

Inquiry into Serious Vilification and Hate Crimes

12 June 2021

Submission to the Legal Affairs
and Safety Committee
Queensland Legislative
Assembly

Prepared by
Rita Jabri Markwell and
Maryam Hashimi
advocacy@aman.net.au



AUSTRALIAN MUSLIM ADVOCACY NETWORK



Islamic Council of
QUEENSLAND

Introduction

Thank you for this opportunity to respond to this Parliamentary Inquiry and offer analysis and practical responses for our State of Queensland.

The Australian Muslim Advocacy Network (AMAN) is a national policy development and advocacy body dedicated to securing Australian Muslims' physical and psychological welfare. Our objective is to create conditions for the safe exercise of our faith and preservation of faith-based identity, both of which are under persistent pressure from vilification and discrimination. We remain very concerned about the exportation of RWE rhetoric from the UK, Europe, Canada, and USA to Australia through disinformation and conspiracy theory campaigns on social media platforms and its potentially devastating impacts on Australia's democracy, social cohesion and national security. AMAN tests laws and legal processes, coordinates law reform submissions, research, as well as using media and parliamentary processes. It has engaged directly with Facebook, Twitter and the Global Internet Forum to Counter Terrorism. It is also a member of the Christchurch Call Advisory Network. It works very closely with the two bodies listed below.

The Islamic Council of Queensland (ICQ) is the peak umbrella body representing the interests of the estimated 50,000 Muslims residing in this State. ICQ represents numerous organisations and mosques across approximately ten Queensland cities, which stretch from Brisbane and the Gold Coast to Cairns in North Queensland. ICQ provides major services to Queensland's broader community, including but not limited to, media and advocacy, promoting cultural cohesion between communities, promoting inter-cultural dialogue, burial services, welfare services, youth development, organising workshops/events and conducting fundraising events for the needy.

The Islamophobia Register Australia (IRA) is a national online register that captures incident reports from victims and witnesses concerning online and offline hate directed at Australian Muslims. It is a community-based and operated third-party reporting mechanism. It refers matters to police with victim permission, and is starting to offer victim support in NSW after receiving funding from the NSW Government. Culturally appropriate victim support includes an advocacy worker who understands Islamophobia and can connect the victim with allied health (psychology) and legal aid and support them to complain to police and, if applicable, anti-discrimination bodies. The Islamophobia Register Australia has been operating for more than five years to collect hate incident data by working in partnership with Charles Sturt University. They have published two national reports with a highly developed methodology for analysing patterns and trends in hate online and offline. These reports have garnered international attention.

There is no funding to support victims of hate incidents from Queensland. IRA refers Queensland-based complaints to AMAN volunteers who also lean on ICQ volunteers. The support provided is very minimal. AMAN and ICQ are not equipped for this work and tend to refer to World Wellness Group for allied health and sometimes Caxton Legal Service. It sometimes refers to police where permission is provided in the original report, but cannot properly follow up with police due to resourcing constraints. Advocacy support needs boosting and much better coordination for culturally and linguistically (CALD) communities.

AMAN and ICQ are members of the Cohesive Communities Coalition. The Cohesive Communities Coalition includes 22 organisations representing or supporting CALD communities and faith communities. A working group of legal professionals and community advocates prepared the first Options Paper, which has formed part of the Terms of Reference to this Inquiry. Rita Jabri Markwell, one of the authors of this submission, is one of the current Co-Chairs of the Cohesive Communities Coalition and one of the original authors of that Options Paper.

Community expertise helps to define not only the problems but also effectively develop the solutions. Since this Inquiry was announced, the Legal Working Group of the Cohesive Communities Coalition analysed and developed recommendations drawing from a significant body of collective knowledge and experience. This included detailed discussions with operational police and police prosecutors at the Queensland Police Service, which was led by Rita Jabri Markwell. Most of the recommendations below emerged from the discussions of that Working Group. Members included: Rita Jabri-Markwell, Kate Greenwood, Professor Katharine Gelber, Mokhtiar Singh, Jason Steinberg, Christine Castley, Kamaljit Kaur Athwal, Ali Kadri, Akashika Mohla. This submission includes further insights and recommendations developed since that process.

Summary of Recommendations (28)

1. Use the principles of legal effectiveness outlined in our paper as a framework to measure the effectiveness of law reform in the area of hate crime and vilification.
2. Introduce a statutory aggravation regarding hate/bias into the Criminal Code Act 1899 (QLD) and Summary Offences Act 2005 (QLD) to apply to criminal conduct.
3. Adopt a harm-based test for determining this hate/bias aggravation that does not rely on establishing the perpetrator's state of mind. We have recommended a statutory hate/bias aggravation to apply where the criminal conduct:
 - a. expresses hate; incites hatred, serious contempt, or severe ridicule, or directly discriminates against a group identified based on a protected characteristic; and
 - b. is reasonably likely to cause a person from a group, identified on the basis of that protected attribute, to have a reasonable fear for their safety or security of property.

Both parts consider the conduct and its effects on the victim and victim group, acknowledging the corrosive impact of hate crime on social worth, equality, belonging, inclusion, participation and cohesion.

4. Specify penalties for this form of aggravated criminal conduct in the Criminal Code regarding each base offence, including public nuisance, Wilful Damage (property), Threatening violence, Stalking, Armed to cause fear, Assault and Grievous Bodily Harm, Deprivation of liberty.
5. Include a general provision regarding aggravation in the Criminal Code to allow for judicial discretion where police have not identified the aggravation, but a judge considers it appropriate.

6. Mandate police to mark it as a hate crime on the first charge sheet where the aggravation is present.
7. Specify in the Criminal Code that when a crime is done for hate and another reason, it should still be considered a hate crime (per the UK legislation).
8. Continue to allow judges to consider sentencing considerations regarding circumstances of the offender or offending but that the crime still is labelled as a hate crime if it fulfils the aggravation threshold, providing that essential recognition to the community.
9. Expand the attributes protected by the Anti-Discrimination Act 1991 (Qld) to include ethnicity, national origin, disability and gender, acknowledging that vulnerabilities exist across these domains and can be difficult to separate in a hate crime.
10. Increase section 131A's penalty to 3 years and financial element, remove the Crown Law officer approval requirement, move it from the Anti-Discrimination Act to the Criminal Code to heighten its visibility, and revisit its effectiveness in a few years.
11. Introduce a new standalone criminal offence for publishing or distributing material online that stirs up, maintains or normalises hatred, with regard to the New Zealand Government's proposal, and also compares existing legislation in the United Kingdom and Western Australia. We recommend that the Committee consider how this legislation could be focused on actors engaged in the most dangerous forms of hate. One option may be to expand the scope of section 131A slightly to insert after (1)(b): (c) 'or causing them to have reasonable fear for their safety or security of property'.
12. Consider the need for a statutory defence to such a new criminal offence to provide explicit protection for legitimate free speech, in line with the exceptions provided to section 124A of the Anti-Discrimination Act.
13. Amend the "Dictionary" Schedule to the current Criminal Code to define key terms, particularly relating to changes in law.
14. Focus on victim support, reporting, data collection and publication. Coordinate with community organisations already supporting victims and collecting data to ensure consistency. Publish prevalence data to encourage community awareness and more reporting. We also recommend this data be shared with researchers to enable useful analysis.
15. Consider non-criminal options for enhancing enforcement of existing incitement to hatred laws, such as giving the Queensland Human Rights Commission additional powers to issue notices to platforms, investigate complaints and issue fines, or bring actions on behalf of targeted communities before QCAT.
16. Confer power to QHRC to automatically alert the relevant digital platform once the complaint is accepted concerning content on their platform. If the complaint is later upheld and the platform did not remove the content initially, this could
 - Contribute to evidence used by the e-Safety Commissioner to issue penalties to the digital platform.
 - Result in the platform having to pay a QCAT costs order.
17. Consider whether any criminal or civil standard includes a corporate liability component for platforms that recklessly allow the material to remain online.

18. Introduce a new species of Order, created along the same lines as a Peace and Good Behaviour Order or Domestic Violence Order, to address behaviour that falls short of criminal offences, but which if repeated, a breach of the order of the court is penalised. We propose that such an order could protect

- A previously targeted individual or group
- Culturally or religiously significant place (eg, place of worship)

19. Develop a restorative justice strategy concerning hate crimes in consultation with affected communities.

20. Invest in diversion options, and community justice conferencing options for hate crime offenders and encourage academic partnerships that evaluate these initiatives to allow for improvement over time.

21. Legislate a hate crime scrutiny panel involving police and community advocates as an ongoing mutual education process to guide improvements in practice and increase communication on high-impact cases.

22. Screen new police for connection to far right movements or racial/cultural superiority ideology as is being done overseas.

23. Introduce religious diversity and cultural diversity awareness into training for new police officers, including meeting with members of the Muslim community and other CALD communities to dismantle biases.

24. Support specialist advocacy services or a legal clinic dedicated to hate crime, human rights, discrimination and vilification for CALD clients of limited socio-economic means. Additionally, private lawyer expertise in this field should be identified to make it easier for community members to seek advice.

25. Encourage preventative education within our schools and local areas, that explains the psychological, neurological, social, and economic impacts of racism, vilification and discrimination.

26. Invest in a trial of pre-emptive education for youth against threat construction of 'out-groups' carried out by right wing extremist networks. The demonisation and dehumanisation of Muslims as part of great replacement theories should be specifically targeted given its mainstream presence online.

27. Invest in bystander education to encourage community witnesses of hate crime to support victims at the time while maintaining their safety – thereby reducing the impacts of the incident on the victim and reinforcing to perpetrators that it is not acceptable behaviour.

28. Explore a pilot of local government-run community dialogues based on those conducted by Victoria University to address underlying prejudice in physical real world environments (different to religious or cultural diversity training).

Terms of Reference for the Inquiry

On 21 April 2021 the Legislative Assembly agreed:

That the Legal Affairs and Safety Committee inquire into and report to the Legislative Assembly on:

- i. the nature and extent of hate crimes and serious vilification in Queensland and whether there is evidence of increasing instances of serious vilification in Queensland
- ii. the effectiveness of section 131A of the Anti-Discrimination Act 1991 (the Act) and other existing Queensland laws responding to hate crimes.

That the Committee consider:

- i. the Options Paper: Serious vilification and hate crime: The need for legislative reform
- ii. the interaction of Queensland and Commonwealth legislation in relation to online vilification
- iii. the effectiveness of activities and programs of the Queensland Government (including the Queensland Police Service and Office of the Director of Public Prosecutions) and the Commonwealth Government responding to hate crime, including record-keeping practices
- iv. the Human Rights Act 2019 (HR Act) and any rights which are engaged by the current law and any proposals for reform, including a human rights analysis under section 13 of the HR Act for any recommended legislative amendments, as well as constitutional limitations
- v. the current legal framework and relevant reports, reviews and inquires in other Australian and international jurisdictions
- vi. the appropriateness of the conciliation-based anti-discrimination framework (s 124A of the Act).

That the committee report to the Legislative Assembly by 31 January 2022.

Structure of this submission

This submission begins with background on the Muslim community. It explains the phenomena of Islamophobia and anti-Muslim hatred, before dealing with issues one by one. It explores issues that happen in the physical world first before moving to the online sphere. The terms of reference are responded to in the course of the submission.

