caxton legal centre inc

12 July 2021

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

By email: *lasc@parliament.qld.gov.au*

Dear Colleagues

Submission to Legal Affairs and Safety Committee Inquiry into Serious Vilification and Hate Crimes

Thank you for the opportunity to make this submission to the *Inquiry into Serious Vilification and Hate Crimes* (the **Inquiry**).

Caxton Legal Centre is Queensland's oldest community legal centre. We are an independent, non-profit community organisation providing free legal advice, representation, social work services, information and referrals. Our vision is for a just and inclusive Queensland.

We are aware of increasing instances of vilification in Queensland, and in particular have noticed a distinct rise in client complaints about racial vilification in the context of the COVID-19 pandemic. While many of those instances may not meet the definition of "serious vilification" under section 131A of the AD Act, those clients may also experience barriers in accessing the civil complaint mechanism under section 124A of the AD Act. The unavailability of both sections 131A and 124A of the AD Act to address instances of vilification illustrates a deficiency in the current legislative framework in Queensland.

We support reforms that seek to provide better protections against vilification in our community.

Our work in the area of anti-discrimination and anti-vilification law

Caxton has considerable expertise in anti-discrimination, human rights and anti-vilification law. It has been a key part of our advice and casework program for many years and in recent times we have deliberately grown that aspect of our program to better achieve our core vision of a just and inclusive Queensland. We have a direct referral relationship with the Queensland Human Rights Commission and we reserve staff lawyer time each week to provide advice to clients booked in by that agency in addition to the clients coming to us via other pathways.

To give an overview of the extent of our work involving the AD Act and other related anti-discrimination law, we provide the following summary of our services over the past 5 years:

Financial Year	Number of discrimination advice and representation services provided
2016/2017	242
2017/2018	158

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2018/2019	228
2019/2020	299
2020 to date	426

This data shows a significant increase in the amount of discrimination advice and representation services over the past two years. We are not able to provide a further breakdown of this data which shows the proportion of our advice or representation services which related to instances of vilification. However, our solicitors report that client complaints about instances of vilification have increased (with a noticeable rise in 2020 in the context of the COVID-19 pandemic, along with a rise in other complaints about discrimination). We note that many vilifications matters are dealt with as discrimination complaints if they occur in an area of public life (including at work) because the vilification conduct occurs in connection with other unfavourable treatment, or because there is some other advantage associated with discrimination proceedings.

For confidentiality reasons we are not able to divulge the details of most of those advice and representation services, save for those which have become a matter of public record through court/tribunal proceedings or have been reported in the media. Comments made below about our client work are drawn from the observations of experienced staff lawyers working across our human right, civil law, employment law and generalist programs.

A - The civil complaint system (Anti-Discrimination Act 1991)

A number of Caxton clients have made complaints about vilification on the basis of a protected attribute through either the Australian Human Rights Commission or the Queensland Human Rights Commission with and without our assistance. Those complaints have sometimes resulted in apologies and compensation outcomes at the conciliation stage of the complaint process.

For some clients, proceeding to a Court or Tribunal is an option they consider when there is no resolution at the conciliation stage. We assist in some of these cases, the most notable being the lengthy pursuit of accountability brought by Richelle Menzies and Rhonda Bruce.

Case example - Menzies and Bruce

This case related to conduct engaged in primarily during 2005 by Mr Owen, then a [redacted] and [redacted] which caused deep distress within the LGBTI community of Gympie. The conduct included publishing material that was ultimately found to have "*the capacity to urge or stimulate hatred or serious contempt for homosexuals amongst members of the Gympie community*"[1].

The case is notable mostly because it was so very lengthy. Proceedings commenced in 2006 did not resolve until December 2014 when the matter, having been through the Queensland Civil and Administrative Tribunal (QCAT), the Court of Appeal, and an application for special leave to the High Court of Australia was ultimately finally decided back in QCAT. More than nine years after the conduct occurred a private apology was the main outcome of that successful case.

