



11 November 2021

Mr Peter Russo  
Chair  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)**

Dear Mr Russo

## **INQUIRY INTO SERIOUS VILIFICATION AND HATE CRIMES**

The Commission makes this supplementary submission on two matters: extending protections from vilification to other attributes; and creating aggravated offences rather than limiting hate as a circumstance of aggravation in penalties and sentencing.

### **Extending protections from vilification**

In its primary submission, the Commission recommended that the Committee investigate whether other groups are experiencing vilification, and referred the Committee to the criteria adopted by the United Kingdom Law Commission for recognising characteristics or groups in hate crime legislation.

The Committee has heard evidence that people with disabilities are subjected to vilification in the open public and in other areas of public life.<sup>1</sup> While some of the examples provided by Queensland Advocacy Incorporated would be covered by the prohibitions in the *Anti-Discrimination Act 1991* against discrimination, treating conduct that would otherwise amount to vilification or serious vilification as discrimination diminishes the serious impact of the conduct on the person with disability. Seeking redress also rests with the person with disability, which can be a difficult and unsatisfactory process. Where the conduct includes actual or threatened physical harm the conduct should properly be dealt with in the criminal context rather than as a civil proceeding.

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<sup>1</sup> For example: Submission No. 075 by Queensland Advocacy Incorporated; Evidence of Ms Matilda Alexander at public hearing on 9 September 2021; Evidence of Ms Yarraka Bayles and Ms Journee Casabuena at the public hearing on 15 October 2021.

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The Committee heard evidence of the distressing harassment and vilification experienced by people of short stature when they try to go about their day to day life activities.<sup>2</sup> The Committee also heard of the devastating impact that vilification has on people with disability who are subjected to the conduct, and on the community.

The Commission considers that there is sufficient evidence to satisfy the criteria for including disability to the attributes that are currently protected from vilification and serious vilification. These are:

- (a) Demonstrable need. There is evidence that criminal targeting based on prejudice or hostility towards people with disability is prevalent.
- (b) Additional harm. There is evidence that criminal targeting based on hostility or prejudice towards disability causes additional harm to the victim, people with disability, and society more widely.
- (c) Suitability. Protection of disability would fit logically within the vilification framework.

I have referred to 'disability', however, in the *Anti-Discrimination Act 1991* the attribute is called 'impairment'.<sup>3</sup>

The Commission recommends that the attribute of impairment is added to the attributes that are protected in sections 124A and 131A of the *Anti-Discrimination Act 1991*.

### **Aggravated offences**

In evidence before the Committee, representatives of the Queensland Law Society (QLS) advised that the QLS does not support the introduction of new criminal offences, and instead supports serious vilification and hate becoming circumstances of aggravation in the *Penalties and Sentences Act 1992*.<sup>4</sup>

In contrast, when asked about this as an alternative option, the representative from Legal Aid Queensland informed the Committee of an issue relating to the effectiveness of the circumstance of aggravation only being considered at the sentencing stage.<sup>5</sup> Given that police are not recognising behaviour as an act of vilification and a hate crime and therefore it is not being picked up at the prosecution stage, there is a serious question as to whether it would be recognised and put before the court at the sentencing stage. The Committee heard that a better alternative is to add hate as an aggravating circumstance to existing summary offences.

This accords with the Commission's recommendation at paragraphs 93 and 96 of the primary submission, to add the attributes protected in the vilification provisions

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<sup>2</sup> Evidence of Ms Yarraka Bayles and Ms Journee Casabuena at the public hearing on 15 October 2021.

<sup>3</sup> Impairment is defined in Dictionary at Schedule 1 to the *Anti-Discrimination Act 1991*.

<sup>4</sup> Evidence of Ms Elizabeth Shearer and Mr Dan Rogers at the public hearing on 9 September 2021.

<sup>5</sup> Evidence of Ms Brittany Smeed at the public hearing on 9 September 2021.

as aggravation to existing offences, some of which are in the *Summary Offences Act 2005* and others in the *Criminal Code*.

Parliament's message of denouncing hate crimes and leading change, is better served by recognising attribute-based hate as aggravation in the offences themselves, rather than as a sentencing option.

The Committee heard evidence of the impact of hate crimes on individuals and the community, and the importance of assuring the community that these incidents will be taken seriously and recognise the motivations of the offenders, and not treated like petty crime. For example, Mr Ali Kadri described an incident of graffiti on a mosque that included glorification of the person who killed 52 people in Christchurch. It caused a tremendous amount of fear in the community, with a lot of members too afraid to go to or send their family to the mosque. In another incident a pig's head with a swastika drawn on it was left at the Islamic College of Brisbane when the children were due to come into the school. Both incidents were dealt with as wilful damage to property, which added to the fear in the community and left them feeling there was not enough legal protection for them. Mr Kadri described another incident when he and his family were verbally abused in public parklands and wine thrown on him. The police were called and treated the incident as common assault. Mr Kadri told the Committee he was so disappointed with the system that he chose not to press charges for common assault when the person's intention was to vilify his community and scare the family.<sup>6</sup>

The evidence supports the need for offences that recognise the attribute-based hate as an aggravated offence, rather than simply at the sentencing stage. People subjected to this conduct need to feel safe and protected by laws that reflect the seriousness of the offending.

Thank you for the opportunity to make this supplementary submission to the Inquiry.

Yours sincerely



**SCOTT MCDOUGALL**  
**Human Rights Commissioner**

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<sup>6</sup> Evidence of Mr Ali Kadri at the public hearing on 10 September 2021.