



30 July 2021

Legal Affairs and Safety Committee

Sent by email to: lasc@parliament.qld.gov.au

Dear Committee

Re: Inquiry into serious vilification and hate crimes

Thank you for the opportunity to discuss the impact of vilification and hate crimes on the LGBTIQ+ community, and particularly the impact that it has on rainbow families.

About Rainbow Families Queensland (RFQ)

RFQ supports, celebrates and advocates on behalf of LGBTIQ+ parents, carers and prospective parents, and their children, across Queensland. Our vision is to create a Queensland which meets the diverse needs of all rainbow families, including those in regional areas.

Our work

RFQ runs social groups, events, fertility information sessions, advocates on law reform issues, and has created targeted resources to promote inclusive childcare and health services.

Our objectives

RFQ's objectives include a strong commitment to mental health, suicide prevention, and ensuring all children are healthy and resilient, which directly addresses two of Queensland Government's *Our Future State* key priorities: "Keep Queenslanders Healthy" and "Give All Our Children a Great Start".

About our families

In 2016 there were 10,500 children in Australia living in same-sex coupled families in Australia.¹ An Australian Institute of Family Studies report by Dempsey found that in 2013 approximately 11% of gay men and 33% of lesbians in same-sex relationships

¹ An Australian Institute of Family Studies report found that in 2013 approximately 11% of gay men and 33% of lesbians in same-sex relationships have children. 'Same-sex couples in Australia', *Australian Bureau of Statistics* (2016)

<<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Same-Sex%20Couples~85>>

have children.² However, this does not include the many children of single parents who identify as LGBTIQ+, and heterosexual couples with children where one or both parents are trans, gender diverse or intersex. While LGBTIQ+ parents are if anything underrepresented in ABS data and other research, there was a 71.5% increase from the 2011 to 2016 census which demonstrates an emerging need. Our community is growing substantially every year, but we face significant barriers to inclusion and experience minority stress at high rates.

Mental health

Based on the latest health data, the mental health of our communities is in crisis. Lesbian, gay and bisexual people are twice as likely to be diagnosed and treated for mental health disorders in Australia, and are 5 times more likely than those in the general population to attempt suicide. Transgender people are at substantially higher risk of suicide attempts (at 11 times the general population). 60% of Australians with an intersex variation had thought about suicide based on issues related to having a congenital sex variation.³

Experiences of vilification by the LGBTIQ+ community

As is the case for other marginalised communities, a major contributing factor to the poor mental health of our communities is the ongoing impact of stigma and discrimination, compounded by negative experiences of vilification and hate crimes.⁴ While in the Dempsey study (2013) it was found that some measures of wellbeing for children in rainbow families were more positive compared with other children, the study by Crouch in 2014⁵ found that experiences of stigma related to being in a rainbow family, which might include bullying or social exclusion, can be a risk factor for the wellbeing of children.

These experiences are sometimes referred to as 'minority stress'. The government has a positive duty to protect families and children from harm under the *Human Rights Act 2019*.⁶

2 Dempsey, C. (2013). *Same-sex parented families in Australia* (CFCA Paper No. 13). Melbourne: Australian Institute of Family Studies. Retrieved from <aifs.gov.au/cfca/publications/same-sex-parented-families-australia>

³ 'Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People', *LGBTI Health Alliance* (February 2020)

<https://d3n8a8pro7vhmx.cloudfront.net/lgbtihealth/pages/240/attachments/original/1595492235/2020-Snapshot_mental_health_%281%29.pdf?1595492235>

⁴ Perales F. The health and wellbeing of Australian lesbian, gay and bisexual people: a systematic assessment using a longitudinal national sample. *Australian and New Zealand Journal of Public Health*. 2019;43(3):281-7, Mereish EH, Poteat VP. A relational model of sexual minority mental and physical health: The negative effects of shame on relationships, loneliness, and health. *Journal of Counseling Psychology*. 2015;62(3):425-37, Strauss P, Cook A, Winter S, Watson V, Wright Toussaint D and Lin A. Mental health issues and complex experiences of abuse among trans and gender diverse young people: Findings from Trans Pathways. 2020;7(3):128-136, Lea T, de Wit J, Reynolds R. Minority stress in lesbian, gay, and bisexual young adults in Australia: Associations with psychological distress, suicidality, and substance use. *Archives of Sexual Behavior*. 2014 43(8):1571-8. 24.

⁵ Crouch, S.R., Waters, E., McNair, R., Power, J., & Davis, E. (2014). Parent-reported measures of child health and wellbeing in same-sex parent families: A cross-sectional survey. *BMC Public Health*, 14,635.

⁶ Section 26 *Human Rights Act 2019*.

Situations where people in the LGBTIQ+ community are most likely to experience unlawful vilification include but are not limited to:

- random verbal attacks on the street, public transport, at the shops etc. (might also be accompanied by a physical attack) and can occur in all public spaces;
- ongoing hate speech from neighbours;
- online – and particularly social media interactions⁷; and
- traditional media – including newspapers.

