criminalising speech is not likely to be an effective way to drive cultural change. We suggest that more attention to ordinary expressions of discrimination and hate is required. Normalised, everyday discrimination perpetuates the norms that foster hate crimes and vilification.⁵ Violence exists on a spectrum, and less blatant harms (e.g. jokes based on racist stereotypes) can escalate into the more widely recognised harms of hate-based physical violence.⁶ Digital platforms and the media play an important role in influencing and entrenching these norms.⁷ In order to combat hate crimes and vilification, it is therefore important that media publishers and digital platforms, in addition to other influential social institutions, adopt strategies to combat discrimination.⁸ Changing norms requires a large-scale social effort to promote tolerance, empathy and equality, not criminal sanctions aimed at individuals.

Please contact [REDACTED] if you would like further information or to discuss any of these findings in more depth.

² *Serious vilification and hate crime: The need for legislative reform*

https://betterlawsforsafegld.com.au/wp-content/uploads/2020/09/SeriousVilificationAndHateCrime_CohesiveCommunitiesCoalition-1.pdf

³ *Brown v Members of the Classification Review Board of the Office of Film & Literature Classification* (1997) 145 ALR 464.

⁴ *Pell v The Council Of The Trustees Of The National Gallery Of Victoria* [1998] 2 Vr 391.

⁵ See, for example, Matamoros-Fernández, A. (2020). 'El Negro de WhatsApp' meme, digital blackface, and racism on social media. *First Monday*, 25(1). <https://doi.org/10.5210/fm.v25i12.10420>; Gillett, R. (2018). Intimate intrusions online: Studying the normalisation of abuse in dating apps. *Women's Studies International Forum*. <https://doi.org/10.1016/j.wsif.2018.04.005>.

⁶ See, in the context of normalised misogyny, Gillett, R. (2018). Intimate intrusions online: Studying the normalisation of abuse in dating apps. *Women's Studies International Forum*. <https://doi.org/10.1016/j.wsif.2018.04.005>.

⁷ Matamoros-Fernández, A. (2017). Platformed racism: The mediation and circulation of an Australian race-based controversy on Twitter, Facebook and YouTube. *Information, Communication & Society*, 20(6), 930–946. <https://doi.org/10.1080/1369118X.2017.1293130>; Suzor, N. P. (2019). *Lawless: The secret rules that govern our digital lives*. Cambridge University Press.

⁸ Suzor, N. P. (2019). *Lawless: The secret rules that govern our digital lives*. Cambridge University Press.