Because of the complex legal machinations along the way, this case set precedent on a technical constitutional point regarding the structure of QCAT as a decision-making entity. Other than this

[1] Menzies v Owen [2014] QCAT 661 https://www.sclqld.org.au/caselaw/QCAT/2014/661

important point of law, it is generally regarded as a cautionary tale about the limitations of civil litigation in addressing any imminent threat to safety or other risk of harm.

Whilst litigating vilification is an option some clients are keen to pursue; many more clients chose not to pursue legal action for a range of reasons including:

1. The prospect of direct retaliatory action - personal and at other members of the affected group
2. The prospect of adverse, and possibly sustained, media coverage of either them personally or of the affected group
3. Personal financial risks such as adverse legal costs orders
4. Difficulties in securing legal representation
5. Difficulties with the legal system, legal tests and the time taken to reach a resolution

Risk of retaliation

We have noted that for our clients it is generally much easier to take private civil legal action in relation to 'lower level' vilification behaviours (such as racist comments at work) than those that seriously threaten physical safety such as sustained street harassment and online campaigns. If there is a real and imminent risk to physical safety, making a complaint is likely to exacerbate that risk. Many clients, particularly those from easily identifiable minority racial and religious communities are justifiably concerned about their own and their communities' physical safety and will often decline to pursue civil action if they cannot be guaranteed safety through that process.

Problems with the system

Problems with the system – excessive burden on complaining individuals

A complaint-based approach to regulating hate speech and vilification places a significant unmanaged risk onto individual complainants. By its very nature hate speech and serious vilification invite threats to life and safety. The pressure on these individuals is compounded by free legal representation services only being available to low income and vulnerable people meaning that within an affected group, only those least able to withstand the risks of such an action are legally supported to commence one.

There is an existing, underutilised solution to part of this problem. Within the Anti-Discrimination Act it is possible to run vilification complaints as representative actions. In many cases, the representative can be a 'relevant entity' which includes specific community organisations,[2] rather than an individual. One current barrier to this occurring more regularly is resourcing those relevant entities appropriately to act as the representative. The scope and reach of the 'like love' project run by the LGBTI Legal Service[3] in response to vilification occurring during the same-sex marriage plebiscite is integrally tied to the fact that a well-protected and resourced representative (the legal service itself) brought the action rather than relying on a vulnerable individual to be the 'face' of the proceedings.

[2] A **"relevant entity"** under section 134(5) ADA which "*means a body corporate or an unincorporated body, a primary purpose of which is the promotion of the interests or welfare of persons of a particular race, religion, sexuality or gender identity*".

[3] See https://lgbtilegalservice.org.au/2017/like-love-project-reveals-hotbed-hate-speech-throughout-marriage-survey-period/

Without appropriate resourcing it is difficult for other similar relevant entities to actively participate in these matters.

Recommendation 1: The Queensland Government should provide funding to facilitate appropriate relevant entities' access to legal representation including from community legal centres.

Recommendation 2: The Queensland Government should consult with appropriate 'relevant entities' (including ethnic community organisations, Aboriginal and Torres Strait Islander organsations, and religious councils) to ascertain, and address, barriers to engaging in representative actions.

Problems with the system - conciliation conferences

The current system relies heavily on conciliation conferences. Many clients value the conciliation process because it provides them with an opportunity to be heard and may result in a settled outcome. Some people also appreciate the fact that conciliation occurs out of the public eye and thus protects them from targeted backlash. In other matters it is less desirable and although it is currently possible to dispense with a conference in some cases it is rare for that to occur in practice. We have persistent concerns that conciliation is generally unsuitable for some people, including self-represented individuals when there is a heavy imbalance of power or when the respondent party presents a risk to the safety of the complainant. Whilst these cases are not necessarily less likely to resolve at the conciliation stage we are concerned that the outcomes achieved do not always meet the needs, including safety needs, of the vulnerable party. Conciliated outcomes are also unsuitable for meeting the needs of any wider group, as they focus primarily on individual outcomes and in particular on compensation[4].