While the law does not clearly extend at present to schools or workplaces these are both areas where hate speech is particularly insidious. This is because while a random attack can be harmful, ongoing vilification in the school or work environment can disrupt a person's education or destroy career opportunities and financial stability for families.

For this reason, RFQ believes that the definition of 'public' should be extended to explicitly include education and workplace settings as significant areas of 'public' life.

Evidence: 2021 community survey on vilification

In collaboration with Queensland Council for LGBTI Health (QC), RFQ conducted a community survey to identify and report on the extent of hate speech occurring in our communities. Over several weeks, the survey was promoted to RFQ community groups online and was answered by a number of our rainbow families.

RFQ has identified the following results from the community survey:

- In the last 5 years, around 68% of LGBTIQ+ people surveyed had experienced hate speech or vilification personally, and 90% believe that the LGBTIQ+ community as a whole, experienced vilification.
- Of those who have experienced hate speech or vilification, 40% had experienced it recently, within the last year.
- Most of the vilification was being experienced online, in the neighbourhood, in social settings and/or in educational settings.
- No one who had experienced vilification in the survey group took a formal complaint to the QHRC or reported the incident to the police. The key reason that action was not taken is that people believed that nothing good would come out of it (39%), with a further 13% feared being outed or experiencing further discrimination if formal action was initiated.
- Our communities, first and foremost, want there to be better education in schools to combat the issue (90% of respondents). There was also strong support for tougher criminal penalties and accountability for online platforms/social media, whole of community education, and creating more

⁷ Consistent with the recent report from eSafety Commissioner that people identifying as LGBTIQ or as Aboriginal or Torres Strait Islander experience online hate speech at more than double the national average.

inclusive definitions of gender identity, sexuality and sex characteristics (see section below *Protections for the whole LGBTIQ+ community*).

Hate speech experienced by families

While the parents in our community experience vilification primarily because they are LGBTIQ+, our RFQ community has a unique experience of hate speech because it can also be directed at, or involve our children. In the words of a respondent to the community survey, we are seeing the direct impact on our children:

“I have a 7yr old son who doesn't see anything "wrong" with Mummy but asks a lot of questions when he sees a stranger have a go at me verbally.”

While there is a large body of evidence to suggest that our children are doing as well as or better than children brought up by non-LGBTIQ+ parents,⁸ there is still much stigma for our families. Unfortunately, some of us carry the burden of feeling like we are ‘less than’ or that we don’t have the ‘right’ to be parents.

Marriage postal survey

Many interactions with members of the public are positive, but there are prejudiced views that at times can be amplified depending on the nature of the public discussion at the time. During the marriage postal survey these views were brought to the surface. Our households received multiple pamphlets saying that our families were at the least inferior, or at worst, that as parents we were child abusers or paedophiles. Some of the households had children who were old enough to read and understand the content at that time and the conversations went on in our schools and communities in front of our vulnerable children and young people. Those of us with younger children felt a sense of relief that the burden did not yet have to be carried by them, but still experienced significant stress and anxiety that impacted on us at home, at work and in the community.

Anecdotally we can report that this coincided with more hate speech occurring in public settings including schools, workplaces and neighbourhoods. Being up for ‘critique’ as a family unit was incredibly damaging to our families at this time.

Research has subsequently found what we already knew as a community, that more frequent exposure to negative media messages during the postal survey was associated with greater psychological distress.⁹

Impact on families

Our families have described the feelings of being vilified as including “feeling less than”, “increased anxiety” and raised concerns about the “harmful impact on children even before they are old enough to understand”.

⁸ <https://aifs.gov.au/cfca/publications/same-sex-parented-families-australia>

⁹ Verrelli S, White FA, Harvey LJ, Pulciani MR. Minority stress, social support, and the mental health of lesbian, gay, and bisexual Australians during the Australian Marriage Law Postal Survey. *Australian Psychologist*. 2019;54(4):336-46.

In some cases, experiences of hate speech can restrict the movements of families within the community and lead to social isolation. If families and children fear that they will have negative experiences in the community they will tend to avoid social situations and places where this can occur.

One of the survey respondents pointed to the ‘sheltering’ we must do for our families to cope:

“I deliberately shelter my children from these things. We do not watch free to air tv, we carefully vet junk mail that comes, deliberately engage with people that are supportive of our family.”

This state of hypervigilance is likely harmful to mental health for us and our children, and realistically once our children go to school there is no way to properly shelter them from hate speech and vilification. **For this reason, RFQ strongly supports efforts to address hate speech and recognise family diversity in our schools starting from the primary school level.**

Neighbourhoods

In the community survey, a substantial number of respondents indicated that neighbourhood vilification is an issue for them. This can include ongoing abuse from neighbours. This type of vilification is particularly distressing, because there is often no escaping it apart from uprooting your family and moving away, thereby causing disruption to home, family life and schooling.