The Australian Muslim Community

The 2016 Census indicated that Islam is Australia's second-largest organised religion, following Christianity. With 50% of National Survey¹ respondents indicating they

¹ Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) (AHRC Report). In addition to the AHRC's nationwide in-person consultations, it conducted an online survey of 1,017 Australian Muslims, and responses were received from every state and territory, and from metropolitan and

frequently pray at work, school, or university, and 60% of participants indicating they wore an item of clothing to express their religion or cultural identity, such as hijab, topi, burqa or niqab.²

The Census also found that Islam is the second-fastest growing religion in Australia, after Hinduism. Muslims have made immense contributions to Australian society. For example, compared to the total population, data from the 2016 Census revealed that Australian Muslims had obtained a higher level of education. Not only are we more likely to be in full-time education, but Muslim men are more likely to hold a bachelor or postgraduate degree.³ Further, the age of the Australian Muslim population (82% under 45 years of age) highlights the significant economic contribution that Australian Muslims make to the economy as active participants in the Australian labour force. There is also evidence that Muslims contribute to metropolitan areas, but those who live in rural or remote communities make significant economic contributions.⁴

While Australian Muslims have greater level of education, we have lower employment rates in comparison to other Australians. According to the 2016 Census, the employment rate for Australian Muslims was only 32.5% in comparison to 45.7% for all Australians. Also, Australian Muslims are lesser represented in managerial and leadership positions and are found to be overrepresented in other occupational roles, which are generally associated with lower socio-economic status. This means the economic return for Australian Muslims' level of education is significantly less, with many receiving a lower weekly wage than non-Muslim members of the Australian community.⁵

Systemic discrimination was identified as a key barrier to seeking employment. A study by the Australian National University found that job seekers in Australia with Middle Eastern names need to submit 64% more applications to be granted the same opportunities as an applicant with an Anglo-sounding name. These findings were reflected in the AHRC's community consultations.

Islamophobia

There are different definitions of Islamophobia. For example, the Australian Islamophobia report⁶ adopts the definition that refined the scope of Islamophobia to instances such as the perpetration of verbal and physical abuse together with denigration of Muslim identity. The working definition of Islamophobia by the All-Party Parliamentary Group (APPG) on British Muslims states Islamophobia' is rooted in racism and is a type of racism that targets expression of Muslimness or perceived Muslimness'. Although not formalised into law, this APPG working definition,

regional locations. In addition to quantitative survey questions, respondents were able to include their personal experiences. The National Survey was completed in December 2019.

² All forms of Islamic religious dress.

³ Ibid 24.

⁴ Ibid 25.

⁵ Ibid.

⁶ Iner, Derya, ed. Islamophobia in Australia Report II (2017-2018). Sydney: Charles Sturt University and ISRA, 2019 (Islamophobia Report II).

formulated after numerous consultations in the UK, has received widespread support and adoption from the Muslim community in the UK and overseas since its proposal.⁷

Commonly it is argued that it is not irrational to fear Islam or Muslims because of overseas terror groups, 'home-grown terrorism', and their belief in the stereotype that Islamic religiosity leads to barbarism and violence. However, this logic relies on *guilt attribution* (blaming the crimes of a few on the whole group), *dehumanising* conceptions (that Muslims are mechanically inhuman or subhuman), and *threat construction* (portraying Muslims as an existential threat) – all features of dangerous speech that have been found historically to escalate the risk of atrocities against minorities.⁸ Sadly these techniques have been openly used in the opinion pages of mainstream newspapers over many years.

In 2020, the Scanlon Foundation's Mapping Social Cohesion Survey⁹ asked respondents about their attitude to six faiths. The highest proportion of survey respondents indicated a negative view towards Muslims, at 37%. Comparatively, a negative attitude towards other faiths ranged from 5% - 13%.

While Islamophobia does operate as a form of racism, "this expression of hostility towards 'Islam', rather than 'Muslims' or any particular ethnic group, it is shown, is employed by activists to support claims that the movement is 'not racist'"¹⁰. However, this ignores that racism can be built on cultural (rather than biological) conceptions of racial superiority.

The impacts of Islamophobia on victims

Muslims are often faced with denigration of their identity, discrimination, and vilification in their daily lives. The abuse can take place in a verbal and physical form and occurs in various settings such as in public places, the workplace, educational institutions, and the online world.¹¹

The Islamophobia Register revealed the response of victims to all types of physical cases was worry (29%). While the most common victim age group (30-39) expressed worry, the younger second-most common victim age group (20-29) conveyed feelings of being scared.¹² Harassment can also provoke physical reactions like crying and shaking and longer-term impacts like unforgettable painful memories (PTSD), changing daily routines and even removing religious garments such as headscarves.

Community studies have documented social withdrawal from public life, including public-facing work, recreation, transport.¹³ This extends to civic and media

⁷ AHRC Report (n 2) 15.

⁸ Jonathan Leader Maynard and Susan Benesch, 'Dangerous Speech and Dangerous Ideology: An Integrated Model for Monitoring and Prevention' (2016) 9(3) *Genocide Studies and Prevention: An International Journal* 70.

⁹ The 2019 Mapping Social Cohesion Report highlights findings of the Scanlon Foundation's twelfth national survey since 2007 exploring Australians' attitudes on social cohesion issues including discrimination, trust in government, and sense of belonging.

¹⁰ Hilary Pilkington (2016) *Loud and Proud: Passion and Politics in the English Defence League*, 125.

¹¹ Islamophobia Report II (n 6) 11.

¹² Ibid 9.

¹³ April Kailahi, Semisi Kailahi and Tatjana Bosevska, 'Resilient Women's Project: Muslim Women and their experiences of Prejudice' (Melbourne: Uniting Church in Australia, 2019); Asha Bedar, Nesreen Bottriell, Shahram

engagement, with high figure women in hijab being subjected to relentless trolling, negative media, and threats to their personal and family lives. The harrowing experiences of Yassmin Abdel-Magied and Mariam Veiszadeh were scarring not only for these women, but also for Muslim women generally, who felt 'warned' about what would happen to them if they dared to establish a high profile and speak out against racism.

The New Zealand Christchurch terrorist attack remains central to the anxiety of many Australian Muslims. Following this act of terrorism, Holland Park Mosque in Brisbane was vandalised with symbols used by right-wing extremist groups, spray-painted alongside the name of the perpetrator of the Christchurch attacks.¹⁴ The Australian Human Rights Commission noted a number of the participants describing the emotional and mental toll of the Christchurch attack, highlighting the long-term effects.

Anti-Muslim hatred

'Anti-Muslim hatred' more precisely refers to the deliberate project of inciting hatred against Muslims, which our research shows, is frequently conducted through disinformation campaigns and socialising of conspiracy theory. This is a concerted, and active project that benefits from the fertile ground provided by mainstreamed Islamophobia. Canadian,¹⁵ Australian,¹⁶ US,¹⁷ and UK¹⁸ research has found Muslims to be a favoured 'out-group' around which radical right-wing discourse coalesces. A high degree of volatility in moving towards violence has been observed in the far right milieu¹⁹, with slippage between offline 'anti-Islamisation' events and online white supremacy also recorded in Australia.²⁰

'Anti-Muslim hatred' can also more precisely describe the responses generated within online communities to dehumanising anti-Muslim information campaigns²¹. That hatred from social media users includes

Akbarzadeh, 'Supporting Muslim Families and Children in Dealing with Islamophobia' (Melbourne: Australian Muslim Women's Centre for Human Rights & Alfred Deakin Institute, Deakin University, 2020).

¹⁴ Leader, 'Dangerous Speech and Dangerous Ideology' (n8) 18.

¹⁵ Jacob Davey, Mackenzie Hart and Cécile Guerin, 'An Online Environmental Scan of Right-Wing Extremism in Canada: An Interim Report' (Institute of Strategic Dialogue, June 2020). Anti-Muslim and anti-Trudeau rhetoric are the most salient topics of conversation among RWE actors in Canada. On Twitter we found that highly prolific extremist users were more likely to be engaged in anti-Muslim conversation, and spikes in activity often contained anti-Muslim conversation. Similarly, on Facebook we found that Muslims were the most widely discussed minority community, and the most common target of posts containing explicit hate speech (23%), with anti-Semitism being the second largest grouping of hate speech (16%).

¹⁶ Mario Peucker, Debra Smith and Muhammad Iqbal, 'Mapping Networks and Narratives of Far-Right Movements in Victoria' (Project Report, Institute for Sustainable Industries and Liveable Cities, Victoria University, November 2018), 7. A recent study found anti-Muslim narratives to be the second most popular topic of far right groups in the first half of 2020, second to Black Lives Matter: Cecile Guerin, Jacob Davey, Dr Mario Peucker and Thomas J. Fisher, 'The Interplay between Australia's political fringes on the Right and Left – Online Messaging on Facebook', (Center for Resilient and Inclusive societies, November 2020).

¹⁷ The Institute for Strategic Dialogue conducted weekly analysis of online hate communities in the lead up to US 2020 election called 'Lens on Hate'. From these records, they frequently identified anti-Muslim communities to be the top five most active hate communities.

¹⁸ William Allchorn and Andres Dafnos, 'Far Right Mobilisations in Great Britain: 2009-2019' (Center for the Analysis of the Radical Right, October 2020).

¹⁹ Mario Peucker, "Should we stop referring to some extremists as right-wing?", *ABC Religion and Ethics*, 20 October 2020.

²⁰ Peucker et al (n 16) 11.

²¹ Far right blogs presenting as pseudo-news sites publish stories about heinous crimes committed by people who are purportedly Muslim, tying it to a narrative that dehumanises all Muslims as a subhuman, hostile, and deceptive mass that is trying to conquer the West and subvert its values. These URLs are amplified by social

- a. expressions of disgust towards Muslims,
- b. iteration of extreme right narratives about Muslims (demographic invasion and replacement),
- c. expressions of wanting to expunge Muslims,
- d. expressions or wanting to kill or see Muslims dead,
- e. as well as fantasies of violence or genocide against entire Muslim populations.²²

The impacts of Anti-Muslim hatred

Increasingly, researchers are analysing the ecosystems that socialise individuals towards extremist violence. Researchers from Macquarie and Victoria Universities have published the first study mapping the online activity of right-wing extremists (RWE) in New South Wales. Like that study, we define right wing extremism as:

communities and individuals committed to an extreme social, political, or ideological position that is pro-white identity (the 'in-group'), and actively suspicious of non-white others (the 'outgroup'). It is characterised by individuals, groups, and ideologies that reject the principles of democracy for all and demand a commitment to dehumanising and/or hostile actions against out-groups (Department of Security Studies and Criminology, 2020,1).

Recent international research has shown that anti-Muslim populist movements have been the predominant force behind the growth of Australia's right wing extremism problem.²³ Anti-Islam conspiracy theory has been used to justify terrorist attacks long before the Christchurch massacre: for example, the 2011 Oslo attack where 77 people were murdered.²⁴

The Australian Muslim community was deeply shaken by the publicised assault of a 38-week pregnant lady in hijab, while sitting in a café with friends. The vandalism of the Holland Park Mosque, glorifying and worshipping the Christchurch terrorist, sent resounding shockwaves. Like the recent car attack that killed an entire family as they were on their evening walk in Canada, international hate crimes are also felt very deeply in Queensland. Those people were targeted because of their religious identity.

media and seemingly circumvent platform moderation. Routinely, it is claimed by these actors that they are unveiling the truth, and that the mass media is ignoring this threat. See Benjamin Lee, "'It's not paranoia when they are really out to get you": The Role of Conspiracy Theories in the Context of Heightened Security' (2016) *Behavioral Sciences of Terrorism and Political Aggression* 1; Benjamin Lee, 'Why We Fight: Understanding the Counter-Jihad Movement' 2016 (10) *Religion Compass* 257; Benjamin Lee, 'A Day in the "Swamp": Understanding Discourse in the Online Counter-Jihad Nebula' (2015) 11(3) *Democracy and Security* 248.

²² This research is being submitted for publication at the time of this submission.

²³ Centre for Analysis of Radical Right- Hedayah Radical Right Counter Narratives Project, *Australian Radical Right Narratives and Counter Narratives in Age of Terrorism*, 22 March 2021, <https://www.hedayahcenter.org/resources/reports_and_publications/australia_radical_right_cve_narrativ es/>

²⁴Toby Archer, 'Breivik's Mindset: The Counterjihad and the New Transatlantic Anti-Muslim Right' in Max Taylor, Donald Holbrook and P M Currie, *Extreme right wing political violence and terrorism* (London, 2013) 169-185; Lars Erik Berntzen and Sveinung Sandberg, 'The Collective Nature of Lone Wolf Terrorism: Anders Behring Breivik and the Anti-Islamic Social Movement' (2014) 26(5) *Terrorism and Political Violence* 759-779; Andrew Brown, 'The myth of Eurabia: how a far right conspiracy theory went mainstream', *The Guardian* [online newspaper], 16 August 2019.

Tarrant's manifesto echoed the narratives that have been alive in the online sphere and prevalent on Facebook for at least a decade. These narratives posit all Muslims as an existential threat. Muslim women, mothers, and children are a threat to be targeted and eradicated because they are the source of new generations – a crucial part of 'demographic invasion' conspiracy theory.²⁵ In our community, some Muslim girls report being no longer treated as children, let alone fellow humans, by some public members when they begin wearing the hijab. Abuse and threats frequently target women, girls, and children, with their vulnerability being no deterrent.

Facebook and other digital platforms are yet to treat demographic invasion conspiracy theories and other dehumanising conceptions about Muslims as violence-inducing hate speech. Muslims acutely feel this discrimination. Queensland Muslims are looking to their elected representatives to make our anti-discrimination framework connect to the online sphere without burdening communities with the task of taking on social media giants.

Community fatigue in discussing the problem and issues with Police

When the federal Race Discrimination Commissioner Chin Tan came to Queensland to consult for his national report, local mosques and the Islamic Women's Association facilitated community meetings. Community members poured out their frustrations and fears again, noting that they had done this a decade earlier for another AHRC report. When it came to this Inquiry, we noted significant levels of community fatigue in speaking about this problem combined with low confidence in this process leading to outcomes. Overall there is sense of powerlessness and disconnection from political processes.

There were four main barriers that kept arising in discussions with community:

- a. Racist abuse and attacks have been so normalised in the minds of victims.
- b. That a different way of policing racist attacks is unimaginable, especially when there is low confidence in police.
- c. Being the victim of a hate crime is shameful and humiliating. Victims would rather not raise it and live through it again.
- d. Reporting it will lead to more stress and possibly danger (fear of repercussion).

There is also a significant distrust of police and belief that many police are ignorant of Muslims, Islam and hold discriminatory beliefs. In 2020, two young Muslim men were shot by police, leading to profound community grief and distress. One of those incidents was prematurely characterised as a terrorism event, without facts being established through a coronial inquest.

To strengthen and protect QPS moving forward, we have recommended that that the QPS screen new police for connection to far right movements or racial/cultural superiority ideology as is being done overseas. We also recommend introducing religious diversity and cultural diversity awareness into training for new police officers, including meeting with members of the Muslim community and other CALD communities to dismantle biases.

²⁵ Lentini, Peter. 2019. "The Australian Far-Right: An International Comparison of Fringe and Conventional Politics" in Mario Peucker and Debra Smith, eds. *The Far-Right in Contemporary Australia*. Singapore, 43.

A particular community concern are methods of counter-terrorism policing which can be very counterproductive to safety, security and social cohesion. AMAN and ICQ have made representations to QPS about improvements that can be made. It has also significantly impacted on community confidence. It is likely many Muslims for example, will be reluctant to seek support from police about hate incidents because of fears about arbitrary use of counter-terrorism policing and powers. For that reason, we strongly suggest that Queensland avoid the NSW mistake of co-locating hate crime responses within the Counter-Terrorism command.

ISSUES

Physical (offline) world incidents

The nature of the discrimination experienced by Australian Muslims has increasingly become more direct and often physical. Consultation participants in the AHRC report identified numerous examples of harassment, vilification, and hate incidents.²⁶ Further, the Islamophobia register determined that 58% of the 349 verified cases reported to the Register constituted offline cases.²⁷ Victims reported 37% of the cases. Non-Muslim fellow Australians continued to consist of one-quarter of the Register's reporter population. These report numbers are only the tip of the iceberg.

Insults targeting Muslims' religious appearance and religion were the highest in the last report.²⁸ Physical (face to face) settings were not deterrent to expressing extreme levels of hate. More than half of the incidents (52%) of incidents were found to take place in commonly frequented places. Among them, shopping centres were the most popular anti-Muslim harassment hotspots (25%). The presence of security guards and cameras in shopping centres did not effectively deter perpetrators, nor did the presence of other people prevent perpetrators from publicly harassing Muslims.²⁹

The chief investigator behind the Islamophobia Report, Dr Derya Iner, suggests that public perpetration with impunity of harassment, vilification, and other acts of Islamophobia promotes public desensitisation to anti-Muslim hate. Bystanders were present in 14% of the cases, while in almost half of the cases (49%), surrounding people passed by paying no attention to the incident. This attitude is believed to lead to the accommodation of anti-Muslim harassment and further encourages public attacks on Muslims in guarded and frequently visited sites.³⁰

²⁶ AHRC report (n 2) 44.

²⁷ Islamophobia Report II (n 6) 3.

²⁸ Ibid 5.

²⁹ Ibid 6.

³⁰ Ibid.

Case study 1—Harassment and intimidation



Below is a testimony from a Gold Coast student who wishes to remain anonymous. She had just turned 13 years old at the time of this incident, which occurred in November 2019.³¹

I was walking back to my father's office after school which is about seven minutes' walk. This is a part of my daily routine after school. As I was walking, a man who appeared to be in his 40's or early 50's interrupted my path and started pointing, yelling and swearing. He carried a beer bottle with him and wore dark clothes. Other students around me became alarmed and quickened their pace. Initially, I thought his aggressive behaviour was not directed at me. I quickly realised that he was looking at me and verbally abusing me because I was wearing a hijab (head covering). I only managed a brief eye contact because I felt really scared for my safety, so I continued on to my father's office.

I thought to myself: why did he yell at me? I didn't offend him or know him...

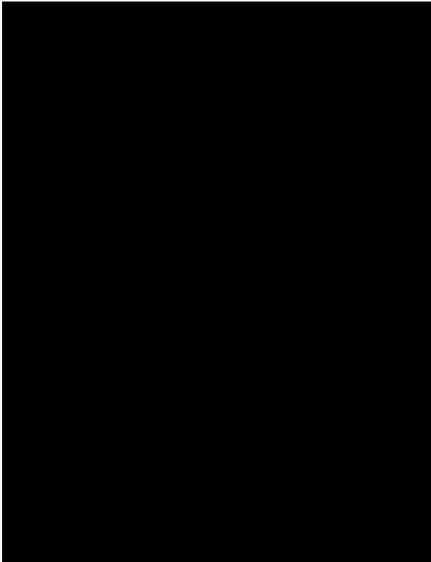
I aspire to be a contributing member of the Australian society. I attend a large state school in Queensland where my friends and teachers are from different ethnicities and backgrounds. I take pride in my school, the hard work of my teachers and my studies. I do not deserve to feel unsafe, harassed or mocked. I am as human as any other teenager. Simply because I walk the path of Islam shouldn't make me a target ...

The current vilification law (s124A) does not work in scenarios where the perpetrator is unknown or when the victim doesn't feel safe to meet the perpetrator. Section 124A

³¹ Her mother contacted the Islamophobia Register Australia. Following this contact, the girl agreed to provide a written testimony.

does not recognise the intimidation element of vilification, whether online or offline. The family might not be aware that this could be treated as a crime (public nuisance). A correctly labelled crime supports community and police to be aware that it is a criminal matter, and that reporting incidents like this is helpful, even where it is not possible to identify or charge them. The crime also needs to attach a high enough penalty to encourage police to take it seriously.

Case study 2—Harassment, intimidation and violent threats



Melbourne man Syed's children were so traumatised after being threatened on a train they have not been on public transport since.
(Supplied)

A Muslim father reported an incident on a Brisbane train trip he took with his wife and three children, all aged under ten. His wife wears the hijab. Another man on the train approached the family and asked if they were Muslim. When he found out they were, he verbally abused the parents. He then approached the children and said he would 'love to kill them all'. The man threatened to throw the youngest child from the train. The father told the Islamophobia Register: 'I cannot forget that journey for my entire life as I was sitting helplessly and watching him abuse myself, my wife and my children'.³²

Again, threatening violence is a crime. But police in this case did not recognise it as a crime and told this man and his family to go home and forget about it. It was more than threatening violence; it was an attack on their inherent dignity, being threatened and humiliated on the basis of their religion. Having clearly labelled hate crime laws will assist community and police. The failure to recognise this as a hate crime had

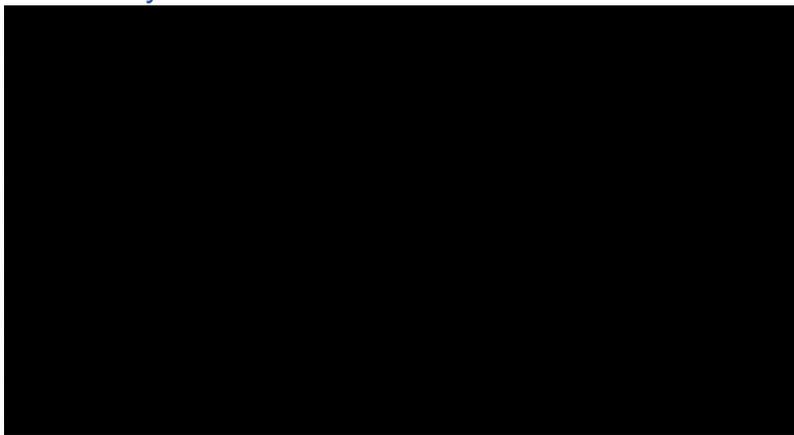
³² Islamophobia Report (n 6) 104-5.

This story, originally from the Islamophobia Register, featured in this piece: <https://www.abc.net.au/news/2019-11-18/muslim-women-enduring-most-islamophobia-in-australia/11708376>

profound effects on the family. In addition to the lack of recognition, they also never received victims of crime counselling support, which compounded their trauma.

The train had many passengers, but not a single person felt comfortable or knew what to do to support the family. Bystander education would be beneficial. The Islamophobia in Australia Report has found that witness support reduced the traumatic impacts of hate incidents on the victim, whereas a failure to act exacerbated the victim's trauma, as it inadvertently gave the impression that the expression of hatred is endorsed or emblematic of a broader community feeling towards people of that race or religion.

Case study 3 – Harassment and intimidation



Nadia Saeed was left shaking and in disbelief after an Islamophobic attack in Brisbane. (Supplied: Nadia Saeed)

Nadia Saeed was on the phone to the Queensland Premier's office when a stranger confronted her in the street.

"I don't care that your people were killed in Christchurch, you should have been shot too," he allegedly said.

The 21-year-old had just organised a Brisbane vigil for the Christchurch victims, something she thinks the man could not have known.

Seeing Ms Saeed in distress, Mr Pegg approached the man and threatened to call the police if he did not leave.

"He was aggressive and angry," Mr Pegg said.

"It was distressing enough for me let alone her who was the target of it.

"It goes to show these events can happen anywhere ... this was in the middle of the day outside a half-empty halal chicken shop."³³

Nadia's case was unusual in that a bystander intervened. She knew the bystander, the late Mr Pegg, an elected representative. Having clearly labelled hate crime laws will help community bystanders to recognise racist harassment and threats as a criminal matter, and to demonstrate care towards the victim. Bystander education will also empower more community members to act like Mr Pegg in that situation.

³³ This story, originally from the Islamophobia Register, featured in this piece: <https://www.abc.net.au/news/2019-11-18/muslim-women-enduring-most-islamophobia-in-australia/11708376>



The rationale for hate crime laws

At the outset, we explain that hate crime laws are justified for the following reasons:

1. Hate crime laws address the additional culpability arising from the harm to the community and the victim's *inherent human dignity*, along with the harm itself. So, for example, if a place of worship is vandalised with hate terms or symbols, it is more than wilful property damage but an attack on the *inherent human dignity* of people based on their religious identity. Verbal abuse of a victim based on their race or religion is more than a public nuisance; it attacks their *inherent human dignity*.
2. Hate Crime undermines fundamental values such as equality and non-discrimination, which have widespread support among the Australian public.
3. Hate crime laws address individual harm to targets of those crimes.
4. Hate crime laws address harm to the group of which the victim is a member or is presumed to be a member.

Principles to measure the effectiveness of hate crime laws

Secondly, noting the deficit of trust in the justice system from many of the communities involved in the Coalition, it is crucial that this review thoroughly exercise care with its recommendations. To achieve community confidence, we recommend the Committee use the following indicators to measure the success and effectiveness of hate crime law proposals, specifically that there is:

1. Formal acknowledgment of the discriminatory hate element of the crime for victim and victim's group.
2. Immediate and sustained safety for the victim.
3. Deterrence of hateful language and acts.
4. A clear signal of society's value on diversity and inclusion.
5. A process that is worthwhile for victims, who achieve better redress and justice.
6. Application of the law by police in response to more instances of harm.

A harm-based test

A hate/bias aggravation could apply where the **criminal conduct**

- (1) expresses hatred; incites hatred, serious contempt, or severe ridicule, or directly discriminates against a group identified based on a protected characteristic; and
- (2) Is reasonably likely to cause a person from a group, identified on the basis of that protected attribute, to have a reasonable fear for their safety or security of property.

This harm-based test considers the perpetrator's conduct and the effects but does not require proof of the perpetrator's state of mind to be labelled as hate or bias crime.

We have drawn from Queensland, Australian and international sources of law to formulate the first limb.

Expresses hatred: Hatred is a feeling of hostility or strong aversion towards a person or thing (Oxford dictionary); Intense dislike, detestation (Macquarie dictionary). Here, 'hate' is taken to mean hatred on a specified ground, as reflected in the ICERD (Article 4a), including "national, religious or racial hatred".³⁴ It is not intended to mean the expression of personal dislike. Alternatively, Queensland could adopt the term "harass" from the WA legislation, which includes to "threaten, seriously and substantially abuse or severely ridicule." This term also captures the direct action expressing hatred towards an individual or group, as opposed to *inciting* hatred towards that individual.

Incites hatred, serious contempt, or severe ridicule: These words carry their ordinary meaning³⁵ as per sections 124A and sections 131A of the Queensland Anti-Discrimination Act.

Directly discriminates: "treats unfavourably" as per section 10 of the Queensland Anti-Discrimination Act.

On the basis of a protected attribute: targeted at a group identified by an attribute protected by the Queensland Anti-Discrimination Act 1991. Currently those groups include "race, religion, sexuality or gender identity", but could be extended to include ethnicity, national origin, disability, and gender. This is important for members of our communities that face multiple grounds of vulnerability, exclusion, and discrimination, which in real-life scenarios can be difficult to separate.

Below are some real-life examples that correspond with each of those terms in the first limb. These examples illustrate that specifying both directly expressed hatred and discrimination and incitement supports police to accurately identify a broader cross-section of criminal behaviour as hate/bias crime.

Assault where racial hatred was expressed

- "An elderly women attacked me with her walking stick and verbally. She approached me by saying to go [redacted] off out of this country, no one wants me here and I didn't [redacted] belong here. She continued with more verbal and offensive words, and at the end she ask me to go back where I came from and take my virus/disease (she thinks I am Asian even though I am Latin).
Lammermoor, April 2020.

Public nuisance where racial hatred was expressed

³⁴ *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 4a.

³⁵ *Wilson & McCollum v Lawson* [2008] QADT 27

- [After being denied entry to my apartment building and being accused of having coronavirus], I said that I don't have it and that resident replied that "all Asians have it because of our disgusting eating habits."

Public nuisance where hate, serious contempt or severe ridicule was incited

- Public verbal abuse saying "be careful she probably has a bomb under that hijab/ in his backpack"

Deprivation of liberty where the victim was discriminated against on basis of her religion

- A female petrol station attendant locks a young woman wearing a niqab inside, depriving her of liberty, but claims to do so because she poses a national security threat. The woman shows her face to the attendant but is still refused exit until police arrive.

Assault where the victim was discriminated against on the basis of race

- "I was entering my apartment building, when I was pushed out. A fellow resident had pushed me and told me that I was not allowed to enter the building unless I was quarantined and cleared of the coronavirus.
- A South Korean backpacker was assaulted by a teenager who accused her of bringing the coronavirus to Australia.

The second limb of the test is whether the criminal conduct reasonably likely to cause a person from a group, identified on the basis of that protected attribute, to have a reasonable fear for their safety or security of property.

This test originates from a joint legal submission to the recent Victorian Parliamentary Committee³⁶. While that Committee didn't settle on precise wording for a new criminal offence, it did accept the need to move towards a 'harm-based test' to improve the legal effectiveness of the Act and shift the burden away from victims.³⁷ Similarly here, this aggravation focuses on the consequence of the act, not the motive.

Our discussions with police and police prosecutors underlined to us that this shift was necessary. Initially we put the first limb of this test forward as part of a motive test, without the second limb which focuses on the harm. They indicated that proving this motive beyond a reasonable doubt, in order to justify the aggravated charge and increased penalty, would still be challenging and lead to scenarios where the community very much experiences a crime as a hate crime, but it cannot be proven. We used a few examples as guiding posts: a person flicks off the turban of a Sikh person; a person defaces a synagogue with a Nazi symbol. Establishing a hate-based motive was not as straightforward as we expected.

³⁶ Human Rights Law Centre, Anti-Defamation Commission, Asylum Seeker Resource Centre, Victorian Trades Hall Council, Get Up, *Stopping Hate in its Tracks: Joint Submission to the Victorian Government's Anti-Vilification Protections Inquiry* (Report, 31 January 2020), Rec 11(f).

³⁷ Parliament of Victoria, *Inquiry into anti-vilification protections* (Report, March 2021), Rec 9.

A harm-based test recognises that hate crime when perceived as hate crime by the victim and victim community, does significant damage to personal security, social belonging, inclusion, participation, and cohesion. So, in line with the Victorian Parliamentary Committee, we formed the view that a harm-based test would be more effective *more often*, according to the effectiveness principles outlined above. This means that we have proposed the first test to operate objectively and *prima facie* on the conduct itself, rather than interrogating the state of the mind of the offender.

Suppose the Committee is interested in introducing a further element of motive. In that case, we suggest that the words “is intended to or” be inserted at the beginning of the second limb.³⁸ That way, the motive is again attached to the desire to create fear instead of expressing hatred, inciting hatred, or discriminating. This maintains the focus on the particular effects of hate crime.

It is noted that summary offences like Public Nuisance do not currently include intent and focus on the effect, such as preventing the peaceful and safe enjoyment of a public space. Later in this paper, where we consider standalone offences that otherwise don't have a base criminal offence, establishing a specific hate motive and intent becomes necessary.

Comparison to other jurisdictions

The UK definition of racist incident focuses on the effect on the victim and victim community, rather than exploring the perpetrator's state of mind. Using a harm-based approach, UK Minimum Standards guide police on “The Investigation of Racist, Domestic Violence and Homophobic Incidents” in public order offences. These standards include definitions of hate crimes and racist incidents.

Hate Crime: Hate crime is where the perpetrator's prejudice against any identifiable group of people is a factor in determining who is victimised.

This is a broad and exclusive definition developed by ACPO. It is worth noting that a victim of hate crime does not have to be either a member of a minority or someone who is generally considered to be victimised because of their association. In other cases, a person entirely unconnected with the hate motivation may be victimised if the perpetrator is mistaken in perceiving an association. So, there are circumstances where anyone can become a victim of hate crime.

Racist incident: Any incident, which is perceived to be racist by the victim or any other person. (Definition adopted from the Stephen Lawrence Inquiry Report, Recommendation 12).³⁹

³⁸ HRLC et al (n 36) Rec 11(f) includes both ‘is intended to or is reasonably likely to’.

³⁹ William McPherson, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William MacPherson of Cluny* (Report, March 1999).

This model would draw from the legislative structure of the UK, Scottish models in adding a statutory aggravation to existing base offences. The Western Australia Criminal Code⁴⁰ uses the statutory aggravation format for assault, threats, and property damage. It also requires that the perpetrator's hate motive be established. The utilisation of these offences appears very low from the public record.

The US model focuses on discrimination and doesn't consider the perpetrator's state of mind.

Penalties

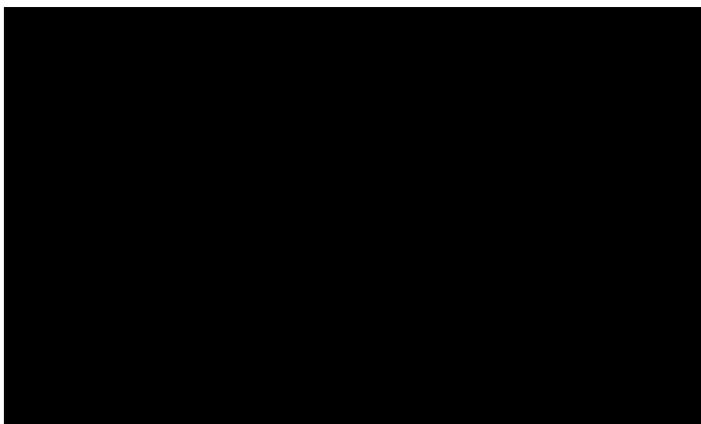
The penalties for this form of aggravated criminal conduct could be included in the Criminal Code regarding each base offence.

Additionally, we recommend that a general provision regarding aggravation be included in the Criminal Code to allow for judicial discretion where police do not identify the aggravation. Codified penalty enhancements lay it out very clearly for police and encourage accurate labels for crimes from the beginning, which is critical. But police prosecutors also have to meet the criminal burden of proof. Judicial discretion has a bit more flexibility, making it a beneficial additional safeguard.

Where a crime carries this aggravation, it could be called a hate or bias crime.

Police could be mandated to mark it as a hate crime on the first charge sheet to encourage more police to identify it. This may lead to more accurate data from QPRIME (Police's data reporting system). We did not consult police on the benefits of mandating versus not mandating. This has been suggested as an improvement to the NSW system by the Australian Hate Crime Network.

Dual Motive



⁴⁰ *Criminal Code Act 1913 (WA)*.

In the Sydney assault of a pregnant hijab-wearing woman in November 2019, the offender first asked for money.⁴¹ Although he didn't wait for a response before launching his physical attack (punching and stomping on her repeatedly); he shouted comments during the attack referring to Muslims; and he had a criminal past of harassing Muslim women. The Judge found that his primary motive was more financial than hate-based. The Judge went as far as extrapolating that the offender's request for money mitigated the harm to the Muslim community. The Judge's reasoning was concerning. Would the offender have punched and stomped repeatedly on a white, non-Muslim woman who was 38 weeks pregnant because he wanted money? NSW is a legally different and uncodified jurisdiction, but it is recommended for clarity that this point be articulated in the relevant legislation.⁴²

We recommend, as per UK legislation, if a crime is done for hate and another reason, it should still be considered a hate crime.

Circumstances of offender and offending

We support the child's best interests and standing considerations regarding mentally unsound offenders being applied at the sentencing stage.

We also heard feedback from police regarding the variety of reasons why someone might offend. These reasons can continue to be taken into account by the judge at the sentencing hearing.

By acknowledging the hate-bias aggravation in the charge and conviction, the true nature of the crime is recognised for the victim and victim community, regardless of considerations at sentencing. This would be a vital step forward as currently, crimes are not correctly labelled, causing significant harm to dignity and our social fabric.

Recommended Categories of Aggravated offences

The Legal Subgroup then considered specific categories of criminal harm.

Public verbal abuse or harassment

A significant portion of hate incidents would constitute an offence under the existing offence of public nuisance.⁴³ It includes if "the person behaves in —a disorderly way; or an offensive way; or a threatening way; or a violent way; and the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public." The maximum penalty is 25 penalty units if the person was near a liquor licensed spot, or otherwise 10 penalty units, with an option of up to 6 months imprisonment. For a first offence, if the nuisance is of a low

⁴¹ *R v Stipe Lozina* (2020) NSWDC 896.

⁴² *Ibid* par 63.

⁴³ *Summary Offences Act 2005* (Qld) s6.

level, one might expect to receive an infringement notice or “ticket”. An infringement notice is an on-the-spot fine and, if paid, the person does not have to go to court and will not have a conviction recorded against their name.

An aggravated public nuisance charge would meet public nuisance elements and the circumstances of aggravation outlined above (harm-based test).

The existing offence of public nuisance does not carry an intent component and affords significant discretion to police. This proposal would not expand upon the actus reus or scope of public nuisance. Instead, this proposal clarifies and highlights that some specific types of abusive and threatening behaviour form part of public nuisance and warrant additional penalty. This is congruent with the approach taken to public nuisance near liquor licensed areas for example.

The working group compared this option to the WA offence for racial harassment. The WA offence provides 5 years imprisonment, or 2 years imprisonment or a \$24,000 fine under summary conviction. The WA criminal code also offers *strict liability* options, which were not specifically supported on the whole by the Cohesive Community Coalition legal working group. Harassment is a significantly higher threshold than public nuisance. The WA offence does not require proof of animus motive, only that the person intended to harass (“threaten, serious and substantially abuse or severely ridicule”) a person of a racial group.

For the following reasons, we favour the aggravated public nuisance model compared to the WA law:

1. In contrast to the proposed public nuisance model, the WA law does have an intent component and requires a victim complaint to bring it forward. There is more of a burden on the victim than a focus on the harm, which may contribute to its lack of legal effectiveness.
2. The public nuisance model is very appropriately focused on maintaining safe public spaces, a core concern of communities.
3. The public nuisance model is likely to deliver a significantly smaller penalty than the WA offence, offering less victim satisfaction and protection. However, recurrent behaviour would attract higher penalties over time. To address this concern about victim protection, we have also proposed measures that could be implemented in tandem with this approach (see below).
4. The key benefit of the public nuisance model is that because it is already frequently used, and operates at a lower threshold with a lower penalty, it is likely to be used in a higher number of instances of harm, leading to greater confidence in the law. To our knowledge the WA offence has been rarely used.

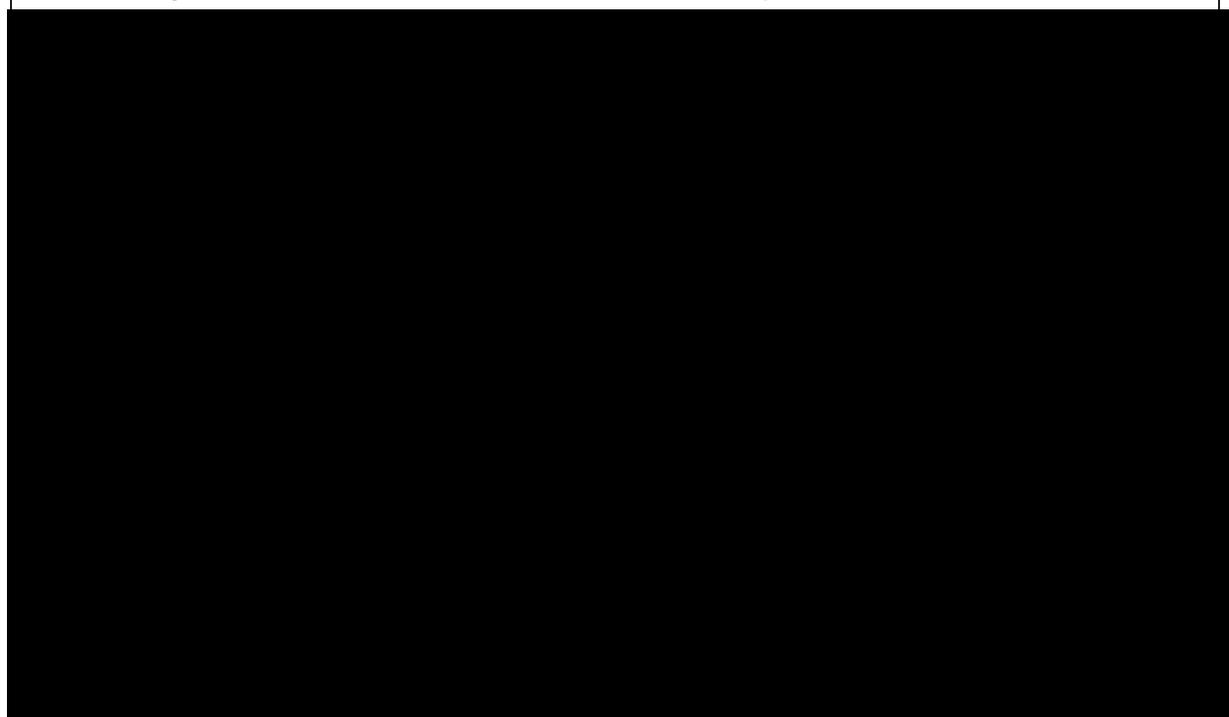
The downside of the public nuisance model is that police could use it against vulnerable communities that are already over-represented in police contacts and criminal justice statistics. This is an ongoing issue that will need some monitoring.

Categories

Reviewing the types of hate crime harm frequently encountered in the community, we propose that “aggravated” versions of the following offences be considered:

- Public nuisance: Including verbal abuse, threatening non-verbal gestures. Blocking someone’s peaceful passage while making discriminatory remarks. Ridiculing or inciting hatred, hostility or discrimination against someone in a public place on the basis of their race or religion (‘watch out they’ve got a bomb under that’).
- Reckless driving: There have been a number of instances reported to the Islamophobia Register where a person has driven dangerously close to a Muslim pedestrian, even mounting a curb, or appearing to drive right towards them in a car park. In a few instances, Muslims have been hit with a car in a car park. This conduct is often accompanied by verbal abuse or non-verbal hateful gestures (the finger, gesturing a gun, slitting a throat). We can provide more evidence on request through the Islamophobia Register (QLD and nationwide).
- Wilful Damage (property): *Criminal Code 1899* (Qld) section 469 is the base offence of wilful damage. Additionally, there is an existing special class of offence for wilful damage of educational institutions and wilful damage cemeteries. The *WA Criminal Code* section 444 describes the circumstances of racial aggravation, requiring a motive of hostility be established. As explained earlier, we propose to focus on the harm, not the intent.
- Threatening violence: Death threats represented one (1) out of 11 offline hate incidents reported to the Islamophobia Register in the last report.⁴⁴ A recent example from Kuraby involved a Muslim elderly male being subject to a death threat by a stranger. The stranger also followed him. Another incident on the Gold Coast involved a stranger aggressively threatening to kill a Muslim man ‘if you have a bomb under that’ referring to his abaya. Conditional threats of violence should also be treated seriously, and more than public nuisance.
- Stalking
- Armed to cause fear: Appearing at a mosque carrying a weapon for example.
- Assault and Grievous Bodily Harm: Removing a woman’s hijab should be treated as assault. Attempting to set it alight should be treated as attempted GBH.
- Deprivation of liberty: A Muslim sister was held inside a petrol station against her will because she was wearing a niqab. She showed her face and was still held against her will (QLD).

⁴⁴ Islamophobia Report (n 6).



It was reported in the news at the time that Queensland police were treating this as a wilful damage crime. This news wounded the Muslim community. How can someone glorifying a racist mosque shooter and terrorist by calling them a saint, the display of a Nazi symbol, and the use of a genocidal call to action from the Bosnian genocide (“remove kebab” which was also written on Tarrant’s gun), be treated as property damage? This example drives at the heart of the need for properly labelled laws with punishments that are proportionate to the additional culpability and harm. It is also noted that this example could have been treated as serious vilification under the existing s131A of the Anti-Discrimination Act as it involves threatening harm and inciting hatred, however there are many barriers and flaws with Section 131A.

Serious vilification (s131A)

Given the prevalence of incitement to harm offline and online, the community is strongly concerned that section 131A of the Anti-Discrimination Act has only been used three times in the past few decades. Our discussions with police show that there are some procedural and technical problems contributing to this.

One of the key obstacles to prosecuting this offence is securing stored communications. Federal legislation⁴⁵ provides for the issuing of stored communications warrants, but given the impacts on privacy, qualifies that this is possible regarding serious contraventions. That includes a person being involved in

⁴⁵ *Telecommunications (Interception and Access) Act 1979* (Cth) ss 116, 5E.

an offence that is punishable by at least 3 years imprisonment. The maximum penalty for section 131A is six (6) months imprisonment.

We recommend an extension of the penalty from six (6) months to three (3) years. Hence, it is more in line with penalties for comparable offences, such as the federal offence of using a carriage service to menace, harass or cause offence⁴⁶ or the NSW offence for inciting violence.⁴⁷ It is also more in line with the proposed increase of penalty by the New Zealand Government to their criminal vilification laws.

Our discussions with police also indicated that alternative offences are often preferred to section 131A because they carry steeper penalties.

Furthermore, we recommend removing the requirement for DPP or Attorney-General approval for a prosecution to proceed, noting that the criminal offence of using a carriage service to cause offence, menace or harass does not require Crown law approval. In our discussions with police, it was very clear that waiting several months, for such approval, posed an unacceptable risk to the community. Police might select other offences that allow them to intervene sooner. This does result, however, in community being denied the recognition that a hate crime has occurred.

As a first step, we recommend that section 131A's penalty be increased to 3 years, remove the Crown Law officer approval requirement, move section 131A to the Criminal Code to heighten its visibility, and revisit its effectiveness in a few years.

Online hatred

The Australian Human Rights Commission Report found that unfavourable treatment due to religion most frequently occurred online. This is likely due to the ease in which perpetrators can harass victims through fake profiles or pseudonyms coupled with the lack of regulation that exists online, allowing perpetrators to evade traditional laws.⁴⁸

⁴⁶ *Criminal Code 1995* (Cth) s 474.17

⁴⁷ *Crimes Act 1900* (NSW) s 93Z.

⁴⁸ AHRC Report (n 2) 35.

Case study 5 —Vilification case run by Queensland Muslim community

In 2016, politician Pauline Hanson and her party experienced a resurgence to Australian politics, this time focused on Muslims as the targeted 'out-group', in line with right wing populist movements in Europe. Later, she also brought Fraser Anning to the Australian Parliament, who unashamedly socialised white replacement extremist theories, arguing all Muslims, "including so-called moderates" were attempting to conquer western countries through immigration and high fertility rates.

After the Christchurch terror attack by an Australian white supremacist, he argued 'the real cause of the bloodshed' was the immigration program in New Zealand that allowed 'Muslim fanatics'. Anning was censured by a motion of the Australian parliament at the time, but Hanson and her colleagues abstained from voting. In 2019 election, Anning made a video outside a Brisbane mosque calling 'Islamification' a 'huge threat' to Australia. That very same mosque endured a vandalism incident within months of this video. 'Remove kebab' a term calling for the expulsion and murder of Muslims, along with St Tarrant, was graffitied across its front wall.

In contrast to this situation in NSW where Muslims have been let down by a lack of legislative protection, the Muslim community in Queensland has been able to use our vilification laws to bring a complaint against this former politician for vilification.

While it has been a great relief to have an avenue of complaint, where the initial process through the Commission was free and straightforward, albeit very slow. Moving into QCAT, the process has been a very long and arduous one given the scale of the respondent's online activity. It is also harder to argue to demonstrate and cost harm to a community, than harm to an individual, meaning that compensation is not as much of an option.

Overall, the civil vilification provision (s124A) is very important for cases involving political actors or candidates, as police are unlikely to get involved, given legitimate sensitivities about freedom of political communication.

Disadvantages of the current process are a loss of time and lack of immediate protection, as well as the costs involved once a matter moves to QCAT. In addition, there is no guarantee that content found to contravene Queensland law would be removed by a digital platform without further legal action from the complainant.

In online vilification matters, it would be useful to confer a power to QHRC to automatically alert the relevant digital platform once the complaint is accepted. If the complaint is later upheld and the platform did not remove the content initially, this could

- Contribute to evidence used by the e-Safety Commissioner to issue penalties to the digital platform.
- Result in the platform having to pay a QCAT costs order.

This is a way to accelerate platform accountability and possibly deliver a quicker outcome. Companies are not incentivised to dedicate resources to monitor their platforms.

Case study 6—Great replacement theory proponent

This Queensland person was propagating the same ideology as Brenton Tarrant, but doing it indirectly through falsely contextualising events and supplying a steady stream of disinformation to a cultivated online audience. He was able to exponentially increase his audience through a Facebook page that he administered.

In June 2019, the Facebook page shared a poster with a picture of a white family with two children and a Muslim family with 4 wives and 12 children. It had the same title as Tarrant's manifesto: "The Great Replacement". The meme was accompanied by similar derogatory statements implying that Muslims plan to conquer countries like Australia through higher fertility rates. The intense reactions to this poster were revealed in the extensive comments, with a significantly high proportion employing explicit dehumanising language, as well as expressions of wanting to kill or see Muslims dead. Responses included: 'Shoot the [REDACTED]', 'Islam is a cancer on global society for which there is no cure', 'You import the 3rd world you become the 3rd world. And when they become the majority then what next? They won't have whitey to leech off. Just like locusts, infest & strip everything until there is nothing left', 'Deport the PEDO crap', 'They breed like rats', 'Drown em at birth', 'Fun those scumbags.muslims....reminds me of aids', 'Society should start culling the Muslims', 'I think I now understand why during the serbian / croat the serbs culled the women', 'I'm going out tonight to do as much as i can to solve this problem'.

The intensity of disgust demonstrated in these user reactions demonstrates this actor has been very successful at inciting hatred.

However, after collecting evidence, we decided against lodging a vilification complaint. We were deterred by the costs (time and expense), as well as the likelihood that he may use this action, over the year or two it takes to resolve, as a platform to present himself as a martyr and gain more followers. This is particularly threatening during elections..

So we decided to test the federal criminal law for using a carriage service to menace, harass or cause offence.⁴⁹ This law has been used to protect individuals who are the victims of online racist hatred when individually targeted, but not to protect communities who are the victims of an online actor who is targeting a community as a whole (for example, Muslims in general).

⁴⁹ Criminal Code 1995 (Cth) S474.17.

New standalone criminal offence - Possession, display, dissemination of material online with intent to racially/religiously harass or stir up hatred.

In cases where the distribution or display of hateful material does not threaten physical harm or property damage or incite others to threaten physical harm or property damage (part of s131A's threshold), alternative offences may be a more effective way of combating hate. This is especially needed given the documented online presence of violent extremist movements that engage in serial or systematic dehumanisation of groups identified on the basis of race or religion. The recent federal Parliamentary Inquiry into Extremist Movements and Radicalism has noted concerns that existing federal frameworks centred on proscription lists for terrorist organisations, were insufficient for dealing with the hateful online echo chambers. Increasingly, authorities were aware of lone actors who may transition to violence, not affiliated with a listed terror organisation. Their activity online occurred as part of hateful or violent movements without any formal affiliation. The Queensland Human Rights Commissioner has recognised that the Anti-Discrimination conciliation based framework cannot deliver the safest or most appropriate process (or outcomes) in certain cases where the respondent is unwilling to engage or conciliate. The Commissioner has also noted the financial and personal cost burden imposed on victims and victim communities. The working group agrees with this assessment and adds that many victims and victim communities are discouraged by these costs and fearful of repercussions. Our original options paper recommended introducing a complementary offence to criminalise the possession, distribution, or display of hateful material.

The need for an offence like this has also been highlighted by the Australian Federal Police⁵⁰ in the recent Federal Parliamentary Inquiry into Extremist Movements and Radicalism and is being considered by that Committee. The Law Society of Australia in its presentation to that Inquiry suggested that a possession offence without an intent requirement that linked to a societal harm would be problematic because people can possess hateful material for a range of reasons.⁵¹ In its review of anti-discrimination and vilification protections, the Victorian Parliamentary Committee limited its recommendations to prohibiting *the display* of symbols of Nazi ideology, such as the 'Nazi swastika'. The Committee also recommended ongoing monitoring of other hate symbols that might be prohibited.

Much hate crime is engendered indirectly or over time by hateful and dehumanising material that socialises individuals to follow supremacist ideologies and believe that members of the target group do not deserve their lives or dignity protected from violence. Incitement to violence is a specific harm, but to limit the law's response to solely this online harm is to ignore the bulk of harm. Still, the working group acknowledges that there are different viewpoints on *criminalising* possession,

⁵⁰ Australian Federal Police, *Submission to the Parliamentary Joint Committee on Intelligence and Security: Inquiry into Extremist Movements and Radicalism*, February 2021.

⁵¹ The AFP proposal is discussed in depth here: Law Council of Australia, *Supplementary Submission to the Inquiry into Extremist Movements and Radicalism in Australia*, 25 May 2021.

distribution or publication of hateful material, and that proposals have been made in other federal forums for *civil penalties* against individuals and the platforms that publish them.⁵²

We acknowledge the view amongst many criminologists that imprisonment is a necessary deterrent in some cases but carries serious risks. Not only does imprisonment connect a person to a new social circle, but it isolates that person from the very protective factors that guard against future violent behaviour. Favouring fines and exclusions from online platforms and reserving imprisonment for cases where it is established that a person plays an ongoing serious risk to the community, may help to address some concerns.

We considered the merits of two existing offences: the WA model and the UK model.

The elements of section 79 of the **WA Criminal Code** include

- possession of written or pictorial material
- that is threatening or abusive
- intending the material to be published, distributed or displayed whether by that person or another person
- intends the publication, distribution or display of the material to create, promote or increase animosity towards, or harassment of,
- a racial group, or a person as a member of a racial group

Thus, two elements of intent must be proved. “Animosity towards” is defined in section 76 to mean hatred of or serious contempt for and “harass” includes to “threaten, seriously and substantially abuse or severely ridicule.”

Western Australia also has a lesser offence under section 80C for instances only involving the display of material (not publication or distribution) and not requiring intent to promote or increase animosity, or harassment of a racial group. Elements of this offence include

- possession of written or pictorial material
- that is threatening or abusive
- intending the material to be displayed whether by that person or another person
- intends the display of the material to harass
- a racial group, or a person as a member of a racial group

It also contains two elements of intent.

Section 79 carries a maximum penalty of 14 years (5 years under strict liability, and 2 years or \$24 000 fine under summary conviction). Section 80C carries a maximum

⁵² See AMAN’s submission to the Australian Government on the Online Safety Bill, January 2021 available at www.aman.net.au. See also Submission by Kath Gelber and Rita Jabri Markwell to the Federal Parliamentary Inquiry into Extremist Movements and Radicalism that canvases some of these proposals from the UK and Australia, May 2021.

penalty of 5 years imprisonment (3 years strict liability, and 2 years or \$24 000 fine under summary conviction).

Hateful material is more tangible than hateful conduct and has a longer life, potentially inflicting greater harm. This WA offence has been utilised at least once, resulting in 3 year imprisonment.

The **United Kingdom model** offers two different thresholds for race and religion. Section 19 of the *Public Order Act 1986* (UK) provides: (1) “a person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—(a)he intends thereby to stir up racial hatred, or (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

Section 29C (1) of the *Racial and Religious Hatred Act 2006* (UK) provides “A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred.”

In relation to both the WA and UK offences, conviction on indictment that person may be subject to imprisonment for a term not exceeding seven years or a fine or both. On summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both. These offences have been utilised, including by themselves and in conjunction with terrorism offences.

The UK and WA models overlap on how they describe the harmful conduct. The WA model only pertains to race, whereas the UK model offers a higher threshold for religious hatred. The WA model includes possession, whereas the UK treats possession in a separate offence. The WA law focuses on preventing racial harassment, whereas the UK model focuses on preventing the ‘stirring up’ of racial or religious hatred. This may be significant as harassment traditionally requires a nexus between the offender and the victim or victim group, and therefore may not capture instances where someone is stirring up hatred in online echo chambers and forums where the victim group is absent. Still, this conduct endangers the victim community. This difference might explain why the UK offence has been utilised more, including in cases involving white supremacists and nationalists. The WA model includes a strict liability version of the offence, that also comes with statutory defences to safeguard against freedom of expression.

On 25 June 2021, the **New Zealand Government** announced it was creating a new, clearer hate speech offence in the Crimes Act, removing it from the Human Rights Act.⁵³

That would mean anyone who "intentionally stirs up, maintains or normalises hatred against a protected group" by being "threatening, abusive or insulting, including by inciting violence" would break the law. This offence builds on the UK offence, but includes maintaining or normalising hatred along with stirring up. It does not appear to

⁵³ New Zealand Ministry of Justice, *Proposals against Incitement of Hatred and Discrimination*, 25 June 2021 <<https://www.justice.govt.nz/assets/Documents/Publications/Incitement-Discussion-Document.pdf>>.

reference publishing or distributing material. The WA and UK jurisdictions also have criminal offences without the reference to publishing or distributing material.

The New Zealand Government also announced that punishment for hate speech offences could also increase - from up to three months' imprisonment or a fine of up to \$7000, to up to three years' imprisonment or a fine of up to \$50,000.

The groups protected from hate speech could also grow - the government is considering changing the language and widening the incitement provisions in the Human Rights Act.

It has not yet decided which groups will be added. That is expected to happen following public consultation. It is currently only an offence in New Zealand to use speech that will "excite hostility" or "bring into contempt" a person or group on the grounds of their colour, race or ethnicity. Gender identity, sexual orientation, religion or disability aren't protected grounds.

Concerns were raised in community discussions about the effect of criminalising hatred in cyberbullying cases, and the particular impact of this on young people. There was also concern about cases where two parties may be involved in exchanging hate towards each other. There was a view that civil routes are more effective for investigating and issuing consequences in the online sphere for these reasons, but there was also a view that more hardened individuals involved in extremist movements, for example, that cause fear to whole communities, will need intervention from police. It was noted that at the federal level, with the recent passage of the *Online Safety Act 2021* (Cth), that there were now civil penalties for cyber abuse of adults and cyberbullying of children, but no civil penalties for when that abuse is directed to whole groups on the basis of a protected attribute. It wouldn't be straightforward to merely extend the Online Safety Act thresholds as they are looking for physical or psychological harm to an individual.

We recommend that the Committee consider the New Zealand, WA and UK models for an offence that specifically targets the most dangerous forms of online hatred, like the serial and intentional conduct described in Case Study 6. We favour the focus on 'stirring up hatred' as opposed to 'harassment' as the latter appears to require a proximity and direct nexus between the perpetrator and victim. Alternatively, section 131A could be amended to insert an alternative limb: (1) (c) or 'causing reasonable fear for their safety or security of property'. This would combine the incitement of hatred threshold with a harm-based test focused on physical endangerment

We recommend that the Committee consider how this legislation could be focused on actors engaged in the most dangerous forms of hate online. To connect it to endangerment, the test could include intent to cause a person from a group, identified on the basis of that protected attribute, to have a reasonable fear for their safety or security of property. This is a more effective and practical evidentiary threshold than trying to prove incitement to harm or violence, which usually requires showing that harm was imminent with instructions to violence provided by the perpetrator.

Policymakers may also want to consider atrocity-prevention research on dehumanization and its function as both a form of violence and precursor to violence. A stirring up hatred provision could capture dehumanising speech and discourse.

We also recommend that the implications for freedom of speech are carefully considered. The WA Criminal Code does have a list of defences to some of their hate crimes laws, but they do not apply to the laws we considered above. That list of defences⁵⁴ is similar to exceptions to section 124A of the Anti-Discrimination Act.⁵⁵ Including some defences may assist with making this law compliant with Queensland's new *Human Rights Act*.

By setting a criminal standard in relation to this harm in Queensland, the federal e-Safety Commissioner will be empowered to issue take down notices to individuals and digital platforms. The Online Safety Act confers powers on the e-Safety Commissioner to issue take down notices to digital platforms for objectionable content, including content that promotes crime. There is a high success rate of compliance with their notices. It appears the e-Safety Commissioner cannot issue notices on content that is illegal but not criminal (for example, a breach of s124A of the Anti-Discrimination Act). The Committee should consult the federal e-Safety Commissioner as part of its deliberations.

Acknowledging the complexity and sheer scale of online hate incidents, we recommend that consideration be given to further state-based non-criminal options. One option may be to give the Queensland Human Rights Commission powers to investigate and issue fines, similar to those conferred to the federal Fair Work Commission.

Making and running a complaint takes great resources, time and courage for a community advocate. The fear of repercussions can be strong and prohibitive, leading to vulnerable groups further retreating and not exercising their rights. There may be mechanisms that allow targeted communities or individuals within those communities to have those rights protected, while not carrying overwhelming burden or danger.

Gelber and Macnamara have recommend that the Committee consider ways to improve the outcomes for target communities. We support consideration of their recommendations that

- The Queensland Human Rights Commission should have the authority to self-initiate complaints where they become aware of conduct that is likely to be deemed unlawful and no private complainant emerges.
- Agencies should be empowered to advocate on behalf of target groups and the wider community to enforce legislative standards.
- Legislation (s134 of the Anti-Discrimination Act 1991 (Qld)) should be amended to

⁵⁴ Criminal Code 1913 (WA) s 80G.

⁵⁵ Listed in section 124A (2).

permit complaints from any individual under s124A.⁵⁶

The last proposal would remove the requirement that a complainant be a person subjected to the alleged contravention, or that a relevant entity complaining on someone's behalf have as its primary purpose the promotion of the interests and welfare of the target group. Complaints should be permissible from any concerned member of the community who has witnessed unlawful vilification.

Case study 7—Platform accountability

Facebook was unwilling to properly investigate the page referred to in the last case study. It appears Facebook currently waits for an Australian authority or court to deem a page or group unlawful before it will take action.

Twitter is very similar. Twitter has declined to take action on a serial actor who incites hatred on Twitter through a sustained disinformation campaign about Muslims. Our studies have shown that this actor is successful at dehumanising Muslims, shown by the explicit slurs used by readers in the comment threads.

For example, one of this Actor's posted stories, 'Muslims migrate to Australia, file complaint with Human Rights Commission because food they're given isn't halal', produced numerous responses expounding on demographic invasion and white genocide. Common dehumanising conceptions from those responding on Twitter were that Muslims originate from 'cesspools', 'toilet bowl countries', and [REDACTED], and that resisting their plot had to be done for the sake of 'civilised world and culture'. It appeared to 'trigger' users who saw this as an attempt to 'placate the Moslem invaders'. One user commented, 'Physical appearance of mooslems is like normal human being but mentally like cold blooded demon, Ogre.' The word 'infiltrate' was preferred to migrate. Many spoke about the 'stages' of 'jihad' in taking over a country: 'It starts with halal food, next is burning cities and killing infidels.' While others lamented that the west was contributing to its defeat: 'A secularism & multiculturalism is a breeding ground for deadly peaceful community virus (Islam).' The disgust prompted by this headline also led to calls to expunge: 'What are the options available with Australia? Will they let the cancer spread there also, like it has in Europe?'

The Committee may also want to consider whether any criminal or civil standard includes a corporate liability component for platforms that recklessly allow the material to remain online. If this was introduced, the QHRC could be conferred with powers to issue a warning notice to platforms. The notice may be unenforceable, but non-compliance could be used as evidence of corporate recklessness. The threat of prosecution lifts the performance of platforms in managing violent and hateful echo

⁵⁶ Katharine Gelber and Luke McNamara, 'Private Litigation to Address a Public Wrong: A Study of Australia's Regulatory Response to "Hate Speech"', *Civil Justice Quarterly* 33 (3) (2014): 307-334.

chambers. This idea is based on the approach to managing Abhorrent Violent Material between the e-Safety Commissioner office and AFP.

Case study 8—Online organising for offline hate activity

Across the AHRC's consultations and the National Survey, participants spoke of this online targeting of Australian Muslims. In Townsville, consultation participants shared their concerns about Facebook posts and groups that targeted Muslims within their community. They spoke of how Facebook groups lobbied against the expansion of their local Mosque.

There's a Facebook page called 'ban Islam and ban Islamic community in Townsville'... they have picture of our mosque and have crossed it out in red.

—Townsville consultation participant

A Townsville participant noted that after the Christchurch attack, there were individuals and groups who were targeting the local mosque on Facebook saying, 'we need to play the same game'.⁵⁷

Based on the analysis of 147 verified online incidents reported to the Islamophobia Register, the most common online platform reproducing and spreading Islamophobia was Facebook (63%). This finding is consistent with the online hate literature. Islamophobia Register Australia's Facebook page was conversely a popular channel for reporting online cases to the Register (82%). Of the 147 online cases, 82% were reported by witnesses; 65% of the reporters were Muslims.⁵⁸

The online hate was circulated using several methods. In addition to spreading everyday Islamophobic rhetoric (48%), 147 reported cases revealed specific tactics to maintain anti-Muslim hate on social media through political far-right campaigns (10%), boycotting and boycotting campaigns via Facebook pages (10%), harassment and intimidation (9%) by sending personal messages to the victims, memes (8%), attacking the Register page (8%) and circulating anti-Muslim petitioning campaigns (2%).⁵⁹

Peace and Good behaviour Bond

Given the penalties for some hate crimes, such as involving public nuisance, may not deliver immediate or sustained protection to victims, we turned our mind to how else this might be achieved.

As we recommended in our first Options Paper, a new species of Order could be introduced, created along the same lines as a Peace and Good Behaviour Order or Domestic Violence Order. It would address concerning behaviour that falls short of

⁵⁷ AHRC Report (n 2) 40.

⁵⁸ Islamophobia Report II (n 6) 9.

⁵⁹ Ibid 10.

criminal offences, but which if repeated, triggers penalties. Building on the original recommendation, we propose that such an order could protect

- A previously targeted individual or group
- Culturally or religiously significant place (eg, place of worship)

There is a lesser burden of proof (balance of probabilities) for such orders.

An example of this includes the civil hate crime injunction used in Vermont, US. The Attorney General's Office can help hate crime victims obtain protective orders and can seek civil penalties from offenders. If the offender violates a hate crime injunction (protective order) it is a crime – and the offender can be arrested and jailed immediately.⁶⁰

The benefit of a civil hate crime injunction or Peace and Good Behaviour Bond is that by not requiring a criminal standard, it provides an avenue for communities to more immediately stop harm from serial pests, offline or online. Given the time delays in securing online evidence and prosecuting under section 131A for example, which can take months, a civil hate crime injunction could be sought against the individual to prevent them from continuing to endanger a specified community through conduct that is at or just beneath the threshold of section 131A. Police could be empowered to seek this Order on behalf of the affected community, as long as the harm can be established on the balance of probabilities. There have been examples of white nationalists online who've implicitly glorified genocide of Jews, Muslims and others. For example, making comments that glorify the Holocaust, or referring to Muslims as a nest of vipers that need to be dealt with, including its young (echoing Tarrant's manifesto). To establish a prosecution under section 131A, police are typically looking for evidence of threatening harm to meet the criminal standard, which is difficult in most cases where actors do it in implied ways. An injunction or Peace and Good Behaviour Bond empowers police and community to take immediate action while evidence for a prosecution is established; and can help to build evidence for that prosecution if there are ongoing transgressions by the individual.

⁶⁰ Office of the Vermont Attorney General website <<http://ago.vermont.gov/hate-crimes/>>.

COMPLEMENTARY MEASURES

Case study 9 —Online mainstreaming of anti-Islam, anti-Muslim narratives

While conducting the National Survey, the Commission was not exempt from receiving anti-Muslim sentiments and hostile views on Islam. As the survey was distributed through sources that were not exclusive to the Australian Muslim community, for example social media, there were instances where trolling occurred, and individuals took the opportunity to voice their anti-Muslim views within the survey instrument. The Commission became aware from comments on its Facebook posts about the National Survey that certain groups targeted the survey and coordinated anti-Muslim responses with the intention of skewing the results and expressing anti-Muslim hate.

While illegitimate survey responses were removed from the data, these qualitative free text responses were collected and considered by the Commission. A study of the responses revealed that they mirror and give insight into the forms of online abuse experienced by the Australian Muslim community.

Responses often targeted Muslim peoples' dress and religion. Expectations about the behaviour of Australian Muslims revealed assimilationist views in which the maintenance of cultural, linguistic, and religious heritage was condemned. Stereotypes and a lack of knowledge of Islam were also reflected in these responses.

Australia was founded on Christian principles and the nation is being conquered by hordes of invaders who do not hold Christian principles.

Advise Muslims to try to integrate by actions such as modifying their dress code would be a positive start. All the robes & head coverings attract attention because they stand out from the norm. If they wish to be treated like everyone else, stop making statements with their dress code which say, 'I'm a Muslim & I'm different'.

Make Muslims assimilate into Australian western society by speaking English and not wearing burqas that demean women.

Australia must stop importing low IQ welfare seekers and Islamists. Import the Third World become the Third World.⁶¹

Regrettably, so far online hatred (when directed at groups on the basis of a protected characteristic) has not been given any policy focus by the Australian government and very minimal focus by the e-Safety Commissioner.

Through its engagement with research networks internationally, AMAN is aware of promising research from the US about the effectiveness of early inoculation of community audiences against techniques used by violent or hateful extremist movements. These techniques, such as dehumanisation and scapegoating, are also used within mainstream political discourse. Research has established that much like the way that vaccines inoculate people against viruses, tailored education can inoculate people against racist conspiracy theory and racial superiority ideologies. That education involves introducing the racist conspiracy theory or ideology in small

⁶¹ AHRC Report (n 2) 49.

doses, whilst encouraging critical thinking about them. It works with youth and individuals who are not yet hardened in this worldview.⁶²

There is also a growing body of research about the attributes of effective counter narrative campaigns. Official government run campaigns are generally not effective. Trusted community advocates with local relationships with local audiences are much more effective drivers of this education and dialogue.

There is also promising research about the effectiveness of local government initiatives that bring diverse communities, including divergent political and worldviews, into the same space.⁶³

Restorative justice options

The community justice conference options are currently available in Queensland to a limited degree. We recommend exploring this option in hate crimes where there is free and informed consent from the victim. This needs to be carefully assessed to make sure that victims are not re-traumatised by this process.

There was a clear view amongst some members that this option was justified for juveniles, given the importance of education at that age. However, there was a reservation amongst some about its appropriateness and effectiveness for adults, who may mis-use the process. It may be that diversionary programs are more appropriate than community conferencing for adult offenders.

A 2021 collaborative report by the Stanford Law School and Law and Policy Lab explores alternative approaches to hate crimes.⁶⁴ This report discusses traditional US hate crime laws, which more generally focus on the prosecution and punishment of perpetrators, rather than restorative justice which centres on repairing the harm suffered by victims and the wider community.

This report examines Community Works West (CWW), a non-profit organisation based in Oakland, California which implements a diversionary program enabled through community conferences, for youth arrested for low-level felonies and high-level misdemeanours. The program is incentivised through non-filing of charges upon successful completion. In 2012, CWW dealt with a case involving youth who were alleged to have vandalised a mosque and to have stolen shoes of people in the mosque. CWW facilitated a community conference with the parties, and the youth were asked to assist in building the new mosque, attend services at the mosque with their families, write an apology and complete community service hours.

⁶² Beth Goldberg, "Can "Inoculation" Build Broad-Based Resistance to Misinformation?", *Medium.com*, 18 March 2021. <https://medium.com/jigsaw/can-inoculation-build-broad-based-resistance-to-misinformation-6c67e517e314>

⁶³ Mario Peucker, Ramón Spaaij, Debra Smith, and Scott Patton, 'Dissenting citizenship? Understanding vulnerabilities to right-wing extremism on the local level: A multilevel analysis of far-right manifestations, risk and protective factors in three local municipalities in Victoria' (Melbourne: Victoria University, August 2020).

⁶⁴ Tyler Bishop, Arielle Andrews, Sam Becker, Lauren Martin, Benjy Mercer-Golden, Mariel Pérez-Santiago, Tiarra Rogers, Kai Wiggins, Shirin Sinnar & Michael German, *Exploring Alternative Approaches to Hate Crimes*, Stanford Law School Law and Policy Lab, 2019-2020 Spring. <https://www-cdn.law.stanford.edu/wp-content/uploads/2021/06/Alternative-to-Hate-Crimes-Report_v09-final.pdf>

Similarly, the report also considered the Restorative Justice Program introduced by the Attorney General for Washington, DC, in 2016. This program is based on a restorative conferencing model, only accepting cases where prosecutors would otherwise bring charges. In 2019, a case where a 16-year-old was involved in a group assault of a transgender woman, was diverted into this program. Having partaken in the conference, the youth apologised to the victim and agreed to attend school more frequently; allowing for the case to be dismissed upon implementing the agreed terms.

In a 2000 report, the US Bureau of Justice Assistance explored the procedures implemented under the Los Angeles County District Attorney's JOLT (Juvenile Offenders Learning Tolerance) Program.⁶⁵ This program was employed as a hate crime initiative, aimed to facilitate early intervention and diversion for juveniles "who have engaged in bias-motivated conduct", including low-level hate crimes. This program was an option offered to juveniles or can be undertaken by reference from the County District Attorney's Office. Under this program, youth were required to complete an anti-hate curriculum, attend and complete anger-management and conflict resolution programs, write letters of apology, and attend school, with additional requests conditional upon the circumstances around the offence.

In New South Wales, a young person was a member of a group which boarded a Sydney bus in 2014 and terrorised a group of Jewish schoolchildren through threats and abuse. The Juvenile Justice Conference resulted in the young person agreeing to participate in a guided two-hour of the Sydney Jewish Museum and in the Board of Deputies' "Respect, Understanding, Acceptance" school harmony program.⁶⁶

We recommend a restorative justice strategy in relation to hate crimes be developed.

We also support greater investment in diversion options for offenders in hate crimes. It may be necessary for diversion options use existing infrastructure for community service in consultation with affected communities, rather than relying on community volunteers to do the heavy-lifting.

We encourage academic partnerships that evaluate diversionary and community conferencing initiatives to allow for improvement over time.

⁶⁵ Wessler, Stephen (2000) *Promising practices against hate crimes: Five state and local demonstration projects*. US Department of Justice. <<https://www.ojp.gov/pdffiles1/bja/181425.pdf>>.

⁶⁶ "School Bus Terror Attack: Youth to Tour Holocaust Museum", *J-Wire news*, 16 January 2015.

Hate Crime Scrutiny Panel

We continue to recommend legislating a hate crime scrutiny panel involving police and community advocates.⁶⁷ The way this model operates in the United Kingdom is described in our original options paper.

This approach brings scrutiny to all aspects of police response. It involves a detailed outline of individual cases, procedures taken by responding officers and commanders, and a critical discussion of the problems encountered in operationalising the hate crime policies and standard operational procedures.

We raised this idea in our discussion with police and there were positive indications that this could be helpful if treated as a mutual education process to guide improvements in practice and increase communication on highly sensitive cases. The scrutiny panel proposal is a safeguard for all concerned and continues to be high on the agenda of affected communities. Real change happens over time and that necessitates purposeful, ongoing collaboration.

Victim support, reporting, data collection and data publication

We acknowledge that victim support, reporting and data collection are intrinsically connected as lack of support, trust and confidence in the justice system is a major barrier to reporting.⁶⁸

We recommend government agencies shift more focus to victim support, reporting and data collection where more work is needed, and coordinate with community organisations already supporting victims and collecting data to ensure consistency.⁶⁹

Currently data collected by police is compromised by lack of appropriate labels for crimes and lack of awareness about hate crime. The technological infrastructure to improve data is there with Qprime, but there would be strong benefit in Qld Police publishing this data to encourage community awareness and more reporting. We also recommend this data be shared with researchers to enable useful analysis as has been recommended elsewhere.⁷⁰

⁶⁷ Asquith, A & Bartkowiak-Theron, I (eds) *Policing Vulnerability* (2012) Federation Press, p155. This was also recommended in Submission from Australian Hate Crime Network to the New South Wales Legislative Council Standing Committee on Social Issues inquiry Gay and transgender hate crimes between 1970 and 2010, February 2020 p21. Available online at <https://www.sydney.edu.au/content/dam/corporate/documents/sydney-law-school/research/centres-institutes/ahcn-gay-and-transgender-homicides-inquiry-submission.pdf>.20

⁶⁸ Matteo Vergani and Carolina Navarro, *Barriers to Reporting Hate Crime and Hate Incidents in Victoria: A mixed-methods study*, 30 June 2020 (Centre for Resilient and Inclusive Studies: Melbourne). This has also been raised in policy submissions by the Australian Hate Crime Network; and in Derya Iner (2019) *Islamophobia in Australia 2016-17* (Charles Sturt University: Sydney).

⁶⁹ Matteo Vergani and Rouven Link, *Tackling Hate in Australia: Stocktake Report 2019-20*, 31 July 2020 (Centre for Resilient and Inclusive Studies: Melbourne).

⁷⁰ See Jehonathan Ben, Amanuel Elias, Mandy Truong, Fethi Mansouri, Nida Denson and Yin Paradies, *Racism in Australia: filling data gaps*, CRIS Issues Papers, No 1 of 2021. They recommend conducting further analysis of existing data, collecting new data that addresses identified data gaps, enhancing data availability and integration.

Access to justice

It was raised during our discussions that many members of vulnerable communities don't know the protections under civil or criminal vilification laws or how to enforce them. Limitations about existing legal aid funded services were identified, including their understanding of the realities of racism, the benefits of advocacy, or even their ability to look beyond the race or religion of a client to consider their situation holistically, including other possible forms of discrimination.

We recommend supporting specialist advocacy services or a legal clinic dedicated to hate crime, human rights, discrimination and vilification for CALD clients of limited socio-economic means. Additionally, private lawyer expertise in this field should be identified to make it easier for community members to seek advice.

CONCLUSION

We have taken a comprehensive view of the issue of serious vilification and hate crimes, recognising that a partial response adopted in other jurisdictions has only served to deepen cracks in the relationship between police, the justice system and community. There must be ways to integrate this complete response within existing systems and programs, and provide the mechanisms for ongoing improvement (such as the hate crime scrutiny panels).

Using the legal effectiveness principles outlined in this submission as a guide, the Queensland Government should be able to achieve a package that secures community confidence. To that aim, we would be pleased to present to an Inquiry hearing or contribute at later stages to policy development.

To summarise, if we are wanting a state where every child feels free to dream about any career path or life trajectory, we need to stand **early and often** against racist attacks and harassment. We cannot afford to have another generation of youth who exclude themselves from certain aspirations or careers because they don't truly feel safe, welcome or that they belong.

Justice needs to be delivered more often in more instances, not rarely; victim's welfare needs to be at the centre of reforms; and the response needs to be integrated in a restorative justice and education framework that moves our society towards understanding and dismantling bias. All our recommendations work towards those aims.

Thank you for holding this Inquiry and considering our views. This issue carries strong importance and consequence for the Queensland Muslim community.