Conciliation should remain an option for complainants but the ability to seek the referral of matters to a decision-maker at an earlier time should also be more readily available. Where conciliation is elected, it would be highly beneficial for appropriate relevant entities (community groups such as ethnic and religious community organisations and councils) to be invited to attend and speak at conciliation conferences even when they are not a party. If there is no suitable entity, a skilled support person from within the more broadly affected group should be invited to attend and permitted to speak (in addition to the complainant and their legal representative).

Consideration ought to be given to routinely publishing sufficient additional details of conciliated outcomes if the subject matter of the complaint affects a larger group. If other people with the same protected attribute were also adversely affected by the specific incident of vilification, they should have access to information about the complaint and resolution thereof.

Recommendation 3: Conciliation conferences should remain available to complainants. Complainants should be able to invite an appropriate community organisation, religious council or skilled support person to <u>actively</u> participate at a conciliation conference. Outcomes of conciliation conferences should be published by the QHRC with sufficient details.

Problem with the system – investigations and evidence

A further problem with the existing system is that it is sometimes difficult to secure the necessary evidence to tie a particular individual to vilification conduct, especially if it occurs online. Notably in the Menzies and Bruce case mentioned above, our clients were unable to prove that a vehicle was

[4] Allen, Dominique, Behind the Conciliation Doors Settling Discrimination Complaints in Victoria (August 10, 2009). Griffith Law Review, Vol. 18, No. 3, p. 778, 2009

owned by Mr Owen and so the part of their claim relating to offensive stickers on that vehicle failed. In the well-known (Commonwealth) case of *Prior v Wood* [2017] FCA 193 a key aspect of Ms Prior's case failed because it was not possible to identify the real author of a Facebook post when the person named and pictured as having made a comment denied having done so.

It would be highly desirable for investigations into racial vilification and hate speech to occur in some official capacity to ensure collection and preservation of difficult evidence, and for the proper conduct of the matter to benefit all parties. Given the ease with which electronic evidence can be altered and destroyed, investigatory powers should extend to early collection and preservation of relevant electronic evidence. At the present time this is possible only if the QPS take an interest in the matter which, for the reasons set out below, is difficult and will be complex to resolve.

Recommendation 4: Consideration ought to be given to developing a formal process of collaboration and information sharing between the QHRC and the QPS in relation to identification of hate related offences, and investigations into vilification and hate speech.

Problem with the system – conflicting rights

A frequently encountered complication of action to address vilification and hate speech is that there is often a contrary claim to protected free speech or a protected right to engage in political activity. It can be very difficult for anyone including lawyers to identify when a particular distressing comment or activity will be considered vilification on the one hand, or protected political activity on the other. For example, on the one hand the recent case of *Ritson v The Giving Network Pty Ltd* [2021] QCAT 81[5] found that it was unlawful discrimination on the basis of political opinion for a fundraising website to make what the decision-maker described as '*a misplaced attempt to take the moral high ground*' when prematurely closing down a fundraiser in support of Fraser Anning in April 2019 following his now well-known comments in the wake of the Christchurch terrorist event.

On the other, in 2020 in the ACT, which has similar protections against both vilification and discrimination on the basis of political conviction (including engaging in political activities) the decision of *Clinch v Rep (No. 2)* (Discrimination) [2020] ACAT 68 the Tribunal considered comments made by a respondent who "*identifies as a feminist with issues concerning trans activism and an interest in political activity*"[6]. It found that comments about trans women in general and Ms Clinch in particular were 'plainly' vilification.