The complaints model under section 124A of the *Anti-Discrimination Act 1991* is unsuitable as it might actually entrench the behaviours or create an even more unsafe environment. **To effectively deal with such a scenario, RFQ supports the introduction of a civil injunction like a Peace and Good Behaviour Order designed to stop the behaviour.**

Protections for the whole LGBTIQ+ community

RFQ shares the concerns of QC that the whole of the LGBTIQ+ is not currently covered by vilification protections in Queensland. This is because of the narrow definition of ‘gender identity’ and ‘sexuality’ in the *Anti-Discrimination Act 1991* (AD Act).

In particular, ‘gender identity’ under the AD Act has a binary definition of gender, which excludes people who live outside the binary. A recent US study found that one in four young people who are LGBTIQ+ now identify as non-binary, and experiences of young people are likely to be similar in Australia. This means that coverage for the youngest cohort of LGBTIQ+ Queenslanders is seriously lacking. Notably, one in four respondents to our recent community survey identified as non-binary.

In addition, the definition of ‘gender identity’ currently conflates transgender people with intersex people. Intersex people do not ‘identify’ as having a ‘gender identity’ but rather have biological characteristics and bodies that fall outside a strict male/female

binary. The definition currently refers to 'being of indeterminate sex', which is a term that is offensive to many people with variations of sex characteristics as it reinforces a myth that they are a 'third gender'.

Sexuality as defined in the AD Act is also confined to 'heterosexuality, bisexuality or homosexuality' which does not reflect the full spectrum of sexual orientation and expression.

RFQ recommends that the Committee engages with the LGBTIQ+ community to determine new definitions that best meet the current community understandings of gender, sexual orientation and intersex status/variations of sex characteristics.

Intersectionality

The law does not currently recognise the intersectionality of our communities. Sometimes we experience hate speech because of not one but two or three characteristics that are inherent to us. For example, this parent contributor to the community survey said that she had experienced hate speech both on the basis of her sexuality and Chinese race, which compounds the trauma:

“During the plebiscite for marriage equality, there was so much debate and hate speech from the No campaign and to feel like such a second-class citizen in this country where people get to vote whether you deserve the same rights is destroying and demeaning.

Now with covid, the blame somehow is on the shoulders of the Chinese and being of Singaporean Chinese descent, you hear things like go back to where you came from and lots of anti-Chinese sentiments is very stressful and upsetting.”

This community member has had terms like “[REDACTED]” yelled at her from a passing car in front of her toddler.

We are also aware that some of our families have children with disabilities who face an additional layer of disadvantage, particularly when accessing services and education.

RFQ recommends that the Committee further consider the adequacy of the law in acknowledging and addressing intersectionality.

RFQ also supports and endorses the submission of Queensland Advocacy Incorporated which suggests extending the protected attributes to include people with an impairment or disability.

Hate speech experienced by young trans children and their parents

While the RFQ was established to support LGBTIQ+ parents, RFQ also works closely with organisations who support parents who have children who are LGBTIQ+. Through these discussions we are aware that hate speech is a significant issue for those families, and particularly those with trans and gender diverse children. These

children and their families are experiencing hate speech online, through traditional media (newspapers) and in education settings.

For example, The Australian newspaper's Gender Issues section has deliberately targeted young trans people and their parents with sensationalist and offensive material on an ongoing basis, with headlines including "They're castrating children", "Transgender project 'out of balance'", "Sex not a matter of belief", "Corrupting kids' thinking" and "Global epidemic of transgender teens".

We know the damage that the postal survey did to our rainbow families and it is painful to see similar psychological distress amongst vulnerable young people in our society and their families, who are trying to do the best for their children.

As RFQ cannot speak on behalf of these families, **RFQ recommends that the Committee specifically seek out the views of these communities who are particularly vulnerable to hate speech.**

Recommendations

In summary RFQ recommends that following steps be taken to address vilification:

1. Modernise the definitions of sexuality and gender identity which should include creating a new protected attribute of sex characteristics based on Yogyakarta Principles.
2. Extend protection to people on the basis of impairment or disability.
3. Create separate aggravated offenses for offending based on hostility towards an individual or group based on a protected attribute with higher penalties than the base offenses.
4. Clarify and expand the meaning of 'public' to ensure it extends to educational and workplace settings.
5. Provide training and support to police regarding LGBTIQ+ issues and improve access to LGBTIQ+ liaison officers to improve cultural competence and community confidence in police services.
6. Create a new civil injunction mechanism to stop vilification.
7. Provide mandatory education for children in schools, starting from a primary school level, about the meaning of hate speech and the harm that it causes.
8. Create stronger policies and training to allow teachers to intervene in hate speech happening in classrooms.
9. Deliver a community education campaign that creates community awareness and increased understanding relating to all protected attributes.

Yours sincerely



Trevor Kanapi and Heather Corkhill
Rainbow Families Queensland