We have had many clients seek our advice and assistance in recent years who have been concerned about a range of online material including significant volume of worrying (particularly anti-Islamic) content published on the websites of registered political parties and accessed by members of the community in connection with legitimate research around elections. It is important that politicians are able, and indeed encouraged, to disclose extremist views including so that moderate voters are alerted and can choose to vote for someone else. It is also constitutionally challenging to regulate political activities of this nature. This makes navigating the issue very difficult for those people who are made unsafe by those political opinions. Any action brought to address such matters would be considered a test case with complex human rights and constitutional law aspects. These legal

[5] *Ritson v The Giving Network Pty Ltd* [2021] QCAT 81[5]
https://www.queenslandjudgments.com.au/caselaw/qcat/2021/81
[6] *Clinch v Rep (No. 2)* (Discrimination) [2020] ACAT 68
https://www.acat.act.gov.au/__data/assets/pdf_file/0005/1624613/CLINCH-v-REP-No.-2-Discrimination-2020-ACAT-68.pdf

features are highly prohibitive for individuals considering legal action in Queensland regardless of the harm they experience as a result of the vilification.

The new *Human Rights Act 2019* (Qld) may aid in future Queensland cases where there is a conflict of rights including by offering decision-makers guidance around interpretation of other law consistent with human rights principals, and navigating limitations on rights when necessary to protect the rights of another. This is yet to be tested at this time.

Recommendation 5: The QHRC should produce comprehensive information guides about safely navigating conflicting rights. There should be a community education campaign designed to build human rights literacy around proportionality, nuance and balance. If the QHRC lacks any necessary authority or resources to undertake such work, this should be remedied.

Recommendation 6: The Queensland Government should provide increased resourcing for legal services to provide support to individuals and community groups affected by vilification in such circumstances.

Adverse media coverage

Those experiencing vilification and hate speech are generally aware that making a complaint or otherwise publicly exposing their distress may result in sustained adverse (traditional) media attention on either them individually or the group they belong to. This is particularly acute for people from diverse racial and religious backgrounds.

The coverage of the offensive racist conduct case brought by Cindy Prior in 2016 resulted in a wave of racist hatred directed at her and other Aboriginal people. The ABC reported that: *her lawyer Susan Moriarty said the irony of the case was that the racist backlash against Ms Prior was far worse than the initial Facebook comments that prompted her discrimination claim.*[7]

Coverage throughout the covid-19 pandemic has reinforced concerns about traditional media, most notably the now notorious July 2020 '*Enemies of the State*' Courier Mail front page headline accompanying a story about three young women of various African backgrounds who returned to Queensland and moved around in the community whilst ill with covid-19. Unlike prior cases, including those originating in Aspen and spreading in Noosa and those coming from cruise ship passengers, the young women in this case were identified by name and their photos were used in the article. A large number of media outlets followed the Courier Mail in making similar reports. The reporting of these cases has been described as "*an invitation to vigilantism.*"[8] In the aftermath of this reporting, Caxton gave advice to numerous distressed and fearful individuals, families and groups worried for their personal safety as a result of the community anger towards minority communities sparked by the media reporting. Many had experienced direct vilification and threats of violence on the basis of their race.

One posited reason for the persistent shortcomings in reporting of diversity, race, religion etc within mainstream media is the lack of diversity within the industry itself[9]. A range of recommendations

[7] https://www.abc.net.au/news/2019-03-30/cindy-prior-rape-threats-and-hate-mail-followed-court-case/10954822

[8] https://theconversation.com/naming-and-shaming-two-young-women-shows-the-only-enemies-of-the-state-are-the-media-143685

[9] Media Diversity Australia report: *Who Gets To Tell Australian Stories: Putting the spotlight on cultural and linguistic diversity in television news and current affairs* 2019 https://www.mediadiversityaustralia.org/research/

have been made organisations including Media Diversity Australia to rectify this, some of which can be implemented by a state government.

Recommendation 7: The Queensland Government should advocate for a national uniform regulatory standard for media reporting of race, religion and other protected attributes which offers specific guidance about how to safely balance public interest considerations when there is risk of incitement, vigilantism or broader public harm arising from a publication.

Recommendation 8: The Queensland Government should actively support diversity in mainstream media including by:

a) **considering scholarships, subsidies and other positive special measures to encourage relevant employers to hire, retain and promote diverse candidates;**
b) **imposing diversity monitoring and reporting mechanisms for media outlets active in Queensland;**
c) **developing an equitable access policy that would prioritise working with journalists from diverse backgrounds for appropriate media engagements.**

B - The civil complaint system (*Peace and Good Behaviour Order Act* 1982)

The Peace and Good Behaviour Order (PAGBO) system is designed to respond to, and restrain, acts or threats of violence or property damage in the community. Some people who have experienced hate and hostility on the basis of an attribute apply for a PAGBO to protect them from further harm but it is not necessarily a good fit when dealing with vilification and hate speech. The PAGBO regime requires specific rather than general threats before it can be engaged. Sometimes the conduct that most frightens our clients is not a threat to cause a particular specified harm. It might instead be sending derogatory messages online, following people and parking outside their house, posting comments on Facebook etc. In our practice we particularly see a large number of older people living in fear of hostile neighbours, and who are not protected by either the vilification/discrimination laws (age is not currently an attribute in the vilification regime, age discrimination is only unlawful in specified areas of public life) or the PAGBO regime because no specific threats have been made to assault or cause property damage.

In a PAGBO application, unlike other safety matters such as Domestic and Family Violence Orders, the unsuccessful party is ordinarily ordered to pay the legal costs of the successful other party. Costs risk is a major deterrent to bringing an application.

A further problem with the PAGBO regime is that it is sometimes very unclear what happens in the case of a breach. While some QPS officers will intervene, many of our clients inform us that there is limited interest in prosecuting breaches of PAGBOs. They tend to operate as little more than a deterrent which can be helpful in cases of low-level threat, but inadequate in any serious case.

It would be possible to amend the PAGBO regime to respond better to threats arising from hate speech and vilification.

Recommendation 9: The Queensland Government should improve the capacity of the PAGBO regime to respond to hate speech and vilification including by:

a. **Expanding the range of conduct that triggers a right to seek a PAGBO to specifically include hate speech, vilification and other harmful behaviours in a community setting;**
b. **Creating specialist lists within the Magistrates Courts to manage PAGBO applications (similar to those dealing with domestic violence protection orders);**

c. **Introducing a provision whereby the parties ordinarily bear their own costs;**
d. **Resourcing and educating QPS Officers to act in relation to breaches of PAGBOs;**
e. **Resourcing legal services to represent people bringing an application for a PAGBO;**

C - Criminal complaints and prosecutions

We are not aware of any occasions on which clients of Caxton Legal Centre who have described vilification/hate speech to us have received assistance in relation to that from the QPS. In some cases, clients have tried to communicate with the QPS about matters which may be vilification but no action is taken. In most cases however our clients do not seek the assistance of the QPS with matters relating to vilification and hate speech. There are a range of reasons for this including:

1. prior policing failures causing distrust;
2. a perception that the QPS support or identify with the perpetrators and are unlikely to help;
3. the adequacy of the offence provision to deal with the matter; and
4. a lack of knowledge that such conduct is a criminal matter.

Perceptions of QPS as tolerant of vilification

There are persistent community concerns about attitudes within the QPS towards minority demographic groups. The landmark case *Wotton v State of Queensland* (No 5) [2016] FCA 1457 found as much in relation to the policing of certain Aboriginal and Torres Strait Islander communities. There has also been recent traditional and social media coverage of individual officers within the QPS engaging in behaviours that are understood to support dangerous ideology including wearing of certain patches[10], and using white supremist hand gestures[11].

We have additional specific concerns about the role of the official QPS Facebook page which has over 1 million followers. It publishes and sometimes engages with unregulated comments from community members, many of which comment unfavourably on protected attributes[12]. Themes over time include that some racial groups (notably Aboriginal people) are criminal by nature, deserve more punishment and are let off lightly by the justice system; that violence is an appropriate response when children commit offences or if they are out at night; and that people with disabilities are funny and/or manipulative (especially when there is a strong visual such as in cases of hoarding).

[10] Eg, https://www.sbs.com.au/nitv/article/2020/09/14/police-officer-photographed-wearing-extremist-flag-patch-brisbane-death-custody

[11] Eg, https://www.facebook.com/ActionReadyQld/posts/530059631688173

[12] For example, in the two weeks to 4 July 2021 the QPS Facebook page retains these comments (among many similar – all errors from the original):

- On 1 July 2021 the top comment on a post of a robbery was '*he is probably getting disability payments so that is why he kept limping to make sure he didn't loose his pension';*
- Also 1 July 2021 a popular comment (over 100 'likes') in relation to the charging of two teenagers with arson offences was '*knee cap them when they are limping around for the rest of there life and sore knees they might stop and relies respect to other people property*';
- On 27 July comments about a child who was stabbed included '*big boy games, big boy prizes'* and '*well that'll teach him'*. Commenters on this post displayed 'thin blue line' profile pictures including some endorsing the violence against this victim;
- On 24 July 2021 in relation to a child in Townsville charged with a property offence '*he will be out in 12 hours as he has Aboriginal in him. The system is a joke'* and *'let the police dogs get some full on chewing, as a bit of a deterrent for the lads. If that doesn't help, feed m lead'*.

Caxton has advised and assisted a number of individuals and groups distressed by comments made by members of the public and amplified by reputable government agencies with significant social media reach including the QPS. Thus far the success Dylan Voller has had in his long-running defamation case against various media outlets relating to 'comments' does not appear to have had any material impact on most businesses and government agencies in Queensland.[13] Perhaps the pending High Court of Australia decision[14] might remedy that. Regardless of the outcome in that matter, there is no reasonable justification for reputable government agencies to allow their various platforms to be used for hate speech and vilification.

Recommendation 10: The QHRC, possibly in collaboration with other relevant commissions, should produce clear best practice social media guidance for Queensland businesses and government departments including clarification around responsibility for comments made on social media posts.

We note there may be further or different recommendations necessary when the High Court hands down its decision in the Voller matter.

A lack of visible action on vilification

In addition to amplifying such voices on its own social media, we are not aware of any action taken by QPS at any time to address dangerous campaigns in the online space. Most notably, there is no apparent effort being made to manage social media mobilisation campaigns such as the one currently being run in Townsville, even though vigilante behaviour in that city allegedly resulted in at least one death[15], and may have contributed to several others[16] in 2020.

That campaign, and the Facebook communities that support it, is ostensibly about property crime. However, the language used is often racial and directed toward Aboriginal children. Whilst charges have been reportedly laid against individual vigilantes[17], there is no obvious effort to address the racial elements underpinning and inciting the individual acts of violence. Conversely, QPS rhetoric around the vigilante behaviour, as reported in one instance, is empathetic: in 2020 Townsville Superintendent Assistant District Officer Glen Pointing described the apparent vigilante car chase which caused the death of a bystander as "*oftentimes while people may have good intentions, it results in unintended consequences"*[18]*.*

13Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller [2020] NSWCA 102 (1 June 2020)

Useful summary of the NSW Court of Appeal decision see https://theconversation.com/media-companies-can-now-be-held-responsible-for-your-dodgy-comments-on-social-media-139775

[14] High Court of Australia summary of Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller https://www.hcourt.gov.au/cases/case_s236-2020

[15] https://www.brisbanetimes.com.au/national/queensland/alleged-vigilante-facing-murder-charge-over-the-death-of-jennifer-board-20210208-p570ks.html

[16] https://www.townsvillebulletin.com.au/news/townsville/audio-from-fatal-crash-that-killed-four-teenagers/video/b6087dff542eff500675d8285921702c

[17] Eg https://www.abc.net.au/news/2020-11-15/townsville-man-charged-over-alleged-pursuit-of-stolen-car/12885546 and https://www.brisbanetimes.com.au/national/queensland/alleged-vigilante-facing-murder-charge-over-the-death-of-jennifer-board-20210208-p570ks.html

[18] As quoted in https://www.brisbanetimes.com.au/national/queensland/alleged-vigilante-facing-murder-charge-over-the-death-of-jennifer-board-20210208-p570ks.html among others

Recommendation 11: The Queensland Government should consider a range of measures to build the capacity of the QPS to respond to the needs of vulnerable communities and individuals experiencing racial vilification and hate including:

a) **Strengthen the regime for investigation of police complaints, either via an independent agency to investigate police complaints or within the existing framework, with a particular mandate to investigate and act to address behaviours that indicate support for dangerous ideology within the QPS;**
b) **Improved diversity within the QPS workforce by targeted recruitment and support for officers from diverse backgrounds;**
c) **Visible action to address serious incidents of hate speech including condemnation and charging of those involved in inciting and supporting vigilante behaviours; and**
d) **A program of cultural change within the QPS including extensive cultural competency training for officers designed to facilitate appropriate engagement with and understanding of vulnerable communities and individuals.**

Appropriateness of the existing offence provision to respond to serious vilification

Few people, including probably many QPS Officers, are aware of the offence provision within the anti-vilification regime. The QPS submission to this inquiry confirms its use is rare and points to the summary offence of public nuisance, among others, as more readily engaged. Anecdotally we also understand that the federal telecommunications offences may be engaged in cases of vilification. Specifically, the offence of 'using a carriage service to menace, harass or cause offence' (s414.17 Criminal Code (Cth)) does a lot of heavy lifting in a wide range of situations in which violence is threatened.

A similar situation exists in New Zealand which is also currently grappling with the shortcomings of its anti-vilification regime[19]. It began the complex process of review in the wake of the 2019 terror attack in Christchurch. One current proposal in that jurisdiction is to transfer the offence provision from the human rights legislation to the criminal law and to increase the maximum penalty from three months to three years imprisonment.[20] New South Wales took a similar approach in 2018, moving its standalone offence to the criminal law and increasing the penalty to three years. We note that the current offence in s131A Anti-Discrimination Act (Qld) carries a maximum penalty of up to six months whereas the more frequently used Commonwealth offence of 'using a carriage service to menace, harass or cause offence' has a maximum penalty of three years imprisonment.

We are generally reluctant to recommend increased penalties in the absence of strong evidence-based justification for doing so. In our view further investigation is needed to determine the correct penalty settings for offences of vilification in Queensland. Given the infrequency with which they are currently engaged this might be quite challenging. It may be preferable to consider whether relevant categories of hatred and vilification should be considered aggravating features of a range of existing other offences (including assault, sexual assault and various public order offences).

[19] Human Rights Commission Te Kāhui Tika Tangata report: *Korero Whakamauahara Hate Speech: An Overview of the Current Legal Framework*, 2019 https://www.hrc.co.nz/files/2915/7653/6167/Korero_Whakamauahara-_Hate_Speech_FINAL_13.12.2019.pdf

[20] Other recommendations include changing/modernising definitions, and a range of other legal and social reforms. For a summary of the legal changes currently proposed see: https://theconversation.com/nzs-hate-speech-proposals-need-more-detail-and-wider-debate-before-they-become-law-159320

Recommendation 12: The Queensland Government should improve the usefulness of the offence regime including:

a) **moving the offence in s131A ADA to the criminal law;**
b) **considering whether hate speech or vilification should be an aggravating feature relevant to a range of offences, and whether the penalty for the standalone offence requires revision;**
c) **removing the unnecessary fetters on the use of the standalone offence, including the requirement to obtain permission from the Attorney General or DPP and the shortened time limit under s226 ADA; and**
d) **expanding the provision to prohibit vilification on the basis of other specific attributes notably age, disability and gender.**

This submission was prepared by Bridget Burton, Director Human and Rights and Civil Law Practice. Bridget gratefully acknowledges Brittany Smeed, Cybele Koning and Yatarla Clarke for their contributions. We would welcome the opportunity to provide any additional comments or feedback as the Inquiry progresses; please contact us on [redacted]. Thank you for the opportunity to make this submission.

Yours faithfully
Caxton Legal Centre

Cybele Koning
Chief Executive